

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement of	)	RM-11358
Copper Loops by Incumbent Local Exchange	)	
Carriers	)	
	)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers	)	
	)	
AT&T Corporation Petition for Rulemaking	)	RM-10593
to Reform Regulation of Incumbent Local	)	
Exchange Carrier Rates for Interstate Special	)	
Access Services	)	

**REPLY COMMENTS  
of  
NTCA – THE RURAL BROADBAND ASSOCIATION,  
WTA – ADVOCATES FOR RURAL BROADBAND,  
the EASTERN RURAL TELECOM ASSOCIATION, and  
the NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.**

**I. INTRODUCTION & SUMMARY**

NTCA – The Rural Broadband Association, WTA – Advocates for Rural Broadband, the Eastern Rural Telecom Association, and the National Exchange Carrier Association, Inc.,<sup>1</sup> (collectively, the “Rural Associations”) respectfully submit these reply comments in response to

---

<sup>1</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. WTA – Advocates for Rural Broadband is a trade association representing more than 280 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities. ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River. NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 et seq.; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

comments filed on the Further Notice of Proposed Rulemaking (“*Further Notice*”) accompanying the *Report and Order and Order on Reconsideration* released by the Federal Communications Commission (the “Commission”) on August 7, 2015.<sup>2</sup>

As discussed herein, the record in this proceeding makes clear the Commission should exercise caution in adopting new guidelines for evaluation of section 214 service discontinuance petitions, and in particular should make clear that rate-of-return regulated local exchange carriers (“RLECs”) would rarely, if ever, be required to submit service discontinuance petitions when upgrading to IP-based services. The Commission should also avoid attempts to use its authority under section 214 of the Act to impose any new service requirements on carriers. Such obligations should be considered, if at all, in the context of industry-wide rulemaking proceedings.

## **II. THE COMMENTS REFLECT SIGNIFICANT CONCERNS THAT THE PROPOSALS CONTAINED IN THE FURTHER NOTICE WILL IMPEDE RATHER THAN PROMOTE THE IP TRANSITION.**

As discussed in the Rural Associations’ initial comments, RLECs have traditionally focused on improving and expanding services to customers in difficult-to-serve rural areas, using a variety of technologies designed to overcome challenges caused by low subscriber density, difficult terrain, extreme weather conditions and other problems uniquely associated with rural areas.<sup>3</sup> These carriers have made every effort, and indeed have made substantial progress, in delivering cutting-edge, IP-based services to their rural consumers. But they have not generally

---

<sup>2</sup> *Technology Transitions*, GN Docket No. 13-5, *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. Aug. 7, 2015).

<sup>3</sup> Rural Associations, p. 6.

been required to expend resources analyzing whether specific network upgrades, reconfigurations or service rearrangements designed to take advantage of newer network technologies might somehow trigger a requirement to seek authorization from the Commission to “discontinue” services pursuant to section 214 of the Act, particularly in circumstances where it is highly questionable that a service discontinuance has occurred at all.

Unfortunately, the Commission’s *Report and Order* and its *Order on Reconsideration* in this proceeding have engendered considerable confusion and concern among RLECs who have upgraded, or are planning to upgrade, their networks from TDM to IP technology. These carriers now find themselves wondering whether the Commission will second-guess whether network upgrades should have been preceded by the filing of an application for authority to discontinue services pursuant to section 214 of the Act.

As ITTA correctly points out:

The Commission has not identified any reason why the current environment requires a new and complicated set of criteria for judging whether alternative services are adequate and why the criteria the Commission has employed to evaluate the numerous changes to and discontinuances of services that it has considered for the last seven decades as technology has evolved are lacking.<sup>4</sup>

In particular, the *Further Notice* does not explain why the simple transition of the underlying technology used to deliver services to consumers (TDM to IP) in and of itself necessarily poses some threat to consumers that cannot be rectified by more specific and targeted approaches. As NARUC states, “[a]lthough sometimes a specific technology can engender a new problem, generally, the technology used to provide a service is not a relevant consideration.

---

<sup>4</sup> ITTA, p. 7. *See also*, USTelecom, p. 9 (“Nothing in the record or the Further Notice demonstrates that the current approach to evaluating substitute services fails to protect consumers facing service discontinuances or the public convenience and necessity. And the number of consumers that have chosen to subscribe to services based on newer technology is proof that consumers think these newer services are adequate substitutes. There are simply no claims of actual or potential harm that would justify a change of this significance.”).

