October 26, 2017

FCC FACT SHEET*

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment
Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking - WC Docket No. 17-84

Background: High-speed broadband is an increasingly important gateway to jobs, health care, education, information, and economic development. Access to high-speed broadband can create economic opportunity, enabling entrepreneurs to create businesses, immediately reach customers throughout the world, and revolutionize entire industries. But all too often, regulatory barriers increase the cost of deploying next-generation networks, resulting in higher prices, less competition, and worse service for consumers and small businesses, especially in rural America.

This *Report and Order*, *Declaratory Ruling*, and *Further Notice of Proposed Rulemaking* seeks to accelerate the deployment of next-generation networks and services by removing regulatory barriers to infrastructure investment; to speed the transition from legacy copper networks and services to next-generation fiber-based networks and services; and to eliminate Commission regulations that raise costs and slow broadband deployment.

What the Report and Order Would Do:

- Reform the pole attachment policies by:
  - Codifying a rule excluding capital costs recovered via make-ready fees from pole attachment rates;
  - Establishing a 180-day shot clock for resolution of pole attachment access complaints; and
  - Allowing incumbent local exchange carriers (LECs) access to infrastructure owned by other LECs.
- Streamline the copper retirement process to facilitate more rapid transition to IP networks.
- Remove a rule that prohibits incumbent LECs from engaging in useful advanced coordination with entities affected by network changes.
- Streamline the section 214(a) discontinuance process by:
  - Reducing the comment and automatic-grant timeframes for applications seeking to: (i) stop taking new customers for low-speed legacy voice and data services; (ii) discontinue low-speed legacy data services for which carriers already are not taking new customers; and (iii) discontinue low-speed legacy voice and data services with no customers.
  - Clarifying that carriers need only consider their end users in seeking discontinuance authority.

What the Declaratory Ruling Would Do:

- Facilitate investment in modern services by reversing the "functional test" from a 2014 Declaratory Ruling and subsequent 2015 Order on Reconsideration that deterred and delayed carriers from upgrading their networks.

What the Further Notice of Proposed Rulemaking Would Do:

- Request comment on streamlining the process to retire services that are too slow to qualify as high-speed broadband so that carriers can focus their investments on accelerating the deployment of high-speed broadband (25 Mbps/3 Mbps) service.
- Request comment on how utilities should treat requests by pole attachers to overlash existing wiring or conduct customer drops.
- Request comment on proposals to further streamline the network change disclosure and discontinuance processes.
- Request comment on whether the Commission can take targeted actions to facilitate rebuilding and repairing broadband infrastructure after natural disasters.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 17-84, which may be accessed via the Electronic Comment Filing System (https://www.fcc.gov/ecfs/). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR § 1.1200 *et seq*.

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

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
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REPORT AND ORDER, DECLARATORY RULING, AND FURTHER NOTICE OF PROPOSED RULEMAKING*

Adopted: [] **Released: []**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its November open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's *ex parte* rules apply and presentations are subject to "permit-but-disclose" *ex parte* rules. *See, e.g.*, 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

I. INTRODUCTION

1. Access to high-speed broadband is an essential component of modern life, providing unfettered access to information and entertainment, an open channel of communication to far-away friends and relatives, and unprecedented economic opportunity. Technological innovation and private investment have revolutionized American communications networks in recent years, making possible new and better service offerings, and bringing the promise of the digital revolution to more Americans than ever before. As part of this transformation, consumers are increasingly moving away from traditional

telephone services provided over copper wires and towards next-generation technologies using a variety of transmission means, including copper, fiber, and wireless spectrum-based services.[1]

2. Despite this progress, too many communities remain on the wrong side of the digital divide, unable to take full part in the benefits of the modern information economy. To close that digital divide, we seek to use every tool available to us to accelerate the deployment of advanced communications networks. Accordingly, today we embrace the transition to next-generation networks and the innovative services they enable, and adopt a number of important reforms aimed at removing unnecessary regulatory barriers to the deployment of high-speed broadband networks.

3. By removing unnecessary impediments to broadband deployment, the regulatory reforms we adopt today will enable carriers to more rapidly shift resources away from maintaining outdated legacy infrastructure and services and towards the construction of next-generation broadband networks bringing innovative new broadband services. And by reducing the costs to deploy high-speed broadband networks, we make it more economically feasible for carriers to extend the reach of their networks, increasing competition among broadband providers to communities across the country. We expect competition will include such benefits as lower prices to consumers.[2] We anticipate taking additional action in the future in this proceeding to further facilitate broadband deployment.

II. BACKGROUND

4. On April 20, 2017, the Commission adopted a *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment* proposing and seeking comment on a number of actions designed to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment.[3] More specifically, the *Wireline Infrastructure Notice* sought comment on: (1) reforming the Commission's pole attachment rules to make it easier, faster, and less costly to access the poles, ducts, conduits, and rights-of-way necessary for building out next-generation networks;[4] (2) changing the process for retiring copper facilities and making other network changes to provide greater regulatory certainty and better enable carriers to transition more rapidly to modern networks;[5] (3) streamlining the regulatory process by which carriers must obtain Commission authorization to discontinue legacy services so that scarce capital is free to be spent on delivering modern, innovative services;[6] (4) using the Commission's preemption authority to prevent the enforcement of state and local laws that inhibit broadband deployment;[7] and (5) changing the Commission's legal interpretations to clarify when carriers must ask for permission to alter or discontinue a service and, thereby, to reduce the regulatory uncertainty

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[1] *See, e.g.*, Rand, U.S. Consumer Preferences for Telephone and Internet Services at iii (2016), https://www.rand.org/pubs/research_reports/RR1382.readonline.html.

[2] *See* Letter from Thomas J. Navin, Counsel to Corning Inc., to Marlene Dortch, Secretary FCC, WC Docket No. 17-84, Attach. A (Oct. 20, 2017), https://ecfsapi.fcc.gov/file/1020823627435/Corning%20Ex%20Parte.pdf (Hal Singer, Ed Naef, Alex King, Economists Incorporated and CMA Strategy Consulting, *Assessing the Impact of Removing Regulatory Barriers on Next Generation Wireless and Wireline Broadband Infrastructure Investment*, at 42-5 (June 2017) (discussing consumer price declines resulting from increased competition, including "a decline in the monthly standard broadband price of between approximately $13 and $18 for plans for download speeds between 25 Mbps and 1 Gbps" when a competitor offering Gigabit Internet is present).

[3] *Acceleration Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Wireline Infrastructure Notice* or *Notice*).

[4] *See id.* at 3267-83, paras. 3-55.

[5] *See id.* at 3283-88, paras. 56-70.

[6] *See id.* at 3288-96, paras. 71-99.

[7] *See id.* at 3296-302, paras. 100-14.

that is costly and burdensome to providers.[8]

5. At the same time, the Commission's Broadband Deployment Advisory Committee (BDAC), a federal advisory committee chartered earlier this year, is examining several of the issues raised in the *Wireline Infrastructure Notice*. The BDAC is charged with providing the Commission with recommendations on how to accelerate the deployment of high-speed Internet access, or "broadband," by reducing and/or removing regulatory barriers to infrastructure investment.[9] Since being chartered, the BDAC has held [three] public meetings[10] and has five active working groups.[11] We anticipate that the BDAC will provide important input on several matters relevant to this proceeding. We will examine the BDAC's recommendations closely in considering whether and how to move forward with those issues.

III. REPORT AND ORDER

A. Pole Attachment Reforms

6. In this Order, we address three pole attachment issues on which the Commission sought comment in the *Wireline Infrastructure Notice*: (1) excluding capital costs recovered via make-ready fees from pole attachment rates; (2) establishing a shot clock for resolution of pole attachment access complaints; and (3) allowing incumbent local exchange carriers (LECs) access to poles owned by other LECs. In the *Wireline Infrastructure Notice,* we requested comment on several other pole attachment issues,[12] and we anticipate that we will address other pole attachment issues in a future order.

1. Excluding Capital Costs Recovered Via Make-Ready Fees from Pole Attachment Rates

7. We adopt the *Wireline Infrastructure Notice*'s proposal to amend section 1.1409(c) of our rules to exclude capital expenses already recovered via non-recurring make-ready fees from recurring pole attachment rates.[13] In adopting this proposal, we reaffirm and emphasize longstanding Commission precedent. Almost forty years ago, the Commission found that "where a utility has been directly reimbursed by [an] . . . operator for non-recurring costs, including plant, such costs must be subtracted from the utility's corresponding pole line capital account to insure that . . . operators are not charged twice

[8] *See id.* at 3302-05, paras. 115-23.

[9] Broadband Deployment Advisory Committee Charter (March 1, 2017), https://www.fcc.gov/sites/default/files/bdac-charter.pdf; *FCC Announces the Establishment of the Broadband Deployment Advisory Committee and Solicits Nominations for Membership*, Public Notice, 32 FCC Rcd 1037 (2017).

[10] *See FCC Announces the Membership and First Meeting of the Broadband Deployment Advisory Committee*, GN Docket No. 17-83, Public Notice, 32 FCC Rcd 2930 (2017); *FCC Announces the Second Meeting of the Broadband Deployment Advisory Committee*, GN Docket No. 17-83, Public Notice, 32 FCC Rcd 5014 (2017); Federal Communications Commission, Notice, 82 Fed. Reg. 48229 (Oct. 17, 2017).

[11] *See* Broadband Deployment Advisory Committee Overview (April 21, 2017) at 6, https://www.fcc.gov/sites/default/files/bdac-4-21-2017-presentation-overview.pdf.

[12] In addition to the pole attachment issues addressed by this Order, the Commission sought comment in the *Wireline Infrastructure Notice* on proposals that would adopt a streamlined timeframe for gaining access to utility poles, reduce charges paid by attachers to utilities for work done to make a pole ready for new attachments, and adopt a formula for computing the maximum pole attachment rate that may be imposed on an incumbent LEC. *Wireline Infrastructure Notice*, 32 FCC Rcd at 3268, 3276, 3280, paras. 6, 32, 45.

[13] *Id.* at 3278, paras. 38-39. "Make-ready" generally refers to the modification of poles or lines or the installation of certain equipment (e.g., guys and anchors) to accommodate additional facilities on poles. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999).

for the same costs."[14] Since that time, the Commission has made clear that "[m]ake-ready costs are non-recurring costs for which the utility is directly compensated and as such are excluded from expenses used in the rate calculation."[15] Nonetheless, the record demonstrates that not all attachers benefit from lower rates in these circumstances, in part because our rules do not explicitly require utilities to exclude already-reimbursed capital costs from their pole attachment rates.[16]

8. We agree with commenters that argue that codifying the exclusion of capital expenses already recovered via make-ready fees from recurring pole attachment rates will help eliminate confusion.[17] While some commenters argue that it is unnecessary to codify this exclusion because current Commission policies already prevent make-ready payments from being included in the formulas used to calculate recurring pole attachment rates,[18] we find that codification of the rule will enhance the deployment of broadband services and should improve compliance with long-standing precedent by providing additional clarity in the text of our rules.[19]

2. Establishing a "Shot Clock" for Resolution of Pole Access Complaints

9. *180-Day Shot Clock.* We establish a 180-day "shot clock" for Enforcement Bureau resolution of pole access complaints filed under section 1.1409 of our rules.[20] When the Commission last considered this issue as part of the *2011 Pole Attachment Order*, the record did not support the creation of new pole attachment complaint rules.[21] By contrast, the record before us today includes broad support for establishing a shot clock for resolving pole access complaints, and we agree with commenters that establishment of such a shot clock will expedite broadband deployment by resolving pole attachment access disputes in a quicker fashion.[22] As the POWER Coalition explains, pole access complaints "are more urgent than complaints alleging unreasonable rates, terms and conditions," and because the only meaningful remedy for lack of pole access "is the grant of immediate access to the requested poles," it is

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[14] *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Memorandum Opinion and Second Report and Order, 72 FCC 2d 59, 72, para. 27 (1979); *see also Florida Cable Telecom. Assn., Inc. et al. v. Gulf Power Co.*, Decision, 26 FCC Rcd 6452, 6455-56, para. 9 (2011).

[15] *Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, 6471, para. 28 (2000); *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(E) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12119, para. 24 & n.120 (2001).

[16] *See* Comcast Comments at 29-30; NCTA Comments at 19; INCOMPAS Comments at 11; American Cable Ass'n Reply at 40.

[17] *See* Comcast Comments at 29-30; NCTA Comments at 18; NTCA Comments at 8-9; Sprint Comments at 50-51; Verizon Comments at 14-15.

[18] *See* Coalition of Concerned Utilities Comments at 33; Utilities Technology Council Comments at 18-19; Ameren et al. Reply at 33; Edison Electric Institute Reply at 11.

[19] *See* NCTA Comments at 17-18; NTCA Comments at 9; Sprint Comments at 48-51.

[20] 47 CFR § 1.1409. A "pole access complaint" is a complaint filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole. *See infra* Appx. A, new 47 CFR § 1.1425. This term does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access.

[21] *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5286, para. 102 & nn.317-18 (2011) (*2011 Pole Attachment Order*).

[22] *See* American Cable Ass'n Comments at 27, 51; Ameren et al. Comments at 58; AT&T Comments at 25-26; CenturyLink Comments at 22; ExteNet Comments at 56; Frontier Comments at 14; Lightower Comments at 16; NCTA Comments at 21; NTCA Comments at 9; USTelecom Comments at 19; Verizon Comments at 15; Crown Castle Reply at 21; Edison Electric Reply at 15.

crucial for the Enforcement Bureau to complete its review of pole access complaints in a timely manner.[23] Similar to the shot clock for Commission review of domestic transfer of control applications,[24] we expect that the 180-day shot clock for pole access complaints will be met except in extraordinary circumstances.

10. We agree with commenters that argue that 180 days provides a reasonable timeframe for the Enforcement Bureau to resolve pole access complaints.[25] While some commenters request a shorter shot clock,[26] and the Utilities Technology Council opposes a shot clock on the grounds that it would inhibit the Enforcement Bureau's ability to comprehensively evaluate facts on a case-by-case basis,[27] we find that 180 days will provide the Enforcement Bureau sufficient time to carefully evaluate the particular facts of each pole access complaint.[28] We find it instructive that, as Verizon points out, a 180-day shot clock for pole access complaints aligns "with the time period that Congress gave reverse-preemption states to decide pole attachment complaints"[29] under section 224(c)(3)(B) of the Act.[30] Furthermore, the Enforcement Bureau can pause the shot clock in certain situations and/or exceed 180 days in extraordinary circumstances, which should ensure that the Enforcement Bureau can comprehensively evaluate any pole attachment access dispute.

11. *Starting the Shot Clock at the Time a Complaint Is Filed.* We direct the Enforcement Bureau to start the 180-day shot clock when a pole access complaint is filed. This approach is consistent with that set forth in the Act for states that act on pole attachment complaints and is broadly supported in the record.[31]

12. *Pausing the Shot Clock.* The Enforcement Bureau may pause the shot clock when actions outside the Enforcement Bureau's control delay the Bureau's review of a pole access complaint. This approach also has broad support in the record.[32] The Enforcement Bureau may, for example, pause

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[23] POWER Coalition Comments at 38.

[24] *See* 47 CFR § 63.03(c)(2).

[25] *See, e.g.*, American Cable Ass'n Comments at 51; Ameren et al. Comments at 58; AT&T Comments at 25; CenturyLink Comments at 22; Frontier Comments at 14; NCTA Comments at 9; USTelecom Comments at 19; Verizon Comments at 15; ADTRAN Comments at 4; Crown Castle Reply at 21.

[26] *See* ExteNet Comments at 57 (arguing for a 75-day shot clock for pole access complaints); Lightower Comments at 16 and Lumos Reply at 12 (arguing for a 90-day shot clock for pole access complaints).

[27] UTC Comments at 22.

[28] We note that in a separate proceeding, the Commission is considering whether to adopt a shot clock for all pole attachment complaints. *See Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Notice of Proposed Rulemaking, 32 FCC Rcd 7155, 7160, para. 19 (2017) (*Complaint Procedures NPRM*). We find the record for this Order is sufficient to support the adoption now of a shot clock for a narrowly-targeted group of pole attachment complaints (i.e., those alleging a denial of access to poles) that will aid broadband deployment and investment. *See* American Cable Ass'n Comments at 27, 51; Ameren et al. Comments at 58; AT&T Comments at 25-26; CenturyLink Comments at 22; ExteNet Comments at 56; Frontier Comments at 14; Lightower Comments at 16; NCTA Comments at 21; NTCA Comments at 9; USTelecom Comments at 19; Verizon Comments at 15; Crown Castle Reply at 21; Edison Electric Reply at 15.

[29] Verizon Comments at 15.

[30] 47 U.S.C. § 224(c)(3)(B)(i).

[31] *Id.*; *see also* American Cable Ass'n Comments at 52; AT&T Comments at 25-26; ExteNet Comments at 57; Verizon Comments at 16. *But see* CenturyLink Comments at 23 (shot clock should start when complaining party's reply is filed); UTC Comments at 23 (shot clock should begin once all pleadings have been filed).

[32] *See* American Cable Ass'n Comments at 52-53; Ameren et al. Comments at 58; AT&T Comments at 26; USTelecom Comments at 20; UTC Comments at 23; Verizon Comments at 16 (pausing the shot clock should be done "sparingly for extreme circumstances and in no cases beyond the 360 days that Congress gave the states as an

(continued….)

the shot clock when the parties need additional time to provide key information requested by the Bureau,[33] or when the parties decide to pursue informal dispute resolution or request a delay to pursue settlement discussions after a pole access complaint is filed. The Enforcement Bureau should resume the shot clock immediately when the cause for pausing the shot clock has been resolved. We direct the Enforcement Bureau to provide the parties written notice of any pause in the shot clock, as well as when the shot clock is resumed.

13. *Establishment of Pre-Complaint Procedures.* Consistent with our goal of adopting measures to expedite broadband deployment by resolving pole attachment access disputes in a more timely manner, we decline to delay the beginning of the complaint process by requiring the parties to resolve procedural issues and deadlines in a meeting with Enforcement Bureau staff prior to the filing of a pole access complaint.[34] We also decline the suggestion made by Ameren et al. that we require pre-complaint mediation or the discussion of mediation in a pre-complaint meeting.[35] Successful mediation can save the parties and the Enforcement Bureau valuable time and resources and we encourage the voluntary use of mediation through the Enforcement Bureau, but we decline to adopt such a requirement and believe the decision as to whether to mediate is better left to the parties.[36] We also recognize that there are times when the Enforcement Bureau requests that parties participate in post-complaint meetings in order to resolve procedural issues and deadlines associated with its review of a complaint.[37] We find that, in general, the complaint process has proceeded in a more timely and smooth manner as a result of post-complaint meetings, and encourage the Enforcement Bureau to continue that practice as appropriate.

14. *Use of Shot Clock for Other Pole Attachment Complaints.* We also decline at this time to adopt a 180-day shot clock for pole attachment complaints other than those relating to pole access issues. We note that in the *Complaint Procedures NPRM*, the Commission is currently seeking comment on whether to apply shot clocks (either uniformly or with differing deadlines) to a number of types of formal complaints, including non-access pole attachment complaints filed under section 224 of the Act.[38] Although some commenters in this record support a 180-day shot clock for all pole attachment complaints,[39] we defer to the record being developed in the *Complaint Procedures NPRM* for resolution of this issue.

(Continued from previous page)
outside deadline" for resolving pole attachment complaints). *But see* ExteNet Comments at 57 (shot clock should be tolled only by mutual agreement of the parties).

[33] We find it instructive that in the transactions context, the reviewing Bureau can pause the shot clock while waiting for parties to provide additional requested information. *See, e.g.*, Letter from Matthew S. DelNero, Chief, Wireline Competition Bureau, FCC, to Bryan Tramont, Adam Krinsky, and Jennifer Kostyu, Counsel to Verizon, and Thomas Cohen and Edward Yorkgitis, Jr., Counsel to XO Holdings, WC Docket No. 16-70 (filed July 20, 2016).

[34] *See* ExteNet Comments at 57.

[35] Ameren et al. Comments at 60.

[36] *See Complaint Procedures NPRM*, 32 FCC Rcd at 7159, para. 16.

[37] *See id.* at 7159, para. 17.

[38] *See id.* at 7160, para. 19. In addition to complaints filed under section 224 of the Act, the Commission is seeking comment on whether to adopt shot clocks for complaints filed under sections 208, 255, 716, and 718 of the Act. *See id.*

[39] *See* American Cable Ass'n Comments at 51; AT&T Comments at 25; Verizon Comments at 15; *see also* ExteNet Comments at 58 (arguing for a 75-day shot clock for consideration of non-access pole attachment complaints); Frontier Comments at 14 (supporting a 180-day shot clock for pole rate complaints); USTelecom Comments at 19 (arguing for a 180-day shot clock for pole rate complaints in addition to pole access complaints).

3. Recognizing a Reciprocal System of Access to Poles Pursuant to Section 251

15. We also take this opportunity to reconsider the Commission's previous interpretation of the interplay between sections 224 and 251(b)(4) of the Act. Based on the record before us, we conclude the better interpretation is to give effect to both sections and read the two sections in harmony as creating a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, are guaranteed access to poles owned or controlled by competitive LECs and *vice versa*, subject to the rates, terms, and conditions for pole attachments described in section 224.[40] As CenturyLink explains, the disparate treatment of incumbent LECs and competitive LECs prevents incumbent LECs from gaining access to competitive LEC-controlled infrastructure and in doing so dampens the incentives for all LECs to build and deploy the infrastructure necessary for advanced communications services.[41]

16. Section 251 of the Act provides that "[e]ach local exchange carrier" has the duty "to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 [of the Act]."[42] Section 224(f) of the Act requires utilities to provide cable television systems and telecommunications carriers with nondiscriminatory access to any pole that they own or control.[43] While section 224(a) of the Act defines a "utility" to include both incumbent LECs and competitive LECs, the definition of "telecommunications carrier" used in section 224 specifically does not include incumbent LECs, thus potentially denying incumbent LECs the benefits of section 224's specific pole attachment access and rate protections.[44]

17. When the Commission initially examined this disparate treatment of incumbent LECs as part of the *First Local Competition Order*, it held that incumbent LECs cannot use section 251(b)(4) as a means of gaining access to competitive LEC poles because section 224(a) specifically excludes incumbent LECs from the definition of those telecommunications carriers entitled to nondiscriminatory access to utility poles.[45] As a result, the Commission concluded it would be inappropriate to grant incumbent LECs access rights that the Commission believed were "expressly withheld by section 224."[46] Consequently, while incumbent LECs were required as utilities under section 224 to provide nondiscriminatory access to their poles to all cable television providers and telecommunications carriers (including competitive LECs), incumbent LECs could not obtain reciprocal nondiscriminatory access to the poles controlled by competitive LECs.[47] However, as the Ninth Circuit Court of Appeals explained in *US West Communications, Inc. v. Hamilton*, sections 224 and 251 can "be read in harmony" to support a

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[40] 47 U.S.C. §§ 224, 251(b)(4). We note that incumbent LECs will be entitled to file pole access complaints under the new rule adopted in this Order and such complaints will be subject to the 180-day shot clock. *See* 47 CFR §§ 1.1424, 1.1425 as set forth in Appendix A.

[41] *See* CenturyLink Comments at 25-26; *see also* USTelecom Comments at 21; AT&T Comments at 27-28; CenturyLink Comments, WC Docket No. 16-132, at 12-13 (Dec. 5, 2016) (CenturyLink Biennial Review Comments).

[42] 47 U.S.C. § 251(b)(4).

[43] *See* 47 U.S.C. § 224(f).

[44] *See* 47 U.S.C. § 224(a)(1), (5).

[45] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499, 16102-04, paras. 1226-31 (1996) (*First Local Competition Order*).

[46] *First Local Competition Order*, 11 FCC Rcd at 16104, para. 1231.

[47] *2011 Pole Attachment Order*, 26 FCC Rcd at 5333, para. 212 & n.643.

right of access for incumbent LECs on other LEC poles.[48]

18. Because the Commission's prior interpretation of sections 224 and 251(b)(4) fails to give full effect to the language of section 251(b)(4) and in doing so also disserves the public interest and harms consumers by distorting both incumbent LEC and competitive LEC incentives to construct infrastructure that can be used to provide broadband services, we think the better approach is to read the sections in harmony.[49] We agree with the Ninth Circuit in *US West*, as well as with commenters such as AT&T and WTA, that section 251(b)(4) provides incumbent LECs with an independent right of access to the poles owned by other LECs and that section 224 then determines the appropriate rates, terms, and conditions of such access.[50] As the Ninth Circuit stated in *US West*,

> Section 224 deals with all utilities, whereas § 251(b)(4) concerns only telecommunications carriers. Section 224 allows CLECs, but not ILECs, access to the physical networks and rights-of-way of all other utilities, including those belonging to electric companies, gas companies, water companies, and the like. Because ILECs had their own physical networks and established rights-of-way when the Act was passed, Congress may have seen fit to grant access to non-carrier utilities' networks and rights-of-way only to CLECs. But in order to maintain a level playing field within the telecommunications industry itself, Congress reasonably could have granted reciprocal access among telecommunications carriers, ILECs and CLECs alike, by means of § 251(b)(4).[51]

Our reading gives full effect to the language of both sections 224 and 251(b)(4) without creating a conflict between them and also advances our goal in this proceeding of advancing broadband infrastructure investment and deployment.

19. We disagree with ExteNet and the Competitive Fiber Providers' arguments that reversing the Commission's prior interpretation of sections 224 and 251(b)(4) "could discourage the broadband deployment these proceedings are designed to promote, impose discriminatory costs and obligations on only one type of owner of competitive poles, and reverse decades of light touch regulation for competitive providers."[52] According to ExteNet and the Competitive Fiber Providers, the burden of accommodating

[48] *US West Communications, Inc. v. Hamilton*, 224 F.3d 1049, 1053-54 (9th Cir. 2000) (*US West*). Despite its skepticism of the Commission's analysis in the *First Local Competition Order*¸ the Ninth Circuit held it was obligated to adhere to that analysis because the parties had not directly challenged the *First Local Competition Order* via the Hobbs Act. *Id.* at 1054-55.

[49] *See* CenturyLink Comments at 23-25; *see also* US Telecom Comments at 20-21; AT&T Comments at 27-28; Puerto Rico Telephone Reply at 21-22; CenturyLink Biennial Review Comments at 13.

[50] *See* AT&T Comments at 28; WTA Comments at 16; *US West*, 224 F.3d at 1053-54; *see also* Puerto Rico Telephone Reply at 21-22 ("[T]he access mandate in Section 224 operates separate and apart from the one in Section 251, and the access mandate in Section 251—the breadth of which is clear on its face (*i.e.*, all 'LECs' must provide to all 'competing providers of telecommunications services')—merely references Section 224 as a basis for the kinds of rates, terms, and conditions. . . ."). We disagree with NCTA's claim that imposing new infrastructure access obligations on competitive LECs "would be of limited relevance because the only infrastructure owned by competitive LECs that conceivably would be useful to an incumbent LEC is conduit." NCTA Comments at 22. We find that broadband deployment is likely to be spurred by applying the reciprocal access obligations to all broadband infrastructure covered by section 251(b)(4) of the Act (e.g., poles, ducts, conduits, rights-of-way). 47 U.S.C. § 251(b)(4).

[51] *See US West*, 224 F.3d at 1054; *see also* USTelecom Comments at 21; AT&T Comments at 27.

[52] ExteNet Reply at 27, 28-35; *see also* Competitive Fiber Providers Reply at 5-14.

incumbent LEC pole access will fall disproportionately on competitive LECs instead of the cable companies that are not "local exchange carriers" under section 251(b)(4).[53] However, even if ExteNet and the Competitive Fiber Providers are correct that accommodating incumbent LEC pole access creates additional burdens for non-cable competitive LECs, we are bound by Congress' determination in section 251(b)(4) to apply such obligations to competitive LECs and not to cable operators.[54]

20. We also fail to see how the imposition of incumbent LEC pole access obligations on poles owned by other LECs will "stifle competitive deployment of fiber infrastructure" as argued by the Competitive Fiber Providers.[55] Competitive LECs are already required to make their pole infrastructure available to other competitive LECs as well as cable television system operators,[56] so any pole deployment decisions would be made (or have been made) with the knowledge that other pole attachers must be accommodated. Any incremental costs associated with expanding the accommodation to include incumbent LECs should not deter competitive LEC pole ownership because such costs will be borne by the incumbent LEC attachers in the form of make-ready fees.[57] Consequently, we find that rather than stifling broadband deployment, the opposite is more likely—allowing incumbent LEC access to poles owned by other LECs should expand broadband deployment by increasing access to broadband infrastructure.[58]

21. We also disagree with ExteNet and the Competitive Fiber Providers' argument that changing our interpretation of sections 251(b)(4) and 224 will give incumbent LECs greater leverage over their competitors because they own more poles and therefore have greater bargaining power.[59] Our decision does not change the pole access rights of competitive LECs, as they will continue to have mandatory non-discriminatory access to incumbent LEC poles.[60] Rather than "putting the Commission's thumb on the scale in favor of the party [incumbent LECs] that owns a much greater percentage of poles,"[61] our decision instead creates regulatory parity among all categories of attachers by ensuring reciprocal pole access rights.[62]

B. Streamlining the Network Change Notification Process

22. Today we eliminate unnecessary and costly regulations governing network change disclosures, including copper retirements, while retaining certain requirements whose benefits outweigh the associated costs to incumbent LECs. The revised rules we adopt today, consistent with the Act,[63] the Commission's longstanding policy goals, and supported by the record now before us, ensure that competing providers receive "adequate, but not excessive, time to respond to changes to an incumbent

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[53] Competitive Fiber Providers Reply at 4-5, 7, 12-13; ExteNet Reply at 28, 33-34.

[54] *See* 47 U.S.C. § 251(b)(4).

[55] Competitive Fiber Providers Reply at 13; *see also* ExteNet Reply at 34.

[56] *See* 47 U.S.C. §§ 224(f)(1), 251(b)(4); *see also First Local Competition Order*, 11 FCC Rcd at 16058, para. 1119.

[57] 47 CFR § 1.1416(b).

[58] *See* USTelecom Comments at 21; AT&T Comments at 27.

[59] *See* ExteNet Reply at 32-33; Competitive Fiber Providers Reply at 8.

[60] 47 U.S.C. § 224(f).

[61] *See* ExteNet Reply at 32.

[62] *See* USTelecom Reply at 14-15.

[63] 47 U.S.C. § 251(c)(5).

LEC's network."[64] We conclude that the Commission majority failed to achieve this balanced objective in 2015 when it imposed far-reaching and burdensome notice obligations on incumbent LECs that frustrate their efforts to modernize their networks.[65] By reforming our rules and returning to the Commission's longstanding balance, we eliminate unnecessary delays in our regulatory process that help carriers more rapidly transition to more modern networks benefitting more Americans at lower costs.

23. Section 251(c)(5) of the Act requires an incumbent LEC "to provide reasonable public notice of changes" to its facilities or network that might affect the interoperability of those facilities or networks.[66] Congress expressly made this a notice-based process, in contrast to statutory provisions requiring an approval-based process.[67]

24. It is important to distinguish between copper retirement and discontinuance of service. While it is possible that a network change, like a copper retirement, could ultimately lead to a discontinuance of service, that eventuality is governed by the Commission's section 214(a) discontinuance process.[68] Otherwise, section 214(a)'s exception from its coverage for changes to a carrier's network would be rendered moot.[69] The Commission's decision in the *Triennial Review Order* to include the copper retirement provisions in the network change notice rules rather than in the rules governing the discontinuance process[70] underscores this distinction.[71] Section 251(c)(5) reflects the decision by Congress that a notice-based network change process best serves the public by striking a balance between allowing incumbent LECs to make changes to their networks without undue regulatory burdens and giving competitive LECs time to account for those changes.[72] We are empowered to ensure that our rules governing copper retirements and other network changes do not impede or delay these transformational and beneficial network changes through unreasonable and burdensome notice-related obligations.[73] The actions we take today will accomplish this objective.

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[64] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19495, para. 224 (1996) (*Second Local Competition Order*).

[65] *See Technology Transitions et al.*, 30 FCC Rcd 9372, 9383-425, paras. 15-97 (2015) (*2015 Technology Transitions Order*).

[66] 47 U.S.C. § 251(c)(5).

[67] *See, e.g.*, 47 U.S.C. § 214(a) (expressly requiring that a carrier obtain Commission authorization before it may discontinue, reduce, or impair a service to a community or part of a community). Incumbent LECs are also subject to certain state laws requiring them to maintain adequate equipment and facilities. *See, e.g.*, Ark. Code Ann. § 23-3-113; Cal. Pub. Utils. Code § 451; Colo. Rev. Stat. Ann. § 40-3-101(2); Idaho Code § 40-3-101; Ill. Compiled Stat. Ann. § 5/8-101; Ind. Code Ann. § 8-1-2-4; N.D. Century Code Ann. § 49-04-01; N.J. Stat. Ann. § 48:2-23; 66 Pa. Cons. Stat. Ann. § 1501; 27 L.P.R. Ann. § 1201; Utah Code Ann. 1953 § 54-3-1.

[68] *See, e.g.*, AT&T Reply at 22.

[69] 47 U.S.C. § 214(a).

[70] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17146-48, paras. 281-84 (2003) (*Triennial Review Order*), *corrected by Triennial Review Order Errata*, 18 FCC Rcd 19020, *aff'd in part, remanded in part, vacated in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554, 564-93 (D.C. Cir. 2004) (*USTA II*), *cert. denied*, 543 U.S. 925 (2004), *on remand*, *Unbundled Access to Network Elements et al.*, Order on Remand, 20 FCC Rcd 2533, 2541, para. 12 (2004), *aff'd*, *Covad Commc'ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

[71] *Compare* 47 CFR § 51.325 *et seq.*, *with* 47 CFR § 63.60 *et seq*.

[72] *Cf.* AARP Comments at x (stating that "copper retirement has the potential to reduce competition").

[73] *See Second Local Competition Order*, 11 FCC Rcd at 19492, paras. 218-20.

25. We are also unpersuaded by incumbent LEC assertions that the network change disclosure rules are outdated because they apply only to incumbent LECs despite the fact that incumbent LECs currently provide voice service to a relatively small percentage of households.[74] The implementing statute specifically applies these notice requirements solely to incumbent LECs,[75] and consistent with the Act we find they continue to be necessary to ensure the interoperability of our nation's communications networks.[76]

1. Revising the General Network Change Disclosure Process

a. Eliminating Prohibition on Incumbent LEC Disclosure of Information About Planned Network Changes Prior to Public Notice

26. Section 51.325(c) of our rules currently prohibits incumbent LECs from disclosing information about planned network changes to "separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors)" until public notice has been given under the applicable rules.[77] Based on the record, we find that this prohibition on incumbent LECs' ability to freely communicate with other entities regarding their plans for upgrading their networks prior to filing the requisite public notice impedes the ability of these LECs to engage and coordinate with the parties that will ultimately be affected by those changes.[78] Accordingly, we eliminate this provision.[79]

27. A primary goal of the 1996 Act was to foster competition. When the Commission adopted section 51.325(c) in 1996, the Commission was concerned that incumbent LECs might try to give their long distance or equipment manufacturing affiliates a competitive advantage through early disclosure.[80] Circumstances have substantially changed in the intervening two decades and incumbent LECs no longer have the near-monopoly they once did.[81] To the contrary, intermodal competition is more prevalent than ever.[82] Moreover, given this intermodal competition, long-distance service is no longer a separate market.[83] Further, as noted by AT&T, incumbent LECs "do not have a significant

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[74] *See* AT&T Comments at 31.

[75] *See* 47 U.S.C. § 251(c) (entitled "Additional obligations of incumbent local exchange carriers").

[76] *Second Local Competition Order*, 11 FCC Rcd at 19471, para. 172 (noting that "competing service providers, in general, are not in a position to make unilateral changes to their networks because they must rely so heavily on their connection to the incumbent LEC's network in order to provide ubiquitous service").

[77] 47 CFR § 51.325(c).

[78] *See, e.g.*, Verizon Comments at 25-26; CenturyLink Comments at 34; ITTA Comments at 13-14; Verizon Reply at 22; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Aug. 24, 2017) (Verizon Aug. 24, 2017 *Ex Parte* Letter).

[79] *See, e.g.*, CenturyLink Comments at 33-34; AT&T Comments at 37-38; Verizon Comments at 25-26; ITTA Comments at 13-14; Alliant and Xcel Reply at 5.

[80] *See Second Local Competition Order*, 11 FCC Rcd at 19490, 19494, paras. 213, 224.

[81] *See, e.g.*, CenturyLink Reply at 21-22; *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3461-62, paras. 2-4 (2017) (*BDS Order*). *But see* Pennsylvania PUC Comments at 10 (demanding that the Commission show "compelling evidence that the marketplace now has adequate safeguards in place" such that "the risk of anticompetitive behavior by the incumbent LECs is low so that they are no longer compelled to favor their affiliates over their competitors").

[82] *See BDS Order*, 32 FCC Rcd at 3469-79, paras. 20-38; Industry Analysis and Technology Division, Wireline Competition Bureau, Voice Telephone Services: Status as of December 31, 2015 at 8-9, Tbl. 1 (Nov. 2016).

[83] *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6185, para. 49 (2015) ("Almost a decade ago, the Commission identified stand-alone long-

(continued….)

presence in the market for manufacturing CPE."[84] As a result, commenters' concern that eliminating this prohibition may result in anti-competitive conduct by incumbent LECs[85] is no longer as persuasive as it once was.

28. The practical effect of section 51.325(c) today is to slow deployment of next-generation networks and withhold useful information by preventing incumbent LECs from discussing their network change plans with any party.[86] For example, this prohibition has prevented incumbent LECs from sharing planned copper retirement information with wholesale and retail customers in response to customers' specific requests for information, and impeded incumbent LECs' ability to engage with landlords and tenants early in a copper retirement process to ensure timely access to the premises to deploy fiber prior to retiring existing copper facilities.[87] We agree with commenters that argue that removing the prohibition on the free flow of information between the incumbent LEC and all potentially impacted entities will permit incumbent LECs to work with affected competitive LECs, government users, enterprise customers, and others at the appropriate time in the normal course of business dealings with such entities, and over a longer period of time to plan for eventual network changes.[88] Giving incumbent LECs the ability to engage with these entities prior to providing public notice under our rules will be especially useful to mitigating concerns raised by certain commenters regarding the impact our revised copper retirement notice process might have on particular users.[89]

29. We decline certain commenters' suggestions that if we eliminate section 51.325(c), we require incumbent LECs to provide notice of network changes to all interconnecting entities before providing public notice.[90] Such a requirement would be unwieldy and unduly burdensome[91] and it would effectively require public notice earlier than would otherwise be required by the rules.[92] Moreover, such pre-public notice disclosures of potential changes to the incumbent LEC's network may well occur at a phase when the incumbent LEC's plans are not yet solidified and might still change. Requiring formal disclosure to interconnecting parties that will eventually be entitled to disclosure under the Commission's rules could result in unnecessary confusion or unnecessary work by and expense to interconnecting carriers should the incumbent LEC's plans change. This is the very reason the network change disclosure rules do not require public notice until the incumbent LEC's plans reach the make/buy point, a

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distance as a 'fringe' market for mass market services." (citing *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16452-54, para. 23, 16499, para. 121 (2007))).

[84] AT&T Comments at 36.

[85] *See, e.g.*, NASUCA et al. Comments at 18-19; California PUC Comments at 27-28; INCOMPAS Comments at 15; BT Americas Reply at 4; NASUCA et al. Reply at 13.

[86] *See, e.g.*, Verizon Comments at 25; CenturyLink Comments at 34; ITTA Comments at 13; Verizon Reply at 22.

[87] *See, e.g.*, Verizon Comments at 25-26, Verizon Reply at 22; Verizon Aug. 24 2017 *Ex Parte* Letter at 2-3.

[88] *See, e.g.*, Verizon Comments at 25-26; ITTA Comments at 13; CenturyLink Comments at 27; Alliant and Xcel Reply at 5; Verizon Aug. 24, 2017 *Ex Parte* Letter at 2-3; Letter from Ola Oyefusi, Director – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Att. at 3 (Aug. 7, 2017) (AT&T Aug. 7, 2017 *Ex Parte* Letter).

[89] *See, e.g.*, City of NY Comments at 6.

[90] *See, e.g.*, Windstream Comments at 10-11; NASUCA Comments at 18-19; Pennsylvania PUC Comments at 9-10; Windstream Reply at 8-9.

[91] *See, e.g.*, Verizon Reply at 22.

[92] *See, e.g.*, NASUCA Comments at 18-19.

requirement that remains in place.[93]

b. Retaining Objection Procedures for Short-Term Network Change Notices

30. We conclude that we should retain the objection procedures currently applicable to short-term notices of network changes.[94] Short-term network change notices are an exception to the general rule adopted in the *Second Local Competition Order* requiring notice of planned network changes at least six months before implementation of the planned changes.[95] An objector can seek to have the waiting period for a short-term network change extended to no more than six months from the date the incumbent LEC first gave notice.[96] Although the objection procedures have rarely been invoked,[97] the possibility of an objection provides incentive for incumbent LECs to work cooperatively with competitive LECs and keep open lines of communication with them, thus avoiding potential delays.[98] We are unpersuaded by USTelecom's concern that competing service providers might use the objection process to unwarrantedly delay a network change.[99] The Commission made clear in the *Second Local Competition Order* that such efforts would not be tolerated and indeed could expose the objector to sanctions.[100] We thus conclude that retaining the objection procedures applicable to short-term notices of planned network changes maintains an appropriate balance between the needs of incumbent and competitive LECs and is consistent with Commission precedent.