Consumers care if the service works and that they are getting what they pay for. Fortunately, the definitional scheme in the Act is technology neutral.”<sup>5</sup>

Where the Commission has identified specific potential consumer harms that may result from carriers’ increased efforts to deploy IP-based services, it has been able to address them in a more targeted fashion. As an example, in response to concerns that replacement of copper facilities to a customer’s premises with fiber-to-the-home would limit consumers’ access to 911 service, the Commission implemented specific backup power and related consumer education requirements.<sup>6</sup> This rule-based approach, which clearly identifies specific concerns and then develops solutions or practices to address them, should be the paradigm, rather than vague guidelines that undermine rather than promote certainty in investment decisions. Unless and until there is evidence that actual service reductions have occurred, small businesses such as RLECs should not have to conduct an amorphous, multi-point analysis of service factors to determine whether service is being “discontinued” or “impaired” in some manner when upgrading networks and services.

At the very least, the Commission should make clear that RLECs would rarely, if ever, need to file applications for approval under section 214 simply as a consequence of converting legacy TDM voice services to IP technology. Such technology conversion is part and parcel of the very broadband deployment that the Commission has repeatedly and emphatically encouraged and further added as a condition of receiving high cost universal service support.

---

<sup>5</sup> NARUC, p. 4.

<sup>6</sup> See *Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order, 30 FCC Rcd. 8677 (2015).

Moreover, such broadband deployments in the vast majority of cases represent *advances*, not reductions or impairments, in services offered by RLECs to their rural consumers.<sup>7</sup>

The record in this proceeding is also quite clear that the Commission should not attempt to use its section 214 review processes to impose *new* service requirements on providers. If a new IP-based service meets the same standards as services provided using legacy TDM technologies, no “discontinuance” or “impairment” has occurred under section 214 of the Act and the inquiry ends there. A new service should not be required to meet new standards or regulations that were not provided by prior service arrangements.

This is not to suggest that consumers should be left with inferior service as a result of changes in underlying technology. As the Rural Associations stated in initial comments, it does appear reasonable for the Commission to inquire whether replacements for discontinued services meet *existing* quality standards established by a state regulatory agency, or standards previously established pursuant to notice and comment rulemaking by the Commission itself (if state standards have not been established or are no longer in force).

Unfortunately, the *Further Notice* appears to go beyond ensuring IP-based services are an adequate substitute for discontinued services. As AT&T states, the Commission “appears poised to substitute its own incongruous regulatory prescription – one that pays lip service to the ‘adequate substitute’ standard but, in fact, imposes a ‘superior service’ standard.”<sup>8</sup>

---

<sup>7</sup> As the Rural Associations noted in comments, RLECs have not generally needed to file applications for discontinuance of service under section 214 simply as a consequence of upgrading their networks. Rural Associations, p. 6. Absent Commission clarification to the contrary, adoption of the proposed guidelines may cause RLECs engaged in network upgrades to submit applications under section 214 “just to be on the safe side.” *Id.* In this respect the approach proposed in the *Further Notice* may well inhibit rather than promote the IP transition, contrary to the Commission’s overall policy goals.

<sup>8</sup> AT&T p. 4.

Questions with respect to “Communications Security” are a perfect example of this. Section 214 should not and cannot be used as a vehicle to impose *new* cybersecurity requirements that do not apply today, and which are instead still being evaluated for tailored adoption and implementation by carriers on a voluntary basis consistent with the NIST Framework and the Executive Order that contemplated such a voluntary framework.<sup>9</sup> Similarly, the Commission should not heed calls for “operability, transmission capacity and connection persistence” and “network hardening” measures for non-residential customers.<sup>10</sup> While such “network hardening” may indeed be a worthy public policy goal necessary to protect our nation’s electrical facilities, additional regulatory proceedings or legislation would be the proper venues for addressing these concerns.

Calls for “affordability” criteria within the 214 process are also misplaced. Certainly, as the MPSC points out, “affordability is a crucial factor in a customer’s decision to continue using a service”<sup>11</sup> But as the Rural Associations have repeatedly stated, a sufficient and predictable High-Cost universal service support program that supports standalone broadband services is the key to ensuring rural consumers have affordable access to IP-based services.<sup>12</sup> Injecting the concept of affordability into the section 214 process would fail to sufficiently address the issue, as it is difficult to see what “remedy” the Commission would employ other than to deny an application, potentially leaving some consumers without access to new IP-based services. And of course, any rate regulation employed as such a remedy would run counter to the

---

<sup>9</sup> See *Further Notice* ¶ 227.

<sup>10</sup> Utilities Telecom Council, p. 6.

<sup>11</sup> MPSC, p. 11.

<sup>12</sup> See, e.g., Comments of the Rural Associations, *et al.*, WC Docket No. 10-90, at 6-26 (filed Aug. 8, 2014); Comments of NTCA, NECA, WTA and ERTA, WC Docket No. 10-90, at 3-11 (filed June 17, 2013); Initial Comments of NECA, NTCA, *et al.*, WC Docket No. 10-90 (filed Jan. 18, 2012).

Commission’s repeated commitment against such an approach made in the context of the Open Internet proceeding.

Carriers of all sizes note the proposed guidelines will require them to expend resources on regulatory compliance matters – resources that would be better spent on improving the quality and reach of their IP networks.<sup>13</sup> This is a particular concern for RLECs as they continue to upgrade to fiber plant and convert from TDM to IP-based services while working to minimize costs.

The *Further Notice* asserts the proposed criteria will reduce uncertainty, as compared to the current case-by-case approach to evaluating section 214 applications.<sup>14</sup> Yet, as CenturyLink points out, the rules for all carriers as to what will be considered an “adequate substitute” going forward are still likely to be developed on a case-by-case basis, as individual carriers’ section 214 applications are evaluated under the guidelines.<sup>15</sup> In other words, the Commission will be replacing one case-by-case approach with a new, guideline-driven approach, which has already created substantial uncertainty in the industry and is likely to continue to do so for some time as individual applications are evaluated under the new guidelines. The record suggests that a rule-based approach would do much more to improve certainty and promote responsible investment than the relative weighting of multi-factor guidelines.

---

<sup>13</sup> See e.g., Verizon, p. 13; ITTA, p.4; CenturyLink, p.21.

<sup>14</sup> E.g., *Further Notice*, ¶ 205.

<sup>15</sup> CenturyLink, p. 27 (“The *FNPRM*’s proposed framework thus would shift policy debates over appropriate regulation in a competitive, multi-platform communications environment from the rulemaking context, where they belong, to the carrier-specific section 214 discontinuance process.”) See also, AT&T, p. 6 (“If there is merit to any of the metrics the Commission has proposed, and the Commission has the authority to mandate those metrics, there is a path for the Commission to do just that – the rulemaking process.”). Further, as ITTA notes, questions regarding 911 service and disabilities access are already subject to existing laws or are being addressed in other proceedings. ITTA, p. 8.

Finally, the Rural Associations note that even if some contend there is no need for a special “rural exemption” from the proposed criteria,<sup>16</sup> to the extent the Commission seeks to impose expanded service requirements or new performance obligations via the 214 review process (contrary to most parties’ suggestions), some type of rural exemption may indeed be required to recognize special circumstances faced by RLECs and similarly-situated carriers.<sup>17</sup>

### III. CONCLUSION

For the reasons discussed above, the Commission should exercise caution in adopting new guidelines for evaluation of section 214 service discontinuance petitions. Commenters widely express concern that the Commission’s *Report and Order and Order on Reconsideration*, together with the guidelines proposed in the *Further Notice*, have added unnecessary uncertainty to the IP Transition. The Commission can and should remove this uncertainty by making clear that RLECs would rarely, if ever, be required to submit service discontinuance petitions when simply upgrading to IP-based services, and by avoiding any attempt to impose new service requirements on carriers via the section 214 process. As the Rural Associations and others explain, such obligations should be considered only in the context of industry-wide rulemaking proceedings.

---

<sup>16</sup> See generally, AT&T and CenturyLink.

<sup>17</sup> For example, portions of the *Further Notice* propose methods by which section 214 applicants would test or measure a substitute service’s compliance with “Service Quality” and “Network Capacity and Reliability.” *Id.* ¶¶ 216 and 217. RLECs already face substantial barriers to broadband deployment not faced by larger, urban-based carriers. Adding costly new measurement requirements to the IP conversion process could potentially reduce the extent to which these companies can deploy broadband facilities in high-cost areas. A rural exemption in these circumstances would allow for a more efficient use of Commission and RLEC resources.



Respectfully Submitted,

**NTCA-THE RURAL BROADBAND ASSOCIATION**

By: /s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

4121 Wilson Boulevard, 10th Floor

Arlington, VA 22203

(703) 351-2000

**WTA – ADVOCATES FOR RURAL BROADBAND**

By: /s/ Derrick B. Owens

Derrick B. Owens

Vice President of Government Affairs

317 Massachusetts Avenue N.E., Ste. 300C

Washington, DC 20002

(202) 548-0202

By: /s/ Gerard J. Duffy

Gerard J. Duffy, Regulatory Counsel

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP

2120 L Street NW, Suite 300

Washington, DC 20037

(202) 659-0830

**EASTERN RURAL TELECOM ASSOCIATION**

By: /s/ Jerry Weikle

Jerry Weikle

Regulatory Consultant

PO Box 6263

Raleigh, NC 27628

(919) 708-7464

**NATIONAL EXCHANGE CARRIER  
ASSOCIATION, INC.**

By: /s/ Richard A. Askoff

Richard A. Askoff

Its Attorney

Teresa Evert, Senior Regulatory Manager

80 South Jefferson Road

Whippany, NJ 07981

(973) 884-8000

November 24, 2015