2. Expediting Copper Retirement

31. Today we eliminate or substantially scale back the copper retirement rules adopted by the Commission in 2015, because the record demonstrates that those rules have added cost and delay into the process with no apparent corresponding benefits.[101] The record shows that these rules have delayed certain incumbent LECs' plans to deploy fiber and, in some instances, to even consider foregoing fiber deployment altogether.[102] We therefore make these rule changes to ensure these delays and foregone

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[93] *See* 47 CFR § 51.331(a) ("An incumbent LEC shall give public notice of planned changes at the make/buy point."); *Second Local Competition Order*, 11 FCC Rcd at 19491-92, 19494, paras. 216-17, 223; *see also* AT&T Comments at 37.

[94] *See supra* Section III.B.2.c.iii (reinstating objection procedures for copper retirements).

[95] *See Second Local Competition Order*, 11 FCC Rcd at 19491-92, paras. 216-20; *see also* 47 CFR § 51.331.

[96] 47 CFR § 51.333(c)(3).

[97] *See, e.g.*, AT&T Comments at 35; Verizon Comments at 17; CenturyLink Comments at 28-29; Verizon Reply at 19.

[98] *Cf.* CenturyLink Comments t 28 (noting that when it received requests for additional time under the pre-2015 rules, "it readily accommodated them"). *But see* AT&T Comments at 35 (asserting that objection procedures are not needed to "ensure just and reasonable rates or to protect consumers and the public interest").

[99] *See* USTelecom Comments at 23; *see also* AT&T Comments at 34-35; Frontier Comments at 24.

[100] *See Second Local Competition Order*, 11 FCC Rcd at 19493, para. 221.

[101] *See, e.g.*, AT&T Comments at 31-33; Frontier Comments at 22-23; CenturyLink Comments at 26-27; ITTA Comments at 9; AT&T Reply at 23-24; USTelecom Reply at 22-23. *But see* NASUCA Comments at 18 (noting that copper retirements are planned over an extended period of time and fiber facilities must already be in place when the retirement occurs, thus negating any burden caused by a longer notice period); AARP Reply at 2 (asserting that there is "no evidence" to support revising the copper retirement rules).

[102] *See, e.g.*, AT&T Comments at 31-33; Frontier Comments at 22-23; CenturyLink Comments at 26-27; ITTA Comments at 9; AT&T Reply at 23-24; USTelecom Reply at 22-23; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Oct. 19, 2017) (Verizon Oct. 19, 2017 *Ex Parte* Letter).

next-generation network opportunities no longer occur on our account. In doing so, however, we continue to recognize the unique circumstances posed by the need to accommodate copper retirements in contrast to other types of network changes.

32. When the Commission first adopted its copper retirement rules fourteen years ago,[103] fiber deployment was in its infancy and copper was the primary last-mile transmission medium for telecommunications services.[104] In seeking to foster competition in adopting rules implementing the 1996 Act, the Commission signaled its goal was not to impose the associated regulatory burdens on incumbent LECs indefinitely.[105] Rather, it intended to eventually ease those burdens once they became unnecessary.[106] Permitting competitive LECs to continue to rely on unfettered access to incumbent LECs' copper facilities when incumbent LECs are rapidly trying to modernize such networks to both compete with newer fiber-based competitors and to bring innovative and superior services to the public frustrates rather than facilitates fiber deployment. Indeed, as early as 2003, the Commission recognized "that the substantial revenue opportunities posted by FTTH deployment help ameliorate many of the entry barriers presented by the costs and scale economies,"[107] specifically noting then that "competitive LECs have demonstrated that they can self-deploy FTTH loops and are doing so at this time."[108] Thus, competitive LECs could not have been operating under the impression that they would be able to rely on incumbent LEC networks forever in the "race to build next generation networks" envisioned by the Commission.[109]

33. In the intervening years, competitors have had the opportunity to explore and develop ways to compete in a world without copper. Likewise, consumers and enterprise customers have had the opportunity to learn about the transition from legacy networks comprised of copper to next-generation fiber networks. The "gradual transition" advocated by one commenter[110] has been ongoing for many years now.[111] Although this will continue to be a gradual, organic, carrier-driven process, we believe it is important to spur the process along rather than slow it down with unnecessary regulatory burdens. We will not impede the progress toward deployment of next-generation facilities for the many because of the reticence of an ever-shrinking few.[112]

a. Retaining Distinctions Between Copper Retirement and Other Network Changes.

34. At the outset, we retain the distinction between copper retirements and other types of network changes for purposes of section 251(c)(5) notice.[113] On balance, the record supports the continued need for such a distinction.[114] In adopting the network change disclosure rules following the

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[103] *See Triennial Review Order*, 18 FCC Rcd at 17146-48, paras. 281-84.

[104] *See* id. at 17142-43, para. 274.

[105] *See First Local Competition*, 11 FCC Rcd at 15507, para. 6.

[106] *See id*.

[107] *Triennial Review Order*, 18 FCC Rcd at 17142-43, para. 274.

[108] *Id.* at 17146, para. 279

[109] *Id.* at 17141-42, para. 272.

[110] National League of Cities Comments at 6.

[111] *See, e.g.*, USTelecom Reply at 16.

[112] *See, e.g.*, *id.* at 16, 22-23.

[113] *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3285, para. 62.

[114] *See, e.g.*, Public Knowledge Comments at 4; California PUC Comments at 26; Pennsylvania PUC Comments at 7; CWA Comments at 9; Windstream Reply at 4; BT Americas Reply at 3; DC PSC Reply at 5.

1996 Act, the Commission recognized that not all types of network changes present the same level of difficulty for interconnecting carriers.[115] It thus adopted different requirements for long-term network changes, i.e., those that cannot be implemented in less than six months from the make/buy point, and short-term network changes, i.e., those that can be implemented in less than six months.[116] The Commission subsequently recognized that copper retirement network changes have a potentially greater impact on interoperability than other network changes because they "affect[] the ability of competitive LECs to provide service."[117] Although competitors are increasingly relying on their own facilities to compete, for at least some competitive LECs that remains the case today.

35. We agree that competitive LECs are more familiar with accommodating copper retirements now than they were 14 years ago when the Commission first adopted its copper retirement rules;[118] however, we are not persuaded that experience obviates the fact that copper retirements are more complicated and impactful than many other types of network changes. For example, where the copper retirement impacts competitive LECs providing Ethernet over Copper or purchasing TDM-based DS1s and DS3s, the affected competitive LECs often must migrate to other forms of last-mile access, change the service being offered and provide time for the retail customer to accommodate the change, or provide time for the retail customer to secure an alternative service arrangement.[119] We thus disagree with incumbent LEC commenter assertions that copper retirements require no special treatment as compared to other types of network changes.[120] As the Commission previously explained, competitors cannot be expected "to react immediately to network changes that the incumbent LEC may have spent months or more planning and implementing."[121]

36. The reforms we adopt today bring the copper retirement process closer in line with the more generally applicable network change disclosure process. However, because short-term network changes can be implemented within as little as ten days of the Commission's release of a public notice,[122] eliminating the distinction between copper retirements and other types of network changes could have adverse effects on interconnected carriers that continue to rely on available copper facilities to serve their end-users.[123] We therefore decline to eliminate the distinction altogether. The reforms discussed below reduce the burdens on incumbent LECs, achieving a balance between those minimal burdens and the benefits of adequate notice to interconnected carriers who rely on the incumbent LECs' networks.

b. Narrowing the Definition of Copper Retirement.

37. *De Facto Retirement*. We revise the definition of copper retirement to eliminate the *de facto* retirement concept that was included in the amendments made to the rules in 2015. We agree with commenters that the *de facto* retirement provision has unreasonably increased incumbent LECs' burden

[115] *See Second Local Competition Order*, 11 FCC Rcd at 19491-92, paras. 216-20.

[116] *See id.* at 19492, paras. 219-20.

[117] *Triennial Review Order*, 18 FCC Rcd at 17146, para. 281.

[118] *See, e.g.*, AT&T Comments at 33-34; CenturyLink Comments at 26; AT&T Reply at 26-27.

[119] *See, e.g.*, Windstream Comments at 5-7; TelePacific Reply at 6; BT Americas Reply at 2-3; *see also* Public Knowledge Comments at 4-5; NASUCA et al. Comments at 18; Public Knowledge Reply at 4.

[120] *See, e.g.*, USTelecom Comments at 26; AT&T Comments at 33-34; Frontier Comments at 23; AT&T Reply at 22-23.

[121] *Second Local Competition Order*, 11 FCC Rcd at 19490, para. 214.

[122] *See* 47 CFR § 51.333(b); *see also* California PUC Comments at 26.

[123] *See Second Local Competition Order*, 11 FCC Rcd at 19471, para. 171.

with no corresponding benefit,[124] and serves no purpose in the context of section 251(c)(5)'s notice requirement.[125] The current rule requires that the incumbent LEC provide notice of copper retirement when it fails to "maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling."[126] Thus, by its very terms, a *de facto* retirement could have conceptually already occurred when notice would be required under the rule we eliminate. Unlike notice of a forthcoming change, there is no practical way to implement the requirement that an incumbent LEC provide notice of a *de facto* retirement, and therefore consumers receive no notice benefit from this concept being part of the definition of copper retirement.[127] Further, loss of service is properly addressed in the context of the discontinuance approval process established by section 214(a) of the Act.

38. We do not agree with those commenters that argue that customers located in areas where there are no options other than copper will suffer if the Commission eliminates *de facto* retirement from the notice requirement.[128] If an incumbent LEC has no plans to deploy fiber or other next-generation technology, it must maintain its copper networks, or it will have access to fewer customers. More fundamentally, we do not agree with commenters that argue that copper retirement notices are an important way for customers to learn about network deterioration.[129] If copper deterioration is causing service quality issues, notice that copper deterioration is the reason for the service quality problems provides no benefit to the customers. Moreover, incumbent LECs are free to resolve those issues by migrating the customer to fiber, as long as the nature of the service being provided to the customer remains the same.[130]

39. We are similarly unpersuaded by arguments that incumbent LECs allow their copper networks to deteriorate in order to "push" their customers onto fiber.[131] The Act gives carriers, not the Commission, the authority to design their networks and choose their own architecture.[132] The Act directs that incumbent LECs need only go through the Commission's copper retirement notice process, absent a discontinuance of service that triggers the requirement to seek Commission approval under section

[124] *See, e.g.*, USTelecom Comments at 25-26; Verizon Comments at 20; ITTA Comments at 8-9. *But see* Windstream Comments at 7-8; Pennsylvania PUC Comments at 5; INCOMPAS Comments at 13; Southern Co. Servs., Inc. Comments at 5; CALTEL Comments at 9; CWA Comments at 11; TelePacific Reply at 8-11; Windstream Reply at 7-8 (all asserting that incumbent LECs' concerns are overstated because *de facto* retirement appears to be limited to instances of intentional neglect).

[125] *See, e.g.*, Verizon Comments at 20-21; USTelecom Comments at 25; Frontier Comments at 24.

[126] *See* 47 CFR § 51.332(a)(iii) (defining copper retirement as including "the failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling").

[127] *But see* DC PSC Reply at 4 (asserting that inclusion of *de facto* retirement, among other things, "ensure[s] that consumers are alerted when an [incumbent LEC] decides to cease its maintenance of copper facilities").

[128] *See, e.g.*, TelePacific Reply at 9.

[129] *See, e.g.* Pennsylvania PUC Comments at 6-8; AARP Comments at 12; NASUCA et al. Comments at 9; CWA Comments at 10, 13-14; TelePacific Reply at 9-10; DC PSC Reply at 4; *See* Letter from Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Sept. 26, 2017 (CWA Sept. 26, 2017 *Ex Parte* Letter).

[130] *See, e.g.*, Verizon Comments at 21.

[131] *See, e.g.*, NASUCA Comments at 8-9; Windstream Reply at 7.

[132] *See* 47 U.S.C. §§ 214(a) (providing that Commission authorization is not required for "any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided"), 251(c)(5) (requiring only that a carrier provide "reasonable public notice" of changes to its network that may affect interoperability).

214(a).[133] To the extent commenters are concerned that eliminating the *de facto* retirement provision could result in an inability to seek Commission redress should an incumbent LEC willfully or otherwise allow its network to degrade, a mandatory notice requirement with no accompanying remedy should give them little solace. Either way, eliminating this unnecessary notice requirement does not foreclose other avenues for relief: Incumbent LECs providing telecommunications services remain subject to section 214(a)'s discontinuance process requirements,[134] and in some states they remain subject to state-level service quality requirements.[135]

40. *Feeder*. By contrast, we retain the feeder portion of the incumbent LECs' loops in the copper retirement definition because of the significant impact retirement of copper feeder can have on competitive LECs' abilities to continue to provide service to their end-user customers. We agree with commenters that recommend that an incumbent LEC seeking to retire the feeder portion of its copper-based network must comply with the copper retirement notice rules rather than the more generally applicable network change disclosure rules.[136] The record demonstrates that the benefits to both interconnected competitive LECs and their respective end-user customers of providing notice under the copper retirement rules when an incumbent LEC seeks to retire the copper feeder portion of its loops significantly outweighs the additional burdens on the incumbent LEC of complying with the copper retirement notice process in such situations. It is not "mere theory" that an interconnecting carrier might need notice of an incumbent LEC's plan to retire copper feeder.[137] The record indicates that there are interconnected carriers that rely on copper feeder to serve their end-users.[138] If we eliminate feeder from the definition of copper retirement, interconnecting carriers entitled to "reasonable notice" under section 251(c)(5) might not receive sufficient notice to continue to provide services to their end-user customers or to enable those end-users to transition to another provider.[139] Retaining feeder in the definition ensures that these interconnected carriers are provided notice of copper retirement in the same timeframes as interconnected carriers that rely on copper loops or sub-loops to serve their end-users. Moreover, we find our additional streamlining of the copper retirement notice process should address the primary concerns of commenters advocating for elimination of feeder from our copper retirement rules.[140]

c. Streamlining the Copper Retirement Notice Process

41. Today we eliminate the changes made to the copper retirement rules adopted in 2015 and reinstate, with certain modifications, the rules applicable to copper retirements that existed prior to that time. We find broad support in the record for these changes that will ease the regulatory burdens on incumbent LECs in transitioning to next-generation networks, affording them greater flexibility and

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[133] *See, e.g.*, CALTEL Comments at 8; *see also* USTelecom Comments at 25-26; Verizon Reply at 20.

[134] *See* 47 U.S.C. §§ 201(b), 214(a).

[135] *See, e.g.*, CALTEL Comments at 8 (pointing to California PUC's service quality requirements).

[136] *See, e.g.*, Windstream Comments at 7; INCOMPAS Comments at 13; NASUCA et al. Comments at 8-9; CALTEL Comments at 8; Pennsylvania PUC Comments at 5; California PUC Reply at 15; Windstream Reply at 7-8; TelePacific Reply at 8.

[137] *See* Frontier Comments at 24.

[138] *See, e.g.*, Windstream Comments at 7; INCOMPAS Comments at 14; Pennsylvania PUC Comments at 5; TelePacific Reply at 8; *see also Triennial Review Order*, 18 FCC Rcd at 17146-47, para. 281; *Second Local Competition Order*, 11 FCC Rcd at 19491, para. 216 (noting that the inability to maintain interoperability with the incumbent LEC's network "could interrupt service between the two service providers.").

[139] *See, e.g.*, Windstream Comments at 7; INCOMPAS Comments at 14; Pennsylvania PUC Comments at 5; TelePacific Reply at 8; *see also Triennial Review Order*, 18 FCC Rcd at 17146-47, para. 281.

[140] *See, e.g.*, ITTA Comments at 5, 8-9; CenturyLink Reply at 19.

eliminating the delays and additional costs imposed by section 51.332's rigid requirements.[141] We also find that these changes, along with incumbent LECs' greater freedom to engage potentially affected parties earlier in the planning process, will simultaneously accommodate the concerns of most commenters by affording sufficient time to accommodate planned changes and addressing parties' needs for adequate information and consumer protection.[142]

42. At the outset, we disagree with commenters that assert that the record contains no evidence that alleviating the significant burdens on incumbent LECs imposed by the copper retirement rules adopted in 2015 will spur broadband deployment.[143] The record shows that the burdens caused by delays in copper retirements resulting from expansive notice obligations can be quite significant, including costs associated with the ongoing need to maintain various parallel computer systems and retain dedicated engineering staff.[144] Indeed, record evidence suggests savings of $45-$50 per home passed per year achieved by retiring copper facilities.[145] Couple that with Verizon's statement that it has filed to retire copper facilities at 3.8 million locations,[146] and it appears that Verizon may have unnecessarily spent between $171 million and $190 million on copper facilities last year that could have been put to deploying next-generation networks. And expediting the copper retirement process could contribute to 26.7 million incremental premises being passed by fiber over a five-year period.[147] Requiring that incumbent LECs forego these potential savings results in opportunity costs and creates a disincentive to broadband investment.[148]

43. We disagree with arguments that the changes we adopt today to our copper retirement notice process "may make it easier for providers to shut down networks and services."[149] We start by noting that incumbent LECs, like their competitors, already have marketplace incentives to maintain service to customers. What is more, such arguments confuse the copper retirement notice process—which applies only when a carrier makes changes to its network—with the discontinuance process. If an incumbent LEC's copper retirement will result in a discontinuance of service, the carrier must still go

[141] *See, e.g.*, USTelecom Comments at 22-23; CenturyLink Comments at 26-27; AT&T Comments at 31-32; Frontier Comments at 22-23; ITTA Comments at 8, 10; Verizon Reply at 16; CenturyLink Reply at 17-18; USTelecom Reply at 22; Corning Inc. Comments, Attach. A at 31; Fiber Broadband Ass'n Comments at 10-11.

[142] *See, e.g.*, Public Knowledge Comments at 6-7; AARP Comments at 12-15; California PUC Comments at 21; INCOMPAS Comments at 13-14; Windstream Reply at 3.

[143] *See, e.g.*, NASUCA et al. Comments at 12-13; AARP Comments at 12, 16; Public Knowledge Reply at 1.

[144] *See* Corning Comments at 5-6; Frontier Comments at 22-23; Verizon Reply at 1-2; AT&T Reply at 24; CenturyLink Reply at 17-18; *see also* USTelecom Comments at 22-23; Verizon Comments at 17; CenturyLink Comments at 27.

[145] *See* Corning Comments, Attach. at 31. According to Corning, this savings estimate breaks down as follows: First, by "[r]educing the copper footprint [the incumbent LEC] can save upwards of 80% of central office space," which "equates to a savings of roughly $35 per home passed per year of real estate expense." Second, "electrifying the copper network and equipment takes a significant amount of electricity to operate, estimated at $1.49 per home passed per year of electricity expense." Finally, "there is a large amount of incremental maintenance for the copper network," and "[i]n 2013, Verizon estimated that in areas where both FiOS and copper existed, they were spending more than $200 million annually on the copper network, or roughly $10 per home passed with both fiber and copper per year of maintenance expense." *Id*. at 30.

[146] *See* Verizon Comments at 3.

[147] *See* Corning Comments at 2.

[148] *See id.* at 6; *see also* CenturyLink Comments at 27.

[149] Greenlining Institute Comments at 7.

through the process of obtaining Commission authorization.[150] In that process, customers can still object to the proposed discontinuance and raise concerns regarding the adequacy of available alternative services,[151] one of the five factors the Commission traditionally considers when evaluating discontinuance applications.[152]

(i) Reducing scope of direct notice requirements.

44. To facilitate the rapid transition to next-generation services, we eliminate unnecessary copper retirement notice requirements.

45. *Eliminating notice to retail customers*. Today we revise the copper retirement rules to eliminate the requirement of direct notice to retail customers adopted in 2015. Based on the record, we conclude that the potential benefits of direct notice of copper retirements touted in the *2015 Technology Transitions Order*[153] have not come to pass. Instead, there is evidence that notice of planned copper retirements, pursuant to section 51.332, has caused confusion and delay.[154] Moreover, incumbent LECs have strong incentives to work closely with their retail customers in order to retain their business given the competition they face from competitive LECs, cable providers, and wireless providers.[155] They do not require mandatory and prescriptive Commission-ordered notice to educate and inform their customers of network transitions from copper to fiber. Rather, these communications must necessarily occur for the incumbent LEC to continue providing the services to which its customers subscribe.

46. We are unpersuaded by commenter assertions that retail customers need us to mandate direct notice of planned copper retirements because of the impact these changes will have on the functionality of devices and services operating on the network.[156] We recognize the reliance consumers place on the functioning of equipment that connect to incumbent LECs' legacy networks, such as fax machines, alarm systems, and health monitoring devices.[157] And many enterprise customers, particularly utilities, continue to rely on TDM-based services today despite the existence and widespread availability of more innovative IP-based services.[158] In both instances, however, commenters calling for continued direct notice of copper retirements wrongly focus on the underlying transmission medium, i.e., the copper network facilities, rather than on the technology of the service being provided by the incumbent LEC, i.e.,

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[150] *See* 47 U.S.C. § 214(a).

[151] 47 CFR § 63.71(a)(5).

[152] *See Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003) (*Verizon Expanded Interconnection Order*) (stating that in evaluating discontinuance applications, the Commission considers, among other factors, the need for the service in general and the existence, availability, and adequacy of alternatives).

[153] *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9375, 9381, 9395-96, paras. 5, 12, 39.

[154] *See, e.g.*, CenturyLink Comments at 26-27, 31-32; Verizon Comments at 3, 17, 20-22; AT&T Comments at 27, 33; Fiber Broadband Ass'n Comments at 10-11; Maryland OPC Comments at 3; CenturyLink Reply at 20; AT&T Reply at 27; Verizon Reply at 17-18. *But see* Pennsylvania PUC Comments at 6, 8-9 (asserting that Section 51.332's requirements serve to minimize consumer confusion).

[155] *See, e.g.*, CenturyLink Comments at 31-32; Verizon Comments at 21; AT&T Comments at 33; Verizon Reply at 17; AT&T Reply at 27.

[156] *See, e.g.*, California PUC Comments at 20; DC PSC at 5; AARP Comments at iii; CWA Comments at 11; Ohio PUC Comments at 5; Illinois Att'y General Reply at 7; Public Knowledge Reply at 2-3; DC PSC Reply at 5; AICC Reply at 2-3; *see also* CWA Sept. 26, 2017 *Ex Parte* Letter at 2.

[157] *See, e.g.*, California PUC Comments at 20; CWA Comments at 11; AARP Comments at iii; Public Knowledge Reply at 2-3; DC PSC Reply at 5; AICC Reply at 2-3.

[158] *See, e.g.*, Edison Electric Comments at 47; NRECA Comments at 6; Puget Sound Energy Comments at 13.

whether it is TDM-based or IP-based.[159] The record confirms that the equipment and devices about which commenters express concern generally continue to function over fiber facilities as long as that service remains TDM-based.[160] This is the case in copper retirements absent other service changes,[161] despite the confusion of many commenters who conflate copper retirement and service discontinuance.[162] Indeed, incumbent LECs devote resources to ensure that the devices their residential customers use over their networks continue to work,[163] including TTY devices.[164] And while the lines serving a customer's home will no longer carry power, that is remedied by use of a back-up power unit, a matter the Commission has previously addressed.[165] Indeed, certain carriers, such as Verizon, provide back-up power units to their customers free of charge in connection with copper retirements without a Commission mandate to do so.[166]

47. We recognize that copper-to-fiber transitions can be more complicated and time-consuming for certain non-residential retail customers, including utilities and federal agency customers.[167]

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[159] *See, e.g.*, Edison Electric Comments at 47 ("Nearly every electric utility relies on frame relay and other time-division multiplexed ("TDM") enterprise wireline carrier services to support critical control data."); NRECA Comments at 6; Southern Co. Servs. at 2, 8; Alliant and Xcel Reply at 3; Public Knowledge Reply at 2. Should the copper retirement be accompanied by a transition to an IP or other technology-based service, only then would the carrier be potentially subject to our Section 214(a) discontinuance process rules. 47 CFR § 63.71(a).

[160] *See, e.g.*, Verizon Comments at 54; USTelecom Reply at 17; AT&T Reply at 22; Fiber Broadband Ass'n Reply at 5-6; Letter from Debra P. Dexter, Assoc. Dir., Fed. Reg. and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-118, Attach. B (filed July 14, 2017) (Verizon July 14, 2017 Letter); Consumer's Guide to Verizon's Copper to Fiber Transition, www.psc.state.md.us/telecommunications/wp-content/uploads/sites/3/Consumer-Guide-to-the-Verizon-Copper-to-Fiber-Transition.pdf; *see also Technology Transitions et al.*, 31 FCC Rcd 8283, 8306, para. 69 & n.185 (2016) (*2016 Technology Transitions Order*).

[161] *See, e.g.*, USTelecom Reply at 17; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Sept. 11, 2017) (Verizon Sept. 11, 2017 *Ex Parte* Letter) Verizon July 14, 2017 Letter, Attach. B. *But see* AICC Comments at 8 (noting "a dramatic increase in the number of failed signals and invalid reports in the first and second quarters of 2017" in areas where Verizon has been retiring copper); Public Knowledge Comments at 4 ("Copper networks exhibit unique performance characteristics as compared to fiber-based networks, including but not limited to functionality during power outages."); CWA Comments at 12 (stating that when Verizon retired copper network in New Jersey, customers reported service interruptions post-migration and that their medical equipment, alarms, or special equipment for hearing loss would not work on fiber).

[162] *See, e.g.*, California PUC Comments at 26; AARP Comments at 13-14; NRECA Comments at 6-7; Edison Electric Comments at 47; NASUCA Comments at 9, 13-14; CWA Comments at 11; AICC Comments at 10; Greenlining Institute Comments at 4-5; Harris Corp. Comments at 6; UTC Comments at 26-27; Southern Co. Servs. Comments at 5, 7; Puget Sound Energy Comments at 13; Illinois Att'y Gen'l Reply at 2, 4, 6; Michigan PSC Reply at 4; NARUC Reply at 5; Alliant and Xcel Energy Reply at 3-4; Consumer Groups and RERCs Reply at 3-5; NRECA Reply at 17; NATOA et al. Reply at 16; AT&T Reply at 21-22, 28; Verizon Reply at 20-21.

[163] *See, e.g.*, Fiber Broadband Ass'n Reply at 5-6.

[164] *See, e.g.*, Verizon Aug. 24, 2017 *Ex Parte* Letter at 2; Letter from Kevin Colwell, Vice Pres. Ultratec, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed Aug. 24, 2017) (Ultratec Aug. 24, 2017 *Ex Parte* Letter); Letter from Ola Oyefusi, Director—Federal Regulatory, AT&T Servs., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed Sept. 5, 2017) (AT&T Sept. 5, 2017 *Ex Parte* Letter); *see also Transition from TTY to Real-Time Text Technology et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13574, para. 8 (2016).

[165] *See Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd 8677, 8680-83, paras. 11-15 (2015).

[166] *See, e.g.*, Verizon July 14, 2017 Letter, Attach. B at cover letter and FAQ 6.

[167] *See, e.g.*, Edison Electric Comments at 46-47; Ohio PUC Comments at 6; BT Americas Reply at 2.

However, the record shows that in practice, section 51.332's requirement that incumbent LECs provide notice on a reticulated schedule to non-residential retail customers imposes more significant burdens and delay on incumbent LECs than the Commission anticipated when it adopted the *2015 Technology Transitions Order*.[168] Indeed, in adopting that order, the Commission failed to account for the important fact that large enterprise customers with complex telecommunications requirements generally enter into long-term contracts with their telecommunications providers, thus affording those customers the ability to negotiate service-related protections from changes that might abruptly and negatively impact their communications capabilities.[169] This is an especially significant oversight given the fierce competition among incumbent LECs, large cable companies, competitive LECs, and numerous smaller facilities-based service providers for these non-residential retail customers.[170] Incumbent LECs have strong incentives to work with these enterprise customers to avoid service disruptions.[171] Accordingly, we disagree with commenters that assert that enterprise customers, in particular utilities as well as federal agencies such as the FAA, will be harmed and public safety will be put at risk if they do not receive direct notice of copper retirements.[172] Suggestions that incumbent LECs would risk harming public safety or fail to work cooperatively and diligently to accommodate critical needs of their public-safety related customers absent a mandatory Commission notice obligation defies both reason and experience.[173]

48. We expect and encourage incumbent LECs to continue to collaborate with their customers, especially utilities and public safety and other government customers, to ensure that they are given sufficient time to accommodate the transition to new network facilities such that key functionalities are not lost during this period of change, and we specifically rely on incumbent LEC commenters that stress the incentives they have to work with their retail customers.[174] And because we are eliminating the rule prohibiting incumbent LECs from discussing planned network changes in advance of public notice,[175] incumbent LECs can now respond to requests for information from these customers about planned network changes at any time.[176] By eliminating this prohibition, we give incumbent LECs the freedom to engage their wholesale and retail customers far earlier in the planning process, thus allowing those customers, in turn, to begin planning and budgeting for the coming changes.[177]

49. Similarly, with respect to residential retail customers, we do not believe that Commission-mandated direct notice of planned copper retirements serves any practical purpose, nor has it helped reduce confusion, despite the relatively seamless nature of a copper-to-fiber transition. We anticipate that residential consumers will continue to be well-informed about copper retirements impacting their service absent Commission-imposed notice obligations. Indeed, incumbent LECs

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168 *See, e.g.*, AT&T Comments at 31-32.

169 *See, e.g.*, *id.* at 52; Verizon Reply at 32; *cf.* CenturyLink Reply at 25 (asserting that government customers "frequently negotiate contractual provisions that require lengthy notice periods before discontinuing the services they buy via that contract").

170 *See, e.g.*, CenturyLink Comments at 24-25, 31-32; USTelecom Comments at 29; *see also generally BDS Order*, 32 FCC Rcd 3459.

171 *See, e.g.*, AT&T Comments at 52; *see also* CenturyLink Reply at 25.

172 *See, e.g.*, Edison Electric Comments at 46-47; Southern Co. Servs. Comments at 8; Alliant Comments at 46-47; Ohio PUC Comments at 6-7; NRECA Comments at 7; DC PSC Reply at 6-7; Harris Corp. Comments at 6-7.

173 *See, e.g.*, AT&T Comments at 52.

174 *See, e.g.*, CenturyLink Comments at 31-32; *see also* Windstream Reply at 3.

175 *See supra* Section B.1.

176 *See, e.g.*, Verizon Aug. 24, 2017 *Ex Parte* Letter at 3.

177 *See, e.g.*, Edison Electric Comments at 46; NRECA Comments at 5; Windstream Comments at 10.

necessarily must reach out to these customers and communicate with them about their specific planned copper retirement to work with them, individually, to access their homes in order to accomplish their migration to the new fiber-based network.[178] This migration simply cannot occur absent these communications. As a result, commenters are mistaken to assert that consumers need Commission-mandated direct notice of planned copper retirements to be fully informed.[179]

50. The record shows that the three largest incumbent LECs that together serve approximately 74% of households purchasing legacy voice service from incumbent LECs[180] acknowledge and embrace their role in educating consumers of the effect of impending changes in the network over which their service is provided,[181] not just of the benefits of advanced, IP-based services.[182] And the record suggests that States that wish to do so are well positioned to engage in consumer education and outreach efforts.[183] Indeed, incumbent LECs are already collaborating with state commissions in certain jurisdictions to educate consumers and minimize confusion about copper retirements.[184] Such efforts are more likely to reduce consumer confusion than governmentally-mandated notices and timeframes.[185]

51. Finally, section 251(c)(5) of the Act, embodied in the market-opening local competition provisions, sets forth the duties of telecommunications carriers *vis-à-vis* other telecommunications carriers. It specifically speaks to the need to provide information to allow "transmission and routing" and ongoing "interoperability" with the incumbent LECs' networks, matters in which retail customers are not engaged. The Commission implicitly and correctly recognized this limitation when adopting the first network change disclosure rules in the *Second Local Competition Order*, concluding that notice of sufficient information to deter anticompetitive behavior was necessary and that "incumbent LECs should give competing service providers complete information about network design, technical standards and planned changes to the network."[186]

52. *Limiting notice requirement for interconnecting entities to interconnecting telephone*

[178] *See, e.g.*, Verizon Comments at 21; CenturyLink Comments at 31-32; ITTA Comments at 11; Verizon Reply at 17; AT&T Reply at 27-28.

[179] *See supra* paras. 45-46.

[180] Verizon Financial Operating Information, as of December 13, 2016, at 16 (Reporting Wireline Selected Financial Results, 2nd Quarter - Used total voice connections minus digital voice residential (Business digital voice is not reported); CenturyLink Reports Second Quarter 2016 Results at 13 (Aug. 3, 2016); AT&T Financial Review 2016 – In-region network access lines in services, as of December 2016, at 10 (Feb. 17, 2017); Industry Analysis and Technology Division, Wireline Competition Bureau, *Voice Telephone Services: Status as of December 31, 2015* at 3, Fig. 2 (Nov. 2016).

[181] S*ee, e.g.*, Verizon Comments at 21-22; CenturyLink Comments at 31-32; AT&T Reply at 28; *see also* Ohio PUC Comments at 4-5 (explaining that the uncodified portion of recent telephone transition legislation in Ohio "establishes a collaborative process . . . [that] is charged with ensuring that 'public education concerning the transition is thorough,'" including by establishing a "Consumer Education Subgroup that consists of industry stakeholders, consumer advocates and Ohio commission staff tasked with evaluating and promoting effective customer communication and understanding regarding technology transition issues").

[182] *See, e.g.* Verizon Comments at 21-22; CenturyLink Comments at 31-32; USTelecom Reply at 20.

[183] *See, e.g.*, Ohio PUC Comments at 4-5; Maryland OPC Comments at 5-6.

[184] *See, e.g.*, Ohio PUC Comments at 4-5; Maryland OPC Comments at 5-6.

[185] *See, e.g.*, USTelecom Reply at 21-22. While we acknowledge here USTelecom's suggestion of a "concerted, federal government-wide effort to ensure that Executive Branch policies do not prolong the federal government's reliance on legacy services," such action is outside the scope of the Commission's authority. USTelecom Reply at 20.

[186] *Second Local Competition Order*, 11 FCC Rcd at 19479, para. 188.

exchange service providers. We modify the copper retirement direct notice requirement for providing notice to interconnecting entities by limiting that requirement to providing notice to telephone exchange service providers that directly interconnect with the incumbent LEC's network.[187] We also afford incumbent LECs some flexibility in the manner in which they provide notice of planned copper retirements to entitled recipients by permitting them to provide notice via web posting to the extent the affected interconnected carriers have agreed to receive notice in this manner.

53. In eliminating the requirement that direct notice be provided to all entities that directly interconnect with the incumbent LEC's network, we return to the pre-2015 requirement that such notice be provided only to directly interconnecting telephone exchange service providers.[188] We agree with commenters that argue that requiring direct notice to all entities that interconnect with the incumbent LEC's network is overbroad,[189] encompassing multiple interconnected entities that are not affected by copper retirements.[190] Requiring that direct notice be provided only to telephone exchange service providers that directly interconnect with the incumbent LEC's network achieves an appropriate balance between the needs of interconnecting carriers that purchase either copper inputs or services provisioned over copper facilities and the need to minimize regulatory burdens on incumbent LECs that affect their ability or incentive to deploy next-generation facilities.[191]

54. To further reduce regulatory burdens and modernize our process, we allow incumbent LECs to post notices of copper retirements on their website in lieu of direct notice to interconnecting telephone exchange service providers where the incumbent LEC can certify that the interconnecting telephone exchange service provider agreed to that method of notice.[192] We agree that for incumbent LECs who maintain webpages on which they post network change notices, providing notice via web posting is efficient and is reasonably calculated to provide expeditious notice to affected interconnecting carriers. This change aligns with our process for non-short-term network changes.[193]

55. Regardless of which method of notice the incumbent LEC chooses, consistent with the pre-2015 requirements,[194] as well as the current short-term network change requirements,[195] incumbent LECs must provide notice to interconnecting telephone exchange service providers at least five business days in advance of filing with the Commission. Further, consistent with the pre-2015 requirements, the incumbent LEC must include with its filing with the Commission a certificate of service to demonstrate that it has provided the required direct notice to interconnecting telephone exchange service providers.[196] And because we retain the requirement of direct notice to specific government entities, the certificate of

[187] 47 CFR § 51.333(a) (2015).

[188] *See, e.g.*, CenturyLink Comments at 26, 30; ITTA Comments at 9; *cf.* Verizon Comments, Declaration of Kevin N. Smith, para. 12 (proposing limiting direct notice to those wholesale entities whose circuits are directly affected by the planned copper retirement); *see also* 47 CFR § 51.333(a) (2015).

[189] *See, e.g.*, Verizon Comments at 23; ITTA Comments at 9-10; Verizon Reply at 21-22. *But see* BT Americas Reply at 4-5 ("The current rule that requires notice to all entities is forward-looking and recognizes that ... all manner of entities interconnect today with carriers. The Commission should not revert to an old rule that is outdated and backward looking.").

[190] *See, e.g.*, CenturyLink Comments at 26, 30; ITTA Comments at 9-10.

[191] *See, e.g.*, ITTA Comments at 9-10.

[192] *See, e.g.*, Verizon Comments at 23; Verizon Reply at 22; Verizon Aug. 24, 2017 *Ex Parte* Letter at 2-3.

[193] *See* 47 CFR § 51.329(a).

[194] *See* 47 CFR § 51.333(a)(1) (2015).

[195] *See* 47 CFR § 51.333(a)(1).

[196] 47 CFR § 51.333(a) (2015).

service must also demonstrate that the incumbent LEC has provided the requisite direct notice to such entities to ensure compliance with this direct notice requirement. This certificate of service effectively replaces the certification previously required by the *2015 Technology Transitions Order*, which we eliminate as moot. As a result, AT&T's request that the Commission pare down the various certifications required by the network change disclosure rules,[197] is also rendered moot.

56. *Eliminating unnecessary governmental notices*. We eliminate the requirement that incumbent LECs provide direct notice of planned copper retirements to state commissions, governors, Tribal Nations, and Department of Defense.[198] When the Commission adopted these direct notice requirements in 2015, it was done to synchronize the notice requirements for copper retirements with those for section 214(a) discontinuances.[199] However, discontinuances present a very different set of concerns because of the potential for loss of service and/or functionality, thereby justifying greater notice than mere changes to the facilities over which an incumbent LEC provides its services. A number of commenters have stated that providing copper retirement notices to governmental entities beyond the Commission is burdensome.[200]

57. States and Tribal Nations that have regulatory authority over copper and wish to mandate notice are able to do so without the need for an across-the-board Commission rule. That in some cases such entities lack regulatory authority over or take a deregulatory approach to network changes shows that a Commission mandate is in many cases unnecessary and imposes a burden for no reason. With regard to Tribal Nations, Verizon asserts that incumbent LECs lack sufficient information to determine whether a copper retirement affects areas within a particular Tribal nation's boundaries.[201] We further find that requiring direct notice of planned copper retirements to the Department of Defense serves no regulatory purpose. The Department of Defense has no regulatory or consumer protection role in the context of copper retirements. Moreover, copper retirements that do not result in a transition from TDM to IP-based services do not present an increased cybersecurity risk.[202]

58. *Eliminating additional content requirement added in 2015*. By eliminating the section of the rule requiring direct notice of copper retirement to retail customers, we are also eliminating the requirement that incumbent LECs include in their copper retirement notices "a description of any changes in prices, terms, or conditions that will accompany the planned changes."[203] No commenters addressed this specific issue in support of or in opposition to the potential elimination of section 51.332. Consistent with the other reduced notice requirements we adopt herein, we find this prescriptive content requirement has no bearing on the type of notice the Commission correctly recognized section 251(c)(5) was intended to provide, i.e., changes in "network design, technical standards and planned changes to the network" when first implementing this provision.[204] As such, we conclude that it imposes an unnecessary regulatory obligation on incumbent LECs beyond the scope of the statutorily mandated notice process.

[197] *See* AT&T Comments at 35.

[198] *See, e.g.*, Verizon Comments at 23-24; USTelecom Comments at 24; Frontier Comments at 25; *see also* CenturyLink Comments at 33.

[199] *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9412, para. 70.

[200] *See, e.g.*, Verizon Comments at 23-24; USTelecom Comments at 24; Frontier Comments at 25.

[201] *See* Verizon Comments at 23-24.

[202] *But see 2015 Technology Transitions Order*, 30 FCC Rcd at 9412, para. 70 (finding that keeping the Department of Defense informed of planned copper retirements was warranted because of "the increased cybersecurity risks posed by IP-based networks.").

[203] 47 CFR § 51.332(c)(1).

[204] *Second Local Competition Order*, 11 FCC Rcd at 19479, para 188.

59. *Rejecting requests to further streamline notice requirements*. We reject requests to further streamline our copper retirement notice requirements. First, we decline to do away altogether with the direct notice requirement, as some in the record suggest.[205] Because an incumbent LEC's copper retirement could significantly impact an interconnected competitive carrier's ability to continue providing certain services to its customers,[206] it remains an important requirement. Requiring every competitive LEC to monitor every notice of network change published by the Commission, as would be necessary absent a direct notice requirement, would be unreasonable for these service providers. Moreover, because we are shortening the notice period for copper retirements today,[207] continuing to require direct notice strikes an appropriate balance between facilitating incumbent LEC network changes and the needs of affected interconnecting carriers. Ensuring that interconnecting service providers will continue to receive copper retirement notices directly from incumbent LECs will afford those entities as much time as possible to convey necessary information to their customers who will be impacted by the incumbent's planned copper retirement.[208]

60. Similarly, we reject Frontier's suggestion that we exempt from our copper retirement rules those copper retirements occurring in areas where the Commission is funding broadband deployment, e.g., in areas receiving Connect America Fund support.[209] The fact that broadband will be deployed in such areas over time does not obviate the benefit of receiving timely notice of impending copper retirements to the parties entitled to such notice under our rules.[210]

(ii) Reducing copper retirement waiting periods.

61. *Reducing the standard waiting period for copper retirements from 180 days to 90 days after the Commission issues its public notice*. We reduce the generally applicable 180-day waiting period for copper retirements to a 90-day waiting period, which was the waiting period prior to the Commission's 2015 amendments to the copper retirement rules. We find that a 90-day waiting period after the Commission releases a public notice of the filing meets the needs of interconnecting carriers and other interested entities while minimizing the risk of undue delay for incumbent LECs.[211]

62. The record demonstrates that the current, longer waiting period has already slowed down affected incumbent LEC deployment plans,[212] and caused uncertainty for at least one carrier's planned broadband buildout.[213] The return to the 90-day waiting period is particularly appropriate in light of the other changes we adopt today that reduce the need for a longer waiting period, including allowing incumbent LECs to share information about planned network changes prior to providing the requisite

[205] *See, e.g.,* Windstream Comments at 10.

[206] *See, e.g.*, *id.* at 3, 5-6; INCOMPAS Comments at 12-13; TelePacific Reply at 5-6.

[207] *See infra* Section III.B.2.c.ii.

[208] *See, e.g.*, AT&T Reply at 27-28. *But see* Southern Co. Servs. Comments at 6 (expressing concern that its service provider will not always timely and accurately report network changes and requesting that direct notice should remain required for non-residential retail customers and critical infrastructure industries).

[209] *See* Frontier Comments at 25.

[210] Recipients of CAF Phase II model-based support have to deploy broadband to 40% of supported locations by the end of 2017, increasing by 20% each year until they reach 100% by the end of 2020. *See* 47 CFR § 54.310(c). As a result, to the extent copper retirement rules require notice, those notifications are likely to be spread over time.

[211] *See, e.g.,* Verizon Comments at 18; ITTA Comments at 8; Verizon Reply at 16.

[212] *See, e.g.*, Frontier Comments at 22; CenturyLink Comments at 26-27; AT&T Reply at 23-24; USTelecom Reply at 22-24; *see also* CenturyLink Reply at 17-18; Verizon Reply at 16c

[213] *See* Frontier Comments at 22.

public notice, [214] and reinstating the previously applicable objection procedures.[215] As a result, the 90-day notice period we adopt today best achieves the balance of "adequate, but not excessive," notice.[216]

63. The copper to fiber transition has been ongoing for the past fourteen years. The timing and rates of transitions or the decision to transition in the first instance vary on a carrier-by-carrier, and even on a case-by-case basis for each individual incumbent LEC.[217] While we recognize that copper loops are not obsolete,[218] competitive LECs have had ample notice that many legacy copper networks are likely to be retired at some point in the not-so-distant future.[219] It is in this context that we must evaluate commenters' claims that they continue to need extensive notice of copper retirements so that they can, if necessary, deploy their own fiber.[220] Longer periods or more open-ended structures requested by some commenters[221] would pose the risk of holding incumbent LEC networks hostage indefinitely,[222] a result explicitly sought by at least one commenter.[223] Such a result would run counter to the expressed goals of this proceeding to accelerate next-generation network deployment, and in any case longer periods are unwarranted.

64. Certain commenters refer to the reduced 90-day waiting period as a "speeded-up time frame."[224] To the contrary, we simply return to the timeframes that applied for more than a decade, before the Commission adopted the *2015 Technology Transitions Order*. By contrast, the extended notice periods sought by competitive LEC commenters constitute the very "overextended advance notification intervals" the Commission was concerned might needlessly "delay the introduction of new services, provide the interconnecting carrier with an unfair competitive advantage, or slow the pace of technical innovation."[225]

65. We decline to adopt certain incumbent LEC requests that the 90-day waiting period begin to run when the incumbent LEC files its copper retirement notice[226] or, in the alternative, to require that

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[214] *See supra* Section II.B.1

[215] *See infra* Section II.B.2.c.iii.

[216] *Second Local Competition Order*, 11 FCC Rcd at 19495, para. 227.

[217] *See, e.g.*, ADTRAN Comments at 5 ("[T]he carrier is in the best position to determine which technology will be most efficient and best meet its customers' needs. And that decision should not be influenced by regulations that require carriers to maintain dual networks or needlessly delay deployment of new technologies.").

[218] *See, e.g.*, CALTEL Comments at 6; ADTRAN Comments at 5; Windstream Reply at 4.

[219] *See, e.g.*, Verizon Reply at 16. *But see* BT Americas Reply at 3-4 (asserting that the 90-day waiting period proposed in the *Wireline Infrastructure Notice* would "allow ILECs to jockey consumers dependent on copper-based services into migrating in a speeded-up time frame without regard for the business uncertainty, disruption and costs wrought by an accelerated and sudden retirement of copper").

[220] *See, e.g.*, INCOMPAS Comments at 13-14; TelePacific Reply at 6.

[221] *See, e.g.*, INCOMPAS Comments at 13-14; Windstream Comments at 5-6; AARP Comments at 5; BT Americas Reply at 2-3; Windstream Reply at 5; DC PSC Reply at 6.

[222] *Cf.* USTelecom Reply at 16.

[223] *See* Harris Corp. Comments at 6.

[224] *See* BT Americas Reply at 3.

[225] *Second Local Competition Order*, 11 FCC Rcd at 19497, para. 233. *But see* NASUCA Comments at 18; CALTEL Comments at 7; Windstream Reply at 6 (all asserting that a 180-day notice period is not overly burdensome because the planning cycle for fiber deployments and copper retirements is already much longer than 180 days).

[226] *See* Verizon Comment at 19; CenturyLink Comments at 29; Verizon Reply at 16; CenturyLink Reply at 19.

we release a public notice within a specified period of time.[227] Incumbent LEC commenters assert that delays in our processing of filings can result in delays in implementation.[228] However, commenters do not point to any specific instance in which a planned copper retirement had to be delayed due to the timing of our release of the relevant public notice. Moreover, having the waiting period run from the date we release a public notice of the filing, as has been the case for more than two decades,[229] affords Commission staff the necessary opportunity to review filings for mistakes and/or non-compliance with the rules.[230] Indeed, Commission staff routinely contacts filers to clarify or correct information contained in filings or to add required information that is missing, and this ability is necessary to ensure the integrity of the filing process. Otherwise, incumbent LEC notices could fail to contain the required information at the time of filing, depriving notice recipients of information they need to accommodate the network change. Incumbent LEC commenters have not specified any reason why, or demonstrated any harm from, timely release of a copper retirement public notice based on the incumbent LEC's own planned implementation date as specified in the notice.

66. *Adopting expedited 15-day waiting period where no customers are served over affected copper*. We further amend our rules to provide for a 15-day waiting period after Commission release of its public notice of an incumbent LEC's filing for copper retirements where the affected copper facilities are no longer being used to provide service. As AT&T explains in its comments, this streamlined notice process, which received support from incumbent and competitive LECs alike,[231] is appropriate because it will not impact any interconnecting carriers or require the transition of any services.[232]

(iii) Reinstating objection procedures for copper retirement notices.

67. Because the rules we adopt today reduce the waiting period from 180 days to 90 days, we reinstate the objection procedures previously applicable to copper retirement notices prior to the *2015 Technology Transitions Order* and currently applicable to short-term network change notices.[233] We therefore find it unnecessary to retain the good faith communication requirement adopted in 2015. In the rare instances in which a competitor may need additional information or be unable to make the accommodations necessary to continue to provide service to its customers within the 90 day notice timeframe,[234] the objection procedure will provide a mechanism to provide more time to address concerns.[235] Before the 2015 changes went into effect, carriers infrequently invoked the objection procedures,[236] but reinstating the procedure affords some measure of protection to competing providers

[227] *See* Verizon Comment at 19.

[228] *See, e.g., id.*; AT&T Comments at 32; CenturyLink Comments at 29.

[229] *See Second Local Competition Order*, 11 FCC Rcd at 19492-93, para. 221; *see also Common Carrier Bureau Network Change Notifications*, Report No. NCD-1, Public Notice, 1996 WL 700032 (CCB Dec. 9, 1996).

[230] *See* AICC Reply at 4.

[231] *See, e.g.*, AT&T Comments at 35; Verizon Comments at 19; CALTEL Comments at 7; Windstream Comments at 10; TelePacific Reply at 7; CenturyLink Reply at 19; Verizon Reply at 16. *But see* Frontier Comments at 25 (suggesting that an incumbent LEC should not need to go through the Commission's copper retirement notice process in these situations).

[232] *See* AT&T Comments at 35.

[233] *See* 47 CFR § 51.333(c).

[234] *See, e.g.*, Verizon Comments at 17; CenturyLink Comments at 28; AT&T Comments at 35; Verizon Reply at 19.

[235] *See, e.g.*, Windstream Comments at 6; California PUC Comments at 29; NASUCA et al. Comments at 18; ADTRAN Comments at 5-6; UTC Reply at 34.

[236] *See, e.g.*, Verizon Comments at 17; CenturyLink Comments at 28; AT&T Comments at 35; Verizon Reply at 19.

facing extenuating circumstances.[237] The objection procedure further serves as an incentive for an incumbent LEC to work closely with competitive LECs to ensure the competitive LECs have the information they need to accommodate the planned copper retirement within the 90-day period,[238] a role that was filled by the good faith communication requirement when the Commission eliminated the objection procedures applicable to copper retirement notices in 2015. Moreover, these procedures allow objections only to delay the planned retirement up to a total of six months from the initial public notice under our rules.[239] In no case, however, do they prevent the retirement from occurring or extend the timeframe beyond the six-month period.

68. We are unpersuaded by Windstream's assertion that it is necessary to retain the requirement that incumbent LECs work in good faith with interconnecting entities to provide information necessary to assist them in accommodating planned copper retirements without disruption of service to their customers.[240] A competitive LEC that feels an incumbent LEC is engaging in anticompetitive behavior by not providing necessary information has two avenues of recourse. First, the objection procedures we reinstate today provide a mechanism for competitive LECs to seek any additional information they need to allow them to accommodate the planned transition.[241] Second, the competitive LEC may assert a claim under section 201(b) of the Act that the incumbent LEC is engaging in an unjust or unreasonable practice.[242]

69. Finally, we are unpersuaded by unsubstantiated incumbent LEC concerns that competitive LECs might use the objection procedures to engage in anti-competitive behavior.[243] Indeed, the Commission is unaware of, and incumbent LEC commenters do not point to, any such instances occurring under the pre-2015 copper retirement objection procedure rules, or the current short-term network change rules, which have always contained an objection period.[244] To the extent this occurs in the future, we again make it clear that we will not tolerate such efforts and that objections proffered for anticompetitive purposes can expose the objector to sanctions.[245] We thus conclude that reinstating the objection procedures previously applicable to copper retirement notices maintains an appropriate balance between the needs of incumbent and competitive LECs and is consistent with Commission precedent.

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[237] *See, e.g.*, Windstream Comments at 6; *cf. Second Local Competition Order*, 11 FCC Rcd at 19491, para. 216 (noting that the inability to maintain interoperability with the incumbent LEC's network "could interrupt service between the two service providers").

[238] *Cf.* CenturyLink Comments at 28 (noting that when it received requests for additional time under the pre-2015 rules, "it readily accommodated them"). *But see* ITTA Comments at 5, 8 (asserting the Commission should eliminate the objection procedures); ITIF Comments at 6 (stating "the Commission should repeal the § 251(c)(5) requirements on incumbent local exchange carrier (LEC) copper retirement notices of less than six months, and retain the prohibition on competitive LECs objecting to and delaying an incumbent LEC's planned copper retirement").

[239] *See* 47 CFR § 51.333(c). *But see* Frontier Comments at 24 ("It does not appear that there is any legitimate reason for a party to object to the deployment of new fiber infrastructure.").

[240] *See* Windstream Comments at 8-9; Windstream Reply at 3.

[241] *See* 47 CFR § 51.333(c)(1) (providing that the objection must "state specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes").

[242] *See* 47 U.S.C. § 201(b).

[243] *See* USTelecom Comments at 23; *see also* Frontier Comments at 24.

[244] *See* 47 CFR § 51.333(c).

[245] *See Second Local Competition Order*, 11 FCC Rcd at 19493, para. 221.

(iv) Reinstating "deemed denied" objection resolution for copper retirements.

70. We also reinstate the objection resolution procedures applicable to copper retirements that were eliminated by the *2015 Technology Transitions Order*. Absent Commission action, an objection to a copper retirement notice will be deemed denied ninety days after the Commission releases its public notice of the incumbent LEC's filing.[246] By reinstating this provision, we further streamline the copper retirement process and obviate the concerns expressed by some commenters that competitors might use the objection procedures for anti-competitive reasons.[247]

d. Adopting Streamlined Copper Retirement Notice Procedures for *Force Majeure* Events

71. As recent events have shown, it is vital that we do everything we can to facilitate rapid restoration of communications networks in the face of natural disasters and other unforeseen events. We recognize that when networks are damaged or destroyed by devastating *force majeure* events such as Hurricanes Harvey, Irma, and Maria, the top priority for service providers must be to restore their networks and service to consumers as quickly as possible rather than jump through regulatory hoops. Regulatory processes that could make sense in normal times may cause unnecessary delay when exigent circumstances arise. To provide incumbent LECs the flexibility to restore service as quickly as possible, today we streamline our copper retirement procedures for cases of natural disasters or other unforeseen events. To be clear, we revise only our network change notification rules that govern how incumbent LECs notify other carriers of copper retirements, and we do not revisit our existing procedures for emergency discontinuances of service.[248]

72. The record shows that as incumbent and competitive LECs recognize, incumbent LECs need the flexibility to restore service as quickly as possible in the case of unforeseen events and should not be rendered non-compliant by actions beyond their control.[249] For example, when a natural disaster such as a hurricane damages an incumbent LEC's facilities, or a copper line is inadvertently cut during a road work project,[250] an incumbent LEC must, first and foremost, take whatever action is necessary to restore impacted service as quickly as possible. We find that it makes more sense to allow the prompt installation of replacement facilities than to require the incumbent LEC to first repair the damaged copper lines, if the incumbent LEC determines that is the best course of action, only to subsequently expend additional resources to then retire and replace those facilities later.[251] The same logic applies when state or municipal authorities notify an incumbent LEC that due to an impending project, the incumbent LEC must move its copper lines within a shorter period of time than might allow the carrier to comply with the advance notice and waiting periods required by the Commission's rules.[252]

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[246] *See* 47 CFR § 51.333(f); *cf.* ITTA Comments at 5, 8 (asserting the Commission should "restore the 90-day 'deemed approved' timeframe while retaining the change adopted in 2015 eliminating the process by which CLECs can object to and seek to delay an ILEC's planned copper retirement").

[247] *See* USTelecom Comments at 23; *see also* Frontier Comments at 24.

[248] *See* 47 CFR § 63.63.

[249] *See, e.g.*, Verizon Comments at 26-28; AT&T Comments at 38-39; USTelecom Comments at 29; Verizon Reply at 23-24; CenturyLink Reply at 19; TelePacific Reply at 6; *see also* Frontier Comments at 23-24 n.56; CALTEL Comments at 7. *But see* CWA Reply at 8-9 (rejecting a blanket exemption in emergency situations and noting that rather, carriers can seek waivers in emergency situations and pointing to the actions of Verizon in the wake of Superstorm Sandy).

[250] *See, e.g.*, AT&T Comments at 38; Verizon Comments at 27-28.

[251] *See, e.g.*, CenturyLink Comments at 29.

[252] *See, e.g.*, Verizon Comments at 27; CenturyLink Comments at 28-29.

73. With respect to *force majeure* events, this new provision applicable to copper retirements codifies streamlined procedures already available to certain incumbent LECs pursuant to a set of waiver orders,[253] the first of which was adopted in the wake of Hurricane Katrina.[254] By codifying these waivers for copper retirements and extending them to all incumbent LECs alike, we adopt well-tested requirements, provide greater regulatory certainty, and promote competitive neutrality among incumbent LECs.

74. Turning to the language of the rule provision we adopt, we specifically revise the rules governing copper retirement to (i) exempt incumbent LECs from advance notice and waiting period requirements for copper retirements that are required as a direct result of *force majeure* events such as the "emergencies" identified in section 79.2(a)(2) of our rules (other than school closings, bus schedule changes, and weather warnings or watches),[255] as well as terrorist attacks,[256] and (ii) require that an incumbent LEC give notice of a copper retirement resulting from a municipal mandate or third-party damage or destruction to copper lines as soon as practicable, and permit a reduced waiting period commensurate with the amount of notice provided to the incumbent LEC by the municipal authority.

75. Under the rules we adopt today, in the case of a *force majeure* event for which an incumbent LEC invokes its disaster recovery plan,[257] the incumbent LEC will be exempted during the period when the disaster recovery plan is invoked, for up to 180 days, from all advance notice and waiting period requirements associated with copper retirements that are a direct result of damage to the incumbent LEC's network infrastructure caused by the *force majeure* event. We find that in the event of a disaster, requiring compliance with these rules would impede restoration efforts and delay recovery.[258] However, during the exemption period, as soon as practicable after the *force majeure* event occurs and the disaster recovery plan is invoked, the incumbent LEC must comply with section 51.325(a)'s public notice requirement and include in such public notice the date on which the carrier invoked its disaster recovery plan. It must also communicate with other interconnected telephone exchange service providers to ensure that such carriers are aware of any changes being made to the incumbent LEC's networks that may impact those carriers' operations, as soon as practicable. No further notice requirements apply.

76. Should an incumbent LEC require relief longer than 180 days after the disaster recovery plan is invoked, the incumbent LEC must request further relief authority from the Commission. Any such request must be accompanied by a status report describing the incumbent LEC's progress and providing an estimate of when the incumbent LEC expects to be able to resume compliance with copper retirement disclosure requirements. In the event of circumstances triggered by third parties, such as a municipal

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[253] *See Petition of BellSouth Corporation for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, Order, 21 FCC Rcd 6518 (WCB 2006) (*2006 BellSouth Waiver Order*); *AT&T STA Order*, 21 FCC Rcd 4306; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 20 FCC Rcd 14713 (2005) (*2005 Network Disclosure Waiver Order*).

[254] *2005 Network Disclosure Waiver Order*, 20 FCC Rcd at 14713, para. 1.

[255] 47 CFR § 79.2(a)(2).

[256] Political or economic events (e.g., Commission action, a market crash) also will not qualify as *force majeure* events for purposes of this rule.

[257] Certain carriers undertook disaster response planning in the wake of Hurricane Katrina and in response to the Administration's expressed hope for greater national preparedness. *See, e.g.*, Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response, WC Docket No. 06-63, at 2 (filed Mar. 10, 2006). The term "disaster recovery plan" as used here is intended to refer to a disaster response plan developed by an incumbent LEC for the purpose of responding to a *force majeure* event. *See, e.g.*, *Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, Order, 21 FCC Rcd 4306, 4310, para. 11 (2006) (*AT&T STA Order*).

[258] *AT&T STA Order*, 21 FCC Rcd at 4310, para. 11.

mandate or inadvertent third party cuts to the incumbent LEC's copper lines, the incumbent LEC's direct and public notice must comply in all respects with the copper retirement notice rules, except that the notice must: (1) incorporate a reduced waiting period commensurate with the specific circumstances at issue; (2) provide an explanation of the particular circumstances; and (3) explain how the incumbent LEC intends to minimize the impact of the reduced waiting period on interconnected carriers.

77. In the event that unforeseen circumstances arise warranting relief that falls outside of the *force majeure* rules we adopt, the Wireline Competition Bureau has delegated authority to address waiver requests. However, we reject CWA's argument that the Commission should proceed solely via waiver in this context.[259] The waiver process is slower and less predictable than a rule, which is especially problematic when carriers need to make quick decisions in exigent circumstances.

e. Updating Filing Titles Applicable to Copper Retirements

78. We update the titles available to incumbent LECs for use in labeling their copper retirement filings. Section 51.329(c)(1) sets forth titles that incumbent LECs must use to label their network change disclosure filings.[260] The Commission added the titles applicable to copper retirement filings in 2016 "to alleviate potential confusion."[261] Those newly-added titles specifically reference section 51.332, which we eliminate today. Because we add the copper retirement notice requirements back into section 51.333, where they originally resided, we revise the copper retirement-related titles set forth in section 51.329(c)(1) to correctly refer to section 51.333.

C. Section 214(a) Discontinuance Process

79. Today we take several important steps to eliminate unnecessary regulatory process encumbrances when carriers decide to cease offering legacy services that are rapidly and abundantly being replaced with more innovative alternatives.[262]

80. The reforms we adopt reflect the reality of today's marketplace. As USTelecom and other commenters in this proceeding observe, demand for the kinds of low-speed services that carriers generally provide over legacy networks is rapidly decreasing, as consumers move towards modern, competing alternatives.[263] As of June 2016, interconnected VoIP lines accounted for nearly half of all retail voice telephone service connections in the United States.[264] Non-incumbent LECs operate more than three quarters of these approximately 60 million interconnected VoIP lines.[265] And mobile voice service subscriptions now outnumber end-user switched access lines in service by more than five-to-

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[259] *See* CWA Reply at 8-9.

[260] *See* 47 CFR § 51.239(c)(1).

[261] *See 2016 Technology Transitions Order*, 31 FCC Rcd at 8355, para. 194.

[262] Section 214(a) requires carriers to obtain authorization from the Commission before discontinuing, reducing, or impairing service to a community or part of a community. As a matter of convenience, unless otherwise noted this item uses the term "discontinue" or "discontinuance" as a shorthand for the statutory language "discontinue, reduce, or impair."

[263] USTelecom Comments at 31-33; CenturyLink Comments at 36; AT&T Comments at 41-42.

[264] Section 9.3 of our rules defines "interconnected VoIP." *See* 47 CFR § 9.3.

[265] *See* FCC, Industry Analysis and Technology Division, Voice Telephone Services: Status as of June 30, 2016 at 2-3 (2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf (2017 Voice Telephone Services Report).

one.[266] Similar trends are affecting legacy low-speed data services, which have largely been abandoned by consumers.[267]

81. These developments drive our efforts to streamline the section 214(a) discontinuance process for legacy services. Section 214 directs the Commission to ensure that a loss of service does not harm the public convenience or necessity.[268] Increasing competition and deployment of higher-speed next-generation services allow most consumers to purchase services that are superior to legacy services.[269] As a number of commenters note, these developments have greatly reduced the risk of harm to consumers stemming from the discontinuance of legacy services.[270]

82. The record also makes clear that the Commission's current section 214(a) discontinuance rules impose needless costs and delay on carriers that wish to transition from legacy services to next-generation, IP-based infrastructure and services.[271] Even relatively short delays or periods of unpredictability can, in the aggregate, create significant hurdles for providers who seek to upgrade hundreds or thousands of lines across their service territory.[272] As Verizon explains, excessive restrictions on the discontinuance of legacy services harm both consumers and competition alike "as they delay the ability of providers to shift resources from legacy voice services to the more modern offerings that consumers demand."[273] For these reasons, as described below, we streamline and expedite our processes for section 214 discontinuance applications for a variety of legacy services.

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[266] *See* 2017 Voice Telephone Services Report at 2. This gap is widening. As the Wireline Competition Bureau (Bureau) recently found, between 2013 and 2016, "interconnected VoIP subscriptions increased at a compound annual growth rate of 10%, while mobile voice subscriptions increased at a compound annual growth rate of 3%, and retail switched access lines declined at 11% per year." *Id*.

[267] Our data show that between December 2014 and June 2016 the proportion of all fixed broadband consumer connections with a download speed between 200 Kbps and 1.544 Mbps has fallen from 6 percent to 3 percent. FCC Form 477 Data, as of December 31, 2014 (image as of February 22, 2016) and as of June 30, 2016 (image as of May 16, 2017).

[268] *See* 47 CFR § 63.71(a)(5)(i)-(ii). In determining whether a discontinuance will harm the public interest, the Commission has traditionally utilized a five-factor balancing test to analyze: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) increased charges for alternative services; and (5) the existence, availability, and adequacy of alternatives. *2016 Technology Transitions Order*, 31 FCC Rcd at 8303-04, paras. 61-62.

[269] *See* Verizon Comments at 28-29, 33-34; AT&T Comments at 41-42.

[270] *See* CenturyLink Comments at 40; USTelecom Comments at 31-33; Verizon Comments at 33-34.

[271] *See* Letter from Patricia J. Paoletta, Counsel to Deloitte LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 at al., Attach. at 20 (filed July 10, 2017); Verizon Comments at 32; *see also Wireline Infrastructure Notice*, 32 FCC Rcd at 3288, para. 72 & n.102.

[272] *See* Verizon Oct. 19, 2017 *Ex Parte* Letter at 3.

[273] *See* Verizon Comments at 32-34; ITIF Comments at 6. For example, Verizon estimates that that "the necessary equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than $30,000" and observes that "[p]roviders who are unable to discontinue these services efficiently would be faced with the cost of maintaining them over fiber should they choose to retire copper, which could divert resources that could be used for newer services." Verizon Oct. 19, 2017 *Ex Parte* Letter at 3.

1. Expediting Applications that "Grandfather" Low-Speed Legacy Services for Existing Customers

83. First, we streamline the approval process for discontinuance applications to grandfather low-speed (i.e., below 1.544 Mbps) legacy services.[274] Specifically, we adopt a uniform reduced public comment period of 10 days and an automatic grant period of 25 days for all carriers seeking to grandfather legacy low-speed services for existing customers.[275] The record supports our conclusion that streamlined processing of these applications will remove unnecessary regulatory delay for carriers seeking to discontinue legacy services with no harmful impact to existing customers.[276]

84. *Streamlined Comment and Auto-grant Period*. There is broad support in the record for reducing the processing period for applications to grandfather low-speed legacy services to a 10-day comment period and a 25 day auto-grant period.[277] Commenters urge the Commission to make the discontinuance process easier for carriers seeking to replace their legacy services with next-generation services, especially to the extent that such discontinuances do not impact those using the service, as is the case with grandfathering.[278]

85. The record demonstrates that longer processing timelines for grandfathering applications are unnecessary to protect consumers from potential harm stemming from discontinuances, and that our current discontinuance rules may unnecessarily impede the deployment of advanced broadband networks by imposing costs on service providers who seek to upgrade legacy infrastructure.[279] Our section 214 discontinuance provisions are intended to protect the public by ensuring that consumers are not harmed by loss of service as a result of a discontinuance, and we will normally authorize a discontinuance unless it is shown that affected customers would be unable to receive a reasonable substitute service.[280] However, as numerous commenters observe, national marketplace trends show that businesses and consumers alike are moving away from legacy services and toward modern alternatives.[281] In both the residential and enterprise services marketplace, incumbent LECs now face widespread competition from numerous intermodal competitors offering services that compete with legacy services.[282] These

[274] "Grandfathering" a service under section 214 refers to a request by a carrier for authorization to stop accepting new customers for a service while maintaining that service to existing customers. *See Wireline Infrastructure Notice*, 31 FCC Rcd at 3288, para. 73. Throughout this section we use the terms "grandfathering," "grandfather," and "grandfathered" interchangeably to refer to this type of section 214(a) application.

[275] *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3288-91, paras. 73-84.

[276] *See id*.

[276] *See* AT&T Comments at 43; USTelecom Comments at 31-36; Verizon Comments at 41; WTA Comments at 13.

[277] *See, e.g.*, Verizon Comments at 41-42; CenturyLink Comments at 44-45; Windstream Comments at 15-16; ITIF Comments at 6; USTelecom Comments at 31-36. The Commission's rules provide for a 30 day comment period and a 60 day auto-grant period for service discontinuance applications filed by dominant carriers. 47 CFR § 61.71(a)(5), (f). For non-dominant carrier applications, comments are due within 15 days of the release of a public notice announcing the filing, and there is a 30 day auto-grant period. *Id*.

[278] *See* AT&T Reply at 34-35; CenturyLink Comments at 36; ITIF Comments at 6; Verizon Comments at 41-42; USTelecom Comments at 31-36.

[279] *See* CenturyLink Comments at 31; ITIF Comments at 6; Verizon Comments at 32-34; USTelecom Comments at 31-36.

[280] *See* 47 CFR § 63.71(a)(5)(i)-(ii); *see also supra* note 269.

[281] *See* AT&T Comments at 46; CenturyLink Comments at 34-38; USTelecom Comments at 31-33.

[282] *See* AT&T Comments at 46; CenturyLink Comments at 34-38; USTelecom Comments at 31-33; s*ee also BDS Order*, 32 FCC Rcd at 3461, paras. 1-4 (finding "substantial and growing competition in the provision of business data services in areas served by incumbent local exchange carriers," and noting that "[a]lthough incumbent LECs

(continued….)

competitive forces have made substitute services readily available to the majority of consumers, mitigating any potential harm that might result from legacy services being grandfathered.

86. The record also makes clear that the section 214(a) discontinuance rules impose costs on carriers that wish to transition from legacy services to next-generation infrastructure, slowing the deployment of advanced services. As Verizon explains, processing times for 214(a) discontinuances "can delay services upgrades considerably."[283] Similarly, ITIF observes, that "[a]llowing faster approval of exit applications will speed the transition away from legacy services and towards next generation IP-based networks."[284] We find that affording carriers a more rapid glide path to transition away from legacy services they no longer seek to offer will reduce costs and promote the availability of innovative new services that benefit the public. By balancing the needs of consumers and carriers to optimize the deployment of new network technologies, these common-sense reforms help us better fulfill our section 214(a) statutory obligations.

87. We disagree with commenters that argue that the reduced comment and auto-grant periods will provide insufficient opportunity for public comment, or will otherwise prevent the Commission from fulfilling its statutory obligation to ensure that discontinuances do not harm the public interest.[285] Relatively few customers remain on legacy services, and because existing customers will be grandfathered under this section of our rules, they are unlikely to be harmed by these new processes. Moreover, a 10-day comment period will permit affected customers sufficient time to raise any applicable concerns with the Commission. Finally, nothing in the rule we adopt today changes a carrier's obligations to directly notify its customers of its plans to grandfather a service at, or before, the time it files its grandfathering application with the Commission. Thus, to the extent customers have concerns about the grandfathering application, they will be able to present concerns both during the 10-day comment period and prior to that period while the Commission's release of the public notice is pending. Similarly, we conclude that a 25-day auto-grant period will provide the Commission with ample time to evaluate any objections to the grandfathering application, and, if necessary, remove the application from streamlined treatment to conduct a more searching review of the application or to give the carrier and objecting party more time to resolve its issues.[286]

88. Our reform is limited in scope. Nothing in the reduced processing timeframes we adopt today alters our obligation under section 214(a) to ensure that discontinuances, including those which

(Continued from previous page)
once dominated the business data services market selling circuit-based DS1s and DS3s, such technology is becoming obsolete"); *see also* CenturyLink Comments at 38.

[283] *See* Verizon Comments at 32-34.

[284] ITIF Comments at 6.

[285] *See, e.g.*, Public Knowledge Comments at 7-8; AARP Comments at 3-6; Greenlining Institute Comments at 13-14; BT Americas Reply at 5-7. One commenter goes so far as to argue that grandfathering applications in general run afoul of Commission precedent because the fundamentals of common carriage dictate that telecommunications services must be offered to all comers. Public Knowledge Comments at 7-8. On the contrary, the Act affords the Commission broad flexibility in administering the section 214 discontinuance process to serve the public interest, and the Commission has long considered applications to grandfather services pursuant to section 214(a) or permitted carriers to grandfather certain service offerings in their FCC tariffs. *See, e.g.*, Ameritech Operating Companies, Tariff FCC No. 2 at 274.1.1.2, 476 and 454 (May 31, 2006); CenturyLink Operating Companies, Tariff FCC No. 9 at 7-57, 7-78, 8-2 (Feb. 28, 2011); *Comments Invited on Application of Qwest Corporation to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 07-289, 22 FCC Rcd 21608 (WCB 2007); *Comments Invited on Application of Embarq Florida, Inc. et al. to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 08-145, 23 FCC Rcd 11077 (WCB 2008).

[286] *2016 Technology Transitions Order*, 31 FCC Rcd at 8300, para. 51.

occur when a service is grandfathered, do not run contrary to the "public convenience and necessity."[287] These streamlining measures do not in any way change the methodology we use to conduct our public interest evaluation or the criteria upon which it is based.[288] We continue to apply our traditional five-factor balancing test to all section 214 discontinuance applications,[289] including the specific grandfathered applications at issue here, regardless of which review timeline applies. If a grandfathering application subject to these new rules raises substantial questions, Bureau staff may remove it from streamlined processing just as it can under our prior approval timeframes.

89. We reject the proposals of Windstream and Ad Hoc Telecom Users Committee to prescribe specific terms and conditions carriers must include in their grandfathering plans.[290] We intend to streamline processing, not impose delay and complexity by interfering with a carrier's specific business plans or how it intends to continue serving its existing customers. As AT&T notes, carriers may have limited ability to provide legacy services that are being phased out, and in any event, requiring carriers to allow moves, additions, and/or changes to grandfathered services would "force carriers to invest resources in outdated technology rather than investing in deployment of next-generation services," which runs contrary to the purpose of the reforms we adopt today.[291] To the extent affected customers believe the terms of a carriers' proposed grandfathering application raises concerns, customers can raise these concerns during the public comment period.

90. *Uniform Treatment for Dominant and Non-Dominant Carriers*. Our section 214 discontinuance rules have traditionally applied different comment and automatic grant periods to dominant and non-dominant carriers.[292] However, in light of the technological and competitive dynamics of today's modern communications landscape, we find it is unnecessary to maintain a distinction between dominant and non-dominant carriers in the context of section 214 applications to grandfather low speed legacy services.[293]

91. *Eligible Low-Speed Legacy Services*. We make the streamlined approval process we adopt available to all carriers seeking to grandfather any voice and data services at speeds below 1.544 Mbps.[294] As the record indicates, demand for these services is falling as consumers migrate to more

[287] 47 U.S.C. § 214(a).

[288] *See* 47 CFR § 63.71; *Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22742, para. 8.

[289] *See Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22742, para. 8 ("In determining whether to allow a carrier to discontinue service pursuant to section 214, the Commission considers a number of factors in balancing the interests of the carrier and the affected user community. These include (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.").

[290] *See* Windstream Comments at 15; Ad Hoc Reply at 16 (requesting that we clarify that grandfathering a service permits moves, additions, and changes to the grandfathered service, and that grandfathering extends to customers who have pending orders or who have made bona fide inquiries about a service within the 120-day period prior to the filing of the application).

[291] AT&T Reply Comments at 38.

[292] *See* 47 CFR § 63.71; *Wireline Infrastructure Notice*, 32 FCC Rcd at 3289, paras. 75-76.

[293] *See* CenturyLink Comments at 44-45; NTCA Comments at 19-22; USTelecom Comments at 31-36.

[294] *Wireline Infrastructure Notice*, 32 FCC Rcd at 3290, para. 79. We recognize that legacy services, in general, constitute numerous services at speeds equal to or greater than 1.544 Mbps and over technologies other than TDM, some of which could be characterized as low-speed. Nevertheless, solely for purposes of the rules we adopt herein today, we apply our streamlined criteria only to those low-speed legacy services lower than a DS1 speed as specified in the *Wireline Infrastructure Notice*.

advanced services that offer greater speed and functionality or to competitive alternatives such as IP or wireless.[295] We find broad record support for including both voice and data services meeting our speed threshold.[296] Indeed some commenters suggest substantially broadening the scope of services covered by these reduced timeframes to include *all* grandfathered services or all grandfathered legacy services, regardless of speed.[297] We decline to extend our streamlined grandfathering provisions to additional services or speed thresholds at this time.[298] We find that limiting our streamlined-treatment to legacy voice and data services below 1.544 Mbps strikes the appropriate balance to provide relief to carriers who wish to transition away from the provision of legacy services for which there is rapidly decreasing demand, while at the same time ensuring that potential consumers of these services have readily available alternatives.[299]

2. Expediting Applications to Discontinue Previously Grandfathered Legacy Data Services

92. Second, we streamline the discontinuance process for applications seeking authorization to discontinue legacy data services that have previously been grandfathered for a period of at least 180 days.[300] We define legacy data services for the purpose of these new rules as data services below 1.544 Mbps.

93. *Streamlined Comment and Auto-Grant Periods*. We adopt a uniform reduced public comment period of 10 days and an auto-grant period of 31 days for all carriers. Discontinuing carriers that wish to avail themselves of this streamlined process may do so by including a simple certification that they have received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. This certification must reference the file number of the prior Commission authorization to grandfather the services the carrier now seeks to permanently discontinue.

94. The record supports reducing the public comment period to 10 days and the auto-grant period to 31 days for previously-grandfathered legacy data applications.[301] Streamlining the comment and auto-grant periods for this class of discontinuance applications will benefit both industry and consumers by speeding the retirement of outdated services and the transition to next-generation networks. Carriers that seek to completely retire legacy data services that have previously been grandfathered will be better able to focus resources on more innovative, technologically advanced services, while simultaneously protecting customers of these previously grandfathered legacy data services.[302]

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[295] *See* CenturyLink Comments at 36 (noting that across much of its service territory, "a critical mass of customers have transitioned away from legacy TDM services to more current and capable technologies"); AT&T Reply at 32 (observing that "about 65% of American households now receive all or almost all telephone calls on cell phones, while only about 14% of American households still rely on legacy TDM landlines").

[296] *See* AT&T Reply at 34; Verizon Comments at 41; USTelecom Comments at 32; *see also* NRECA Comments at 7-8; Windstream Comments at 15-16 (arguing that "the Commission should adopt its proposal to apply streamlined processing only to low-speed TDM services at lower-than-DS1 speeds").

[297] *See* CenturyLink Comments at 36; Verizon Comments at 41; USTelecom Comments at 32.

[298] *See* USTelecom Comments at 32; CenturyLink Comments at 45; Verizon Comments at 41.

[299] *See* NTCA Comments at 19-20 (noting that new IP-based services "generally surpass in function, capacity, and capability TDM-based offerings").

[300] *See Wireline Infrastructure Notice*, 31 FCC Rcd at 3291-92, paras. 85-89.

[301] *See, e.g.*, AT&T Comments at 46; ITIF Comments at 6; WTA Comments at 13.

[302] *See* AT&T Comments at 46; NRECA Comments at 8.

95. A 10-day comment period for these applications will provide customers with ample notice of the impending discontinuance of their service, as the initial grandfathering of the service is a clear signal to these customers that such service is likely to be discontinued in the future.[303] This is particularly true considering our requirement that such services be grandfathered for a minimum of 180 days prior to the filing of a discontinuance application. Thus, we disagree with commenters that claim that this shortened comment interval will fail to give impacted customers sufficient notice,[304] or suggest merely knowing that a service is grandfathered does not prepare retail or wholesale customers for the subsequent end to that service.[305] In reality, the 180-day minimum period for grandfathering legacy data services will give these previously-grandfathered customers more notice and a far longer timeframe within which to consider alternative services than existed under our prior rules. And as competition continues to grow and providers offer new and better services over modern broadband facilities, it is less likely that customers will experience a harmful service loss or be unable to secure a reasonable substitute service for legacy services at any rate.[306]

96. The 31-day auto-grant period will provide us sufficient time to determine whether to remove an application from automatic grant if we find that such application raises concerns, and carriers and their customers are unable to resolve their issues prior to the end of the 31-day period. We are not persuaded by arguments claiming that we fail to account for the need for longer timeframes to transition customers to new or alternative services, potentially disrupting and hampering mission-critical communications,[307] and pointing to past service transitions that have taken more than a year to complete.[308] Many discontinuances are already subject to a 31-day auto-grant period, and commenters have failed to show why this existing interval is a problem. Moreover, we expect that in the case of discontinuances involving multiple customer locations that require lengthy transition periods to implement, particularly of the type concerning these commenters, the discontinuing carrier has strong incentives to work with its customers to establish a transition schedule that is seamless, physically attainable, and comports with the service agreement or master contract governing the terms of service between that customer and carrier.[309] After all, the carrier is in business to provide service, and in today's increasingly competitive business services marketplace, the incentives to retain and grow existing customer relationships are strong.[310]

97. Similarly, we are not persuaded by commenters' concerns that streamlining the auto-

[303] *See* USTelecom Comments at 35-36; Verizon Comments at 41-42; Verizon Reply at 30.

[304] *See* AARP Comments at 3-5; BT Americas Reply at 5-7; California PUC Comments at 35-36; Greenlining Institute Comments at 9, 13-14; Harris Corp. Comments at 6; NASUCA et al. Comments at 15; Public Knowledge Comments at 7-8; Southern Co. Servs. Comments at 15-16; UTC Comments at 31-33; AARP Reply at 3; NASUCA et al. Reply at 17-19. In its comments, Harris Corporation appears to mistakenly believe we have proposed to allow the discontinuance to go into effect ten days after issuance of a public notice. It also appears to mistakenly conflate the network change notification process with the section 214(a) discontinuance process. *See* Harris Corp. Comments at 6.

[305] *See* NASUCA et al. Comments at 15.

[306] USTelecom Comments at 31-32.

[307] *See* Southern Co. Servs. Comments at 13-16; *see also* CCA Comments at 54.

[308] *See* Southern Co. Servs. Comments at 15-16.

[309] *See* USTelecom Comments at 32 (noting that competition for data services continues to grow); Verizon Comments at 29 (stating that "providers everywhere are eager to sell voice and data service using multiple modern technologies" and that "the Commission recently found that 'the market for business data services is dynamic with a large number of firms building fiber and competing for this business'").

[310] *See BDS Order*, 32 FCC Rcd at 3460-61, para. 1 (recognizing the "intense competition present" in the market for business data services).

grant period for applications to discontinue previously grandfathered legacy data services may allow carriers to quickly discontinue vital services used by 9-1-1 networks to deliver calls from end users to emergency responders.[311] Carriers' incentives to ensure seamless service transitions for services involved in safety-of-life are even more acute than other types of mission-critical safety-related service arrangements. Nonetheless, we invite customers to comment on specific applications that raise public safety or other mission-critical safety concerns, where the discontinuance timeframe is too short to accommodate its transition needs, or where the carrier is not working cooperatively to effectuate such a transition. We retain flexibility to address these circumstances on a case-by-case basis.

98. We also decline to grant Verizon's request that we further shorten the streamlined auto-grant period for applications to discontinue previously grandfathered legacy data services from 31 days to 25 days.[312] Although it is admittedly a judgment call, we would prefer a slightly longer period to evaluate discontinuance applications that impact existing customers than applications that seek to grandfather such customers.

99. Having considered the record, we find that the auto-grant period we adopt today will eliminate needless delay in eliminating these previously grandfathered legacy data services and enable carriers to spend their limited resources on deploying innovative next-generation services. At the same time, we recognize that nothing about our auto-grant timeframe alters our statutory obligation to ensure that these discontinuance applications, like all other discontinuance applications, are not contrary to the public interest, nor does it impact our ability to remove it from streamlined treatment.

100. *Uniform Treatment for Dominant and Non-Dominant Carriers*. We adopt uniform timeframes for all carriers for applications to discontinue previously grandfathered legacy data services for the same reasons we adopt uniform timeframes for grandfathering applications.[313] These legacy data services are characterized by falling demand, and consumers are increasingly abandoning them and adopting more advanced data services with better capability and greater functionality.[314] Moreover, the market for data services as a whole is characterized by increasing competition from a variety of competitive sources, including cable, wireless, and satellite providers, all offering alternative data services that provide, at a minimum, the same capabilities of these legacy data services.[315] Given these market dynamics, disparate treatment of dominant and non-dominant carriers seeking to discontinue these previously grandfathered services is no longer necessary.

101. *Eligible Previously-Grandfathered Legacy Data Services*. The record supports limiting previously grandfathered legacy data services subject to our new rules to speeds below 1.544 Mbps.[316] Given the falling demand for data services below this speed as consumers migrate to more advanced offerings with higher speeds and greater functionality, we find this to be the appropriate threshold at this time.[317] Moreover, adopting this speed threshold maintains consistency with the rules we adopt today governing low-speed legacy grandfathered services, and will thus avoid any customer and carrier confusion as to which previously-grandfathered data services these new rules apply.

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[311] *See* California PUC Comments at 36.

[312] *See* Verizon Comments at 41.

[313] *See supra* para. 90.

[314] *See* CenturyLink Comments at 36-38.

[315] *See* AT&T Comments at 43; CenturyLink Comments at 35; USTelecom Comments at 31-33; Verizon Comments at 29.

[316] *See* Windstream Comments at 16 (arguing that the Commission should streamline the discontinuance process for applications to discontinue previously grandfathered low-speed legacy services).

[317] *See* CenturyLink Comments at 36; AT&T Reply at 32.

102. We decline to extend these streamlined comment and auto-grant periods to *all* applications to discontinue any type of grandfathered services, as Verizon suggests.[318] We prefer to proceed incrementally and legacy data services present the most obvious case for the streamlining reforms we adopt given declines in usage and competitive options available. As reflected in the Further Notice, we will explore in greater depth whether to adopt further streamlining reforms for other legacy services.

103. We also decline to limit eligibility to only those applications that include prescribed methods of demonstrating the availability of alternative comparable data services throughout the service area from the discontinuing provider or a third party, as Southern Company Services recommends.[319] Introducing additional requirements that carriers must satisfy before discontinuing low speed legacy data services does not comport with our objectives in adopting new more flexible streamlined rules today. Moreover, we consider the existence of available and adequate alternative services as a part of our five-factor test for evaluating discontinuance applications.[320] Consequently, there is no need to make these applications unnecessarily arduous by adding redundant and inflexible new content requirements.

104. Finally, we reject Windstream's proposal to exclude from eligibility previously-grandfathered services that are subject to a specified customer term before that term has expired.[321] Nothing in our rules modifies or abrogates the terms of contracts. Windstream offers no good reason to insert ourselves into contractual disputes.

105. *Special Consideration for Federal, State, Local, and Tribal Government Users*. We also decline to adopt special provisions for applications seeking to discontinue previously grandfathered legacy data services to federal, state, local, and Tribal government users.[322] Although we are sensitive to the budget and procurement challenges that government customers face, as well as other challenges associated with transitioning strategic government applications that use legacy services to alternative next-generation services, these issues are not insurmountable and the record does not support adoption of unique rule-based regulatory requirements to address them.[323] Instead, the record shows that incumbent LECs and other carriers have incentives and a long history of accommodating government customers to avoid costly and dangerous disruptions of service.[324] The record makes clear that carriers discuss service changes with affected government customers "well before the changes are implemented,"[325] and are especially sensitive to the needs of government customers when supplying mission-critical services that implicate emergency response or national security.[326] Moreover, as AT&T and others explain any hurdles associated with transitioning large volumes of services, even those considered to be critical, can be overcome through negotiation and coordination between the carrier and government customers.[327]

[318] *See* Verizon Comments at 42.

[319] *See* Southern Co. Servs. Comments at 16.

[320] *See supra* note 289.

[321] *See* Windstream Comments at 16; *see also* Ad Hoc Reply at 17.

[322] *See Wireline Infrastructure Notice,* 31 FCC Rcd at 3292, para. 89.

[323] *See* AT&T Comments at 51-52; CenturyLink Comments at 44 n.55; USTelecom Comments at 34-35; CenturyLink Reply at 25; Verizon Reply at 31-32.

[324] *See* CenturyLink Comments at 44 n.55.

[325] USTelecom Comments at 34.

[326] *See* AT&T Comments at 52; USTelecom Comments at 35. For example, CenturyLink's standard agreement for federal government customers obligates CenturyLink to provide "18 months' notice prior to discontinuing a service covered by that agreement, and/or to deliver an alternative product equivalent to the service being discontinued." CenturyLink Reply at 25.

[327] *See* AT&T Comments at 52.

Indeed, this process is routine for carrier/customer relationships of this size.[328]

106. Because the record shows that any concerns about government entities' transition away from legacy services are better and more appropriately addressed by government customers and their carriers in their negotiated service agreements which necessarily cover service continuity provisions, we decline to adopt special rules for such entities with respect of the discontinuance of legacy services.[329] However, we retain authority to take action in individual circumstances where the public interest requires.

3. Expediting Applications to Discontinue Low-Speed Legacy Services with No Customers

107. Recognizing that there are minimal concerns when a carrier seeks to discontinue a service which has no customers, we adopt new streamlined processing rules for a specific category of "no customer" discontinuance applications, i.e., applications to discontinue low-speed legacy services having no customers for the prior 30-day period. Specifically, we adopt a 15-day auto-grant period for applications to discontinue legacy voice and data services below 1.544 Mbps for which the carrier has had no customers and no request for service for at least a 30-day period prior to filing the application. Consistent with the streamline processing measures we adopt for other categories of low-speed legacy service applications today, because demand for these services is falling[330] it makes no sense to prevent carriers from eliminating these services and any associated costs from their business processes as rapidly as possible.[331]

108. Under the current rules, carriers can apply for streamlined processing to discontinue any service if they have no customers taking that service and have had no requests for that service for the previous 180 days.[332] Such applications will be automatically granted 31 days after the Commission places them on public notice unless the Commission has removed the application from streamlined processing.[333] The *Notice* sought comment on whether to maintain and further streamline the broadly applicable "no customer" rule by reducing the 180 day period to 60 days, or even shorter, and whether any other changes to this rule should be made.[334] The record supports adopting a shorter "no customer" period, as well as reducing the auto-grant period for "no customer" applications.[335] When there are no customers of a service, and no prospective customers have requested a service for 30 days, there is little or no public interest for the section 214 discontinuance process to protect.[336] We are not persuaded by Windstream's argument that a lengthy "no customer" period is necessary to demonstrate a lack of demand.[337] There is no evidence in the record to suggest that services with no customers and no demand for 30 days are likely to be in demand sometime in the future.[338] We better meet our public interest obligations when needless regulatory delay is eliminated so as to facilitate discontinuance of services that

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[328] *See* AT&T Comments at 52; USTelecom Comments at 34; CenturyLink Reply at 25.

[329] USTelecom Comments at 35; Verizon Reply at 32; AT&T Comments at 52.

[330] *See supra* para. 80 & nn.263-67; *see also* CenturyLink Comments at 36; AT&T Reply at 32.

[331] See AT&T Comments at 47-49.

[332] 47 CFR § 63.71(g). This rule is currently pending OMB approval and is not yet effective.

[333] *Id.*

[334] *See Wireline Infrastructure Notice*, 31 FCC Rcd at 3295, para. 97.

[335] *See* AT&T Comments at 47-49.

[336] *See* USTelecom Comments at 38; CenturyLink Comments at 44-45; AT&T Comments at 47-49; WTA Comments at 13; ITTA Comments at 23-24; Verizon Comments at 42.

[337] *See* Windstream Comments at 18.

[338] *See* ITTA Comments at 24.

are no longer demanded, freeing up carrier resources for other, more highly demanded services.[339] We find that a 30-day "no customer" period and a 15 day auto-grant period strikes the best balance between providing additional streamlining and ensuring adequate proof of no further demand.

109. As with today's other section 214(a) streamlining reforms, we proceed incrementally, and limit this further streamlined processing to those "no customer" applications to discontinue low-speed (i.e. below 1.544 Mbps) legacy voice and data services.[340] Demand for these legacy services has declined precipitously in recent years, and competing services utilizing next-generation technologies are readily available to consumers, minimizing the potential for harm to consumers following the discontinuance of these services.[341] In light of these market forces, we find it appropriate to further streamline the discontinuance process for carriers seeking to discontinue these low-speed legacy services with no customers. However, in the accompanying Further Notice, we seek comment on whether we should adopt this same reduced "no customer" 30-day timeframe and 15 day auto-grant period for all, or some other subset, of "no customer" discontinuance applications.[342]

110. At the same time, we find that the current record is insufficient to consider AT&T's and CenturyLink's requests that we should forbear entirely from applying section 214 with regard to any service for which there are no customers.[343] We seek comment on AT&T's and CenturyLink's proposal in the accompanying Further Notice.

4. Eliminating Section 214(a) Discontinuance Requirements for Solely Wholesale Services

111. We conclude that a carrier need not seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act when a change in service directly affects only carrier-customers.[344] In so doing, we reverse the decision in the *2015 Technology Transitions Order* regarding when carriers must seek approval to discontinue, reduce, or impair wholesale service provided to carrier-customers."[345] Our decision today better comports with the text of the Act and Commission precedent, and as the record shows it benefits consumers by eliminating a needless regulatory burden that diverts investment to outdated services.[346] As a result of our decision, we return to the status quo before the *2015 Technology Transitions Order*.

112. As an initial matter, our decision is the best interpretation of the Act and relevant Commission precedent. Our policy decisions must be grounded in the authority the text of the Act grants

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[339] *See* CenturyLink Comments at 44-45.

[340] *See supra* Sections III.C.1-2.

[341] *See supra* para. 80 & nn.263-67.

[342] *See infra* Section V.

[343] *See* AT&T Comments at 47-49; CenturyLink Comments at 44-45.

[344] We address here only changes in wholesale service, such as the discontinuance of one service when others remain available, not the "severance of physical connection or the termination or suspension of the interchange of traffic with another carrier." 47 CFR § 63.62(b). As used in this section, a carrier-customer is a carrier—typically a competitive LEC—that buys wholesale service from another carrier—typically an incumbent LEC—and repackages that service for retail sale to end user customers. Thus, the carrier-customer is both a "customer" (of the incumbent LEC) and a "carrier" (to its retail end users).

[345] *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9428, para. 102.

[346] *See* CenturyLink Comments at 47-48 (asserting that this aspect of the *2015 Technology Transitions Order* "created a time-consuming hurdle to replacing legacy TDM wholesale services with more modern and capable IP wholesale services").

to the Commission.[347] Section 214(a) states, in pertinent part,

> No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby[.][348]

When determining whether a carrier needs Commission approval to discontinue service, the Act seeks to protect service provided by a carrier to a "community." The Commission has consistently held that the term "community" in the statute means end users, or "the using public."[349] Carrier-customers are not the using public; they are intermediaries who provide service to the using public. Carrier-customers are therefore not part of a "community" that section 214(a) seeks to protect from discontinuances.[350] As the Commission noted in *Western Union*, "there are some important differences between this type of relationship and the more usual type involving a carrier and its non-carrier customer."[351]

113. The *2015 Technology Transitions Order* purported to recognize this statutory limitation, but it failed to heed the constraints of the text and made the carrier responsible for its carrier-customers' customers. According to that *Order*, "under the statute and our precedent it is not enough for a carrier that intends to discontinue a service to look only at its own end-user customers."[352] The *Order* said the carrier must also evaluate "service provided to the community by the discontinuing carrier's carrier-customer."[353] Upon further consideration, we conclude that this was an incorrect reading of the statute's plain language.

114. We return to the interpretation dictated by the plain text of the Act, that a carrier must consider only the end-user community it serves. The customers of the carrier-customer are part of a community: They are the retail end users.[354] But they are not part of a community that the carrier is serving; rather, the carrier-customer is their service provider. The upstream carrier is selling *wholesale* service to the carrier-customer, and that wholesale service is merely an input that the carrier-customer repackages into a *retail* service to the end user.[355] It is the carrier-customer, not the carrier, that is

[347] *See, e.g., U.S. v. Ron Pair Enter.*, 489 U.S. 235, 241 (1989) ("The task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself.").

[348] 47 U.S.C. § 214(a).

[349] *See Graphnet, Inc. v. AT&T Corp.*, File No. E-94-41, Memorandum Opinion and Order, 17 FCC Rcd 1131, 1140-41, para. 29 (2002) (*Graphnet*); *Western Union Telegraph Company Petition for Order to Require the Bell System to Continue to Provide Group/Supergroup Facilities*, Memorandum Opinion and Order, 74 FCC 2d 293, 296, para. 7 (1979) (*Western Union II*).

[350] *See* AT&T Comments at 53; USTelecom Comments at 36.

[351] *Western Union II*, 74 FCC 2d at 296, para. 7; *accord Graphnet*, 17 FCC Rcd at 1140-41, para. 29; *Lincoln County Tel. Sys., Inc. v. Mountain States Tel. and Tel. Co.*, File No. TS 3-79, Memorandum Opinion and Order, 81 FCC 2d 328, 332, para. 13 (1980) (*Lincoln County*).

[352] *2015 Technology Transitions Order*, 30 FCC Rcd at 9428, para. 102.

[353] *Id.*

[354] *See* Windstream Comments at 12; Joint Brief of Intervenors Public Knowledge, INCOMPAS, and 10 Competitive Carriers, *U.S. Telecom Ass'n v. FCC*, No. 15-1414, at 22-23 (D.C. Cir. Aug. 22, 2016) ("Joint Intervenors' Brief"). INCOMPAS incorporated its brief by reference in its comments. INCOMPAS Comments at 16.

[355] *See Western Union II*, 74 FCC 2d at 297, para. 9 (loss of an input "does not raise a Section 214 question").

providing "service to a community,"[356] and therefore it is the carrier-customer, not the carrier, that has an obligation under section 214(a) to seek approval for a discontinuance of the end user's service. And this makes sense given that it is the carrier-customer, not the carrier, that has the relationship with the community through its end-user customers, and it is the carrier-customer, not the carrier, that chooses what facilities to use (its own, the carrier's, or another's) to provide that service to the community. The record strongly supports this interpretation;[357] we disagree with the relatively few commenters who misinterpret section 214 to require carriers to maintain wholesale service for the benefit of someone else's customers.[358]

115. The structure of the Communications Act also supports this interpretation of the duty under 214(a). Congress laid out a carrier's responsibility to its carrier-customers in section 251, and a carrier's duty under section 251(c)(5) complements the carrier-customer's duty under section 214(a).[359] If a carrier makes a network change that would impact the carrier-customer (and correspondingly disrupt retail service to the carrier-customer's end users), it must notify the carrier-customer.[360] This notice gives the carrier-customer adequate time to either find another wholesale supplier or seek approval under section 214(a) to discontinue service to its own end users.[361] Although sections 214(a) and 251(c)(5) are distinct provisions serving distinct purposes (as the former pertains to changes in services and the latter pertains to changes in networks),[362] they nonetheless complement each other to help carriers and carrier-customers protect the using public's ability to obtain and retain service. We therefore disagree with commenters that argue that carriers must both provide network change notifications *and* obtain approval under section 214 for discontinuing wholesale service solely to a carrier-customer;[363] such an interpretation is contrary to the plain language of section 214 and imposes needlessly duplicative burdens on carriers.

116. Agency precedent largely supports this plain reading of the Act. In case[364] after case[365] after case[366] after case[367] after case,[368] the Commission has declined to require a section 214

[356] 47 U.S.C. § 214(a); *see also Western Union II*, 74 FCC 2d at 296, para. 7 ("[W]e must distinguish those situations in which a change in a carrier's service offerings to another carrier will result in an actual discontinuance, reduction or impairment to the latter carrier's customers as opposed to a discontinuance, reduction or impairment of service to only the carrier itself."); *Graphnet*, 17 FCC Rcd at 1140-41, para. 29.

[357] *See, e.g.,* AT&T Comments at 53-55; USTelecom Comments at 36-37.

[358] *See* Southern Co. Servs. Comments at 16-17; INCOMPAS Comments at 16; California PUC Comments at 36-39.

[359] *See* 47 U.S.C. § 251(c)(5) (incumbent LEC has the "duty to provide reasonable public notice of changes" to its network that affect interoperability); *see also* 47 CFR § 51.325 *et seq*.

[360] *See* 47 CFR § 51.325(a)(1).

[361] *See* AT&T Comments at 54-55; USTelecom Comments at 36-37.

[362] *See* Windstream Comments at 13-14; AARP Comments at 7-8; Joint Intervenors' Brief at 24-25.

[363] *See, e.g.*, Windstream Reply at 13.

[364] *AT&T Co., Long Lines Department Revisions to Tariff F.C.C. Nos. 258 and 260 (Series 5000)—Termination of Telpak Service Transmittal No. 12714*, Memorandum Opinion and Order, 64 FCC 2d 959 (1977) (*AT&T Telpak*).

[365] *Western Union Telegraph Company Revisions to Tariffs F.C.C. Nos. 240 and 258, Tariffs F.C.C. Nos. 268 and 269 Pertaining to the Interconnection of Domestic Telex and TWX Services with the International Record Carriers for the Provision of Overseas Telex Service*, C.C. Docket 78-97, Transmittal Nos. 7347 and 7348, Memorandum Opinion and Order, 68 FCC 2d 98 (1978).

[366] *Western Union II*, 74 FCC 2d 293.

[367] *Lincoln County*, 81 FCC 2d at 335, para. 22.

[368] *Graphnet*, 17 FCC Rcd at 1140, para. 29.

discontinuance application before allowing a carrier to change the service offerings available to its carrier-customers. In *AT&T Telpak*, the Commission made clear that section 214 "does not apply" when a carrier continues to offer "like" services to a community, even if a carrier-customers would prefer to use a previously offered service.[369] In *Western Union II*, the Commission stated that "the fact that a carrier's tariff action may increase costs or rates," including in that case an action that required a carrier-customer to order different services using different equipment over different facilities, "does not give rise to any requirement for Section 214(a) certification."[370] In *Lincoln County*, the Commission found that the "removal" of particular facilities used by a carrier-customer, as well as the "reconfiguration of facilities and [] re-routing of traffic" "does not fall within 214 and 214 application is not required."[371] And in *Graphnet*, the Commission found that "in situations where one carrier attempts to invoke Section 214(a) against another carrier, concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the carrier itself."[372] Despite the *2015 Technology Transitions Order*'s suggestion to the contrary,[373] both the holdings and dicta in those cases support our conclusion that carriers need not seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act when a change in service directly affects only carrier-customers.

117. We conclude that the Commission erred in *BellSouth*, the only case to require a discontinuance application from an upstream carrier in the absence of end users.[374] There, the Commission acknowledged that carriers had previously been able to change their offerings to carrier-customers without seeking section 214 approval and distinguished those instances by noting that the service at issue "is the subject of a Notice of Proposed Rulemaking in which the Commission tentatively concluded that it is in the public interest to formulate a federal policy to promote the availability of [that] service."[375] But section 214 neither mentions Commission rulemakings nor ties its scope to such rulemakings, and to the extent *BellSouth* holds otherwise, we overrule it. We also note that the Commission decided *BellSouth* four years before adoption of the 1996 Act, which adopted a notice-based process for wholesale inputs.[376] Therefore, it is clearer today than in 1992 that the interpretation adopted in *BellSouth* is erroneous in light of the 1996 Act addressing obligations of carriers to competitors through statutory provisions other than the discontinuance requirement of section 214.[377] For the reasons discussed herein we conclude that our interpretation today is more consistent with the statutory text and the public interest, and therefore we overrule any precedent to the contrary.

[369] *AT&T Telpak*, 64 F.C.C.2d at 965, para. 18.

[370] *Western Union II*, 74 FCC 2d at 297, para. 9.

[371] *Lincoln County*, 81 FCC 2d at 335, para. 22.

[372] *Graphnet*, 17 FCC Rcd at 1140, para. 29.

[373] *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9431-33, paras. 108-13 (citing *Western Union II*, 74 FCC 2d 293; *Lincoln County*, 81 FCC 2d 328; *BellSouth Telephone Companies Revisions to Tariff FCC No. 4*, Transmittal No. 435, Memorandum Opinion and Order, 7 FCC Rcd 6322 (1992) (*BellSouth*); *Graphnet*, 17 FCC Rcd 1131; Windstream Comments at 14-15 (asserting that "the Commission's 2015 clarification is supported by precedent"); Joint Intervenors' Brief at 23.

[374] *See BellSouth*, 7 FCC Rcd at 6322-23, paras. 5-6; *see also* AT&T Comments at 60; Brief for Petitioner USTelecom, *United States Telecom Ass'n v. FCC*, No. 15-1414, at 44-45 (D.C. Cir. June 14, 2016) (USTelecom Brief).

[375] *BellSouth*, 7 FCC Rcd at 6323, n.9.

[376] *See BellSouth*, 7 FCC Rcd at 6322-23, paras. 5-6; *see also* AT&T Comments at 60; USTelecom Brief at 44-45.

[377] *See* 1996 Act § 101.

118. To the extent there is any ambiguity in the statutory text or past Commission precedent interpreting that text, we nevertheless conclude that our reversal of the prior interpretation of section 214(a) in the *2015 Technology Transitions Order* is appropriate because our interpretation better serves the public interest. It fully protects consumers because each carrier is responsible for its own customers. The upstream carrier files 214 applications as needed when its end users are affected, and the carrier-customer files 214 applications as needed when its end users are affected. Moreover, this less burdensome approach to section 214(a) gives full practical effect to section 214(a)'s direction that we ensure that discontinuances do not adversely impact the public interest. In many circumstances the carrier-customer will be able to obtain wholesale service from another source without causing a disruption of service for the end user.[378] As CenturyLink observes, the widespread availability of next-generation substitutes to legacy TDM services makes it unlikely that there will be no available alternative to the discontinued wholesale input.[379] Moreover, this risk of loss of wholesale supply is an incentive for the carrier-customer to itself invest in new infrastructure, which would benefit the public.[380] Insofar as there arise instances in which a community may truly lose a service option (and the upstream carrier would not already be filing a 214 discontinuance application for its own customers), we conclude that the other public benefits to infrastructure investment discussed herein outweigh those costs.[381] We thus reject arguments that we should retain the 2015 interpretation predicated on the view that as a practical matter, if a carrier discontinues wholesale service to a carrier-customer, that carrier-customer may be unable to obtain wholesale service from another provider and may have no choice but to discontinue service to its end users, effectively resulting in a downstream discontinuance of retail service.[382]

119. The prior interpretation diverted investment from network improvements in order to maintain outdated services that the carriers would otherwise discontinue.[383] Requiring carriers to accommodate end user customers with which they have no relationship for services that they are not providing would be unduly burdensome and would likely hinder deployment of new advanced networks. We agree with AT&T that "[i]ntermediating wholesale carriers between carrier-customers and their end users will inevitably lead to wasteful expenditure of wholesale carriers' resources that could otherwise be put toward furthering technology transitions."[384]

120. Moreover, as a practical matter, upstream carriers cannot consistently know how the carrier-customers' end users are using their retail service. An upstream carrier does not typically have a contractual relationship with its carrier-customer's end users, and it may not know how these customers

[378] *See* USTelecom Comments at 36-37; *see also Graphnet*, 17 FCC Rcd at 1140-41, para. 29. Even the *2015 Technology Transitions Order* recognized that under its framework "all situations will not require a section 214 filing." *2015 Technology Transitions* Order, 30 FCC Rcd at 9441, para.127.

[379] *See* CenturyLink Comments at 47-48.

[380] *See, e.g., BDS Order*, 32 FCC Rcd at 3581, para. 288 (stating that the Commission has a "longstanding policy of 'encourag[ing] the innovation and investment that come from facilities-based competition.'") (quoting *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2535, para. 2 (2005)).

[381] Additionally, in circumstances in which the loss of a service input results from a network change by an incumbent LEC, we are able to extend the implementation date for incumbent LEC copper retirements and short-term network changes up to six months from the date of filing where the competitive LEC has made a showing that satisfies our rules. *See supra* Section III.B.2.c.iii (restoring copper retirement objection process). Our network change process under section 251(c)(5) thus provides an additional safety valve that mitigates the likelihood of impact on end-user customers.

[382] *See, e.g.*, CALTEL Comments at 9-10; Joint Intervenors' Brief at 24; Windstream Reply at 11-12.

[383] *See, e.g.*, AT&T Comments at 56-57; *see also* USTelecom Brief at 46-47 (stating that requiring section 214 approval does not benefit consumers in these instances, only competitive LECs).

[384] AT&T Comments at 57.

use their retail service.[385] We disagree with commenters that claim that the upstream carrier can easily ascertain how an end user—with which the carrier has no relationship—uses their service.[386] The consultation process described by the *2015 Technology Transitions Order* was cumbersome and unlikely to adequately inform an upstream carrier absent extraordinary market research expenses.[387] The carrier that provides service directly to end users is in the best position to evaluate the marketplace options available to it and determine the most effective way to provide retail service to its end users.[388] Consequently, it makes the most sense for the carrier that provides service directly to end users to have the responsibility to comply with section 214(a) with regard to the services it provides its customers.

121. We disagree with commenters that argue that we should consider whether discontinuing service to carrier-customers could impede competition or otherwise injure those carrier-customers.[389] The purpose of section 214(a) is not to bolster competition; it is to protect end users.[390] As the Commission has long held, "concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the [carrier-customer] itself."[391] Congress added other provisions to the Act in 1996 to promote competition.[392] Even if harms to carrier-customers were relevant to our decision, we conclude that any such harms are outweighed by the benefits to the public described herein. In particular, we note that carrier-customers can mitigate any harms associated with this decision by negotiating with carriers for contractual provisions to protect against the sudden or unexpected loss of wholesale service. We remind carriers that discontinuing a service—whether a section 214 approval is required or not—is not an excuse for abrogating contracts, including contract-tariffs. Further, any costs incurred by carrier-customers under our decision today are the same costs that would have obtained prior to the *2015 Order*.

122. We conclude, based on the text of the statute and the public interest in both spurring deployment of advanced networks and protecting access to existing services, that carriers are not required to seek approval under section 214(a) in order to discontinue, reduce, or impair wholesale service to a carrier-customer.

5. Rejecting Other Modifications to the Discontinuance Process

123. Based on the current record, we reject the proposals by certain commenters to further modify the section 214(a) discontinuance process today. Specifically, we reject NRECA's request to place additional conditions on the discontinuance of DS1 and DS3 services,[393] and Verizon's proposal that we impose "shot clocks" for Commission processing of discontinuance applications.[394]

124. *NRECA DS1 and DS3*. We decline NCREA's request to impose specific requirements related to installation, testing, and pricing of replacement services as conditions to granting carriers'

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[385] *See* CenturyLink Comments at 48; USTelecom Comments at 36-37; ADTRAN Comments at 6; AT&T Comments at 57-58.

[386] *See* Windstream Reply at 12; CALTEL Comments at 9-10.

[387] *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9433-37, paras. 114-19.

[388] *See* AT&T Comments at 53-58; USTelecom Comments at 36-37.

[389] *See* Pennsylvania PUC Comments at 15.

[390] *See, e.g.*, USTelecom Brief at 46-47.

[391] *Western Union II*, 74 FCC 2d at 296, para. 7; *see also Graphnet*, 17 FCC Rcd at 1140-41, para. 29.

[392] *See generally* 47 U.S.C. §§ 251-52.

[393] *See* NRECA Comments at 8-9.

[394] *See* Verizon Comments at 42.

section 214(a) discontinuance authority for DS1 and DS3 TDM services.[395] Section 214(a) directs the Commission to ensure that a loss of service does not harm the public convenience or necessity, and applications to discontinue DS1s and DS3s, like discontinuance applications for any service, are subject to the Commission's traditional five-factor test.[396] NCREA has provided no compelling reason why more burdensome requirements should be imposed on this particular category of services. Our rules already require that carriers that file discontinuance applications provide notice of such applications in writing to each affected customer unless we authorize in advance, for good cause shown, another form of notice.[397] Thus, NCREA's request for a requirement that a carrier provide written notice to customers of planned discontinuance dates is already contained in our rules.[398]

125. *Verizon Shot Clocks*. We decline to adopt Verizon's "shot clock" proposals. Verizon has failed to demonstrate why the Commission's current processing timeframes warrant adopting such shot clocks. The Commission routinely processes discontinuance applications based on carriers' proposed schedules set forth in their applications, and a 10-day shot clock could preclude the Bureau staff from obtaining a clarification or supplemental information in the case of an incomplete application necessary to issue the public notice. In such cases, the Bureau would be forced to dismiss the application rather than having the flexibility to resolve the issue and process the application but for the shot clock.

126. We further decline to adopt Verizon's proposed 31-day "deemed granted" shot clock for applications that have been removed from streamlined treatment after the initial auto-grant period has been suspended.[399] Applications that are removed from automatic-grant are done so for good reason, primarily to resolve an objection that merits further consideration and review. While we strive to resolve such issues as quickly as possible, often resolution depends on the applicant working with the objecting party to achieve some accommodation. Adopting Verizon's proposal would remove any incentive the carrier had to address a legitimate concern raised by a commenter, effectively automatically granting the application in an additional 31 days. Doing so would run counter to our statutory responsibility to ensure that proposed discontinuance applications do not harm the public convenience and necessity.[400]

IV. DECLARATORY RULING

127. In this Declaratory Ruling we reverse the "functional test" standard for determining whether a service is being discontinued, reduced or impaired pursuant to section 214(a) authority that the Commission adopted in its November 2014 *sua sponte* Declaratory Ruling.[401] We instead find that a carrier's description in its tariff—or customer service agreement in the absence of a tariff—is dispositive of what comprises the "service" being offered by that carrier for purposes of determining whether section 214(a) discontinuance authority is required. In reaching this conclusion, we increase incentives for deployment of next-generation services and provide clarity to industry and customers alike.

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395 *See* NRECA Comments at 8-9

396 *See* 47 CFR § 63.71(a)(5)(i)-(ii); *see also Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22742, para. 8 (stating that in evaluating discontinuance applications, the Commission considers, among other factors, the need for the service in general and the existence, availability, and adequacy of alternatives).

397 *See* 47 CFR § 63.71(a).

398 *See* NRECA Comments at 8.

399 *See* Verizon Comments at 42.

400 *See* 47 U.S.C. § 214(a).

401 *See Technology Transitions et al.*, GN Docket No. 13-5 et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 15015-18, paras. 114-19 (2014) (*2014 Technology Transitions NPRM and Declaratory Ruling*).

128. *Background*. In November 2014 the Commission released a declaratory ruling adopting the "functional test," an interpretation of section 214(a) that entails the Commission applying a vague "totality of the circumstances" test when analyzing whether a service is discontinued, reduced, or impaired under section 214.[402] In response, the United States Telecom Association (USTelecom) filed a Petition for Reconsideration of the Declaratory Ruling, arguing that the new definition of service as set forth by the "functional test" was "impermissibly vague," and that, instead of terminating a controversy or removing uncertainty, it had created "unnecessary confusion."[403] The Commission decided in an Order on Reconsideration to retain the "functional test," rejecting claims about the "vagueness and inscrutability" of this newly implemented standard of analysis.[404] On November 12, 2015, USTelecom filed a Petition for Review with the Court of Appeals for the D.C. Circuit,[405] asking that the court vacate the "functional test" standard.[406] On February 21, 2017, the court granted the Commission's motion to hold the case in abeyance pending further order of the court.[407]

129. *Discussion*. Having further considered the matter, we conclude that a carrier's tariff or contract with its customers determines the scope of a "service" for purposes of the section 214(a) discontinuance requirement, and therefore we reject the functional test previously adopted by the Commission. We find that our approach better conforms with the Act as well as Commission and other legal precedent, will provide greater clarity to carriers and customers alike, and will facilitate greater investment in next-generation services and infrastructure.

130. *Statutory Language*. Our decision best comports with the plain language of section 214(a). Section 214(a) states, in relevant part, that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."[408] Although the Act does not define "service,"[409] traditional tools of statutory interpretation provide guidance as to its meaning. The statute refers to a carrier's service, rather than the uses of the service by customers, thus implying that such uses cannot be used to proscribe or restrict the limits of such service.

131. The statutory structure of the Act supports our approach of looking to the carrier's description of what it is offering when identifying the "service" being offered by a carrier for purposes of section 214(a) discontinuance authorization. Title II of the Act refers to the "service" provided by the "carrier." It does not refer to any third-party services transmitted over the carrier's underlying service.[410] It thus stands to reason that such third-party services are not a part of the carrier's service within the meaning of section 214(a). Notably, Title II's codification of the filed tariff doctrine in section 203

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402 *See 2014 Technology Transitions NPRM and Declaratory Ruling*, 29 FCC Rcd at 15018, para. 117.

403 Petition for Reconsideration of the United States Telecom Association, GN Docket No. 13-5 et al., at 2, 7-9 (filed Dec. 23, 2014) (USTelecom Petition), http://apps.fcc.gov/ecfs/document/view?id=60001010989.

404 *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9478, para. 201.

405 *See* Federal Communications Commission, List of Pending Appellate Cases (Oct. 18, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-341783A1.pdf.

406 *See* USTelecom Brief at 25-39.

407 *See* Order Granting Motion to Hold Case in Abeyance, *United States Telecom Ass'n v. FCC*, No. 15-1414, at 1 (D.C. Cir. Feb. 21, 2017).

408 47 U.S.C. § 214(a).

409 CWA Comments at 31.

410 *See* Verizon Comments at 40 (stating that Title II "never uses 'service' to refer to third-party services").

prohibits carriers from offering benefits absent from their tariffs.[411] In establishing the tariffing system, section 203 speaks to what services carriers can and cannot provide, thus working in tandem with section 214, which governs extensions and discontinuances of these same services. As such, we believe that Congress intended these provisions to be read and interpreted in concert, as joint parts of the same whole.

132. The statutory history of section 214(a) also supports our interpretation. In its debates over the precise wording of section 214(a), Congress revealed a strong desire to protect Americans' continued access to the nation's communications networks while also preserving carriers' ability to upgrade their services without the interruption of federal micromanaging.[412] Perhaps most telling is Congress' eventual adoption of section 214(a) over rejected alternative language that would have required a company seeking to "move a wire from one House Office Building to the other . . . to go through the endless red tape of application and hearings and a certification on the part of the Commission."[413]

133. While the 2014 Declaratory Ruling relied on the phrase "to a community, or a part of the community" to suggest Congress intended for "service" to be evaluated subjectively,[414] this text defines the scope of individuals affected before an application must be filed. It does not modify "service," as the Commission's prior decisions asserted.[415]

134. We reject the Pennsylvania PUC's contention that had Congress intended to "limit the impair standard set forth in Section 214 to tariff specifications, it would have used the term 'schedule of charges' as set forth in Section 203(a) of the Act . . . which creates the tariff-filing requirement," rather than the term "service."[416] Section 203 provides the best evidence of Congress's understanding of what constitutes a "service," and the statutory scheme must be read as a whole. If carriers are prohibited under section 203(c) from offering benefits which are absent from their tariffs, then it follows that these same carriers need not apply for Commission authorization under section 214(a) when seeking to discontinue services that are absent from their tariffs. Congress could not plausibly have intended for carriers to seek authorization to discontinue services that they were prohibited from offering to customers.

135. The absence of the word "tariff" from section 214(c) does not preclude us from using the description in a carrier's tariff to define what "service" the carrier is offering for purposes of section 214(a) discontinuance authorization, as Public Knowledge argues.[417] Again, given the prohibition in section 203(c) against carriers offering benefits which are absent from their tariffs, we read "service" in section 214(a) to refer to a service as defined in a tariff (or contract where there is no tariff). Given the presence of section 203(c) within Title II and its clearly established, tariff-based limits on what carriers may offer as part of their service, we find it unnecessary for Congress to separately use the term "tariff" in section 214(c). Public Knowledge is also mistaken when it asserts that because section 214(c) specifically says "discontinuance, reduction, or impairment of service, described in the application" and not "described in the *tariff*," the Commission is unable to define the term "service" using the description

[411] *See* 47 U.S.C. § 203(c).

[412] *See* 89 Cong. Rec. 786 (1943) (statement of Rep. Brown); *id*. at 777 (statement of Rep. Wadsworth); Verizon Comments at 31-32.

[413] 89 Cong. Rec. 787 (statement of Rep. Boren).

[414] *See 2014 Technology Transitions NPRM and Declaratory Ruling*, 29 FCC Rcd at 15015-18, paras. 115-119; *see also* CWA Comments at 31; CWA Reply at 12; Public Knowledge Reply at 8.

[415] *See 2014 Technology Transitions NPRM and Declaratory Ruling*, 29 FCC Rcd at 15015-18, paras. 114-119; *2015 Technology Transitions Order*, 30 FCC Rcd at 9476-477, paras. 198-199.

[416] *See* Pennsylvania PUC Comments at 24. This argument is reiterated by AARP, CWA, NASUCA, and Public Knowledge. *See* AARP Comments at 23; CWA Comments at 30-32; NASUCA Comments at 30-31; Public Knowledge Comments at 11-12; AARP Reply at 13; CWA Reply at 11-12; Public Knowledge Reply at 8.

[417] Public Knowledge Reply at 8-9*; see also* Public Knowledge Comments at 9-10.

in a carrier's tariff.[418] Section 214(c) uses the term "described in the application" rather than "described in the *tariff*," because it is referring not to the carrier's underlying service but to the discontinuance, reduction, or impairment of service that a carrier has proposed in its application to the Commission.[419] Put more simply, the statute is not referencing the carrier's service but merely the planned discontinuance described in its application to the Commission. Public Knowledge's argument thus relies on a mistaken reading of the plain language of the statute.

136. *Commission Precedent*. Our decision returns the 214(a) discontinuance process to long-held Commission precedent. As far back as 1968, the Commission held in *Carterfone* that customers could attach third-party devices to the telephone service they purchased, but explained that if the underlying telephone network technology and standards changed, the device must be "rebuilt to comply with the revised standards" or the customer would have to "discontinue its use," for such was the "risk inherent in the private ownership of any equipment to be used in connection with the telephone system."[420] In failing to address this aspect of the holding in *Carterfone*, the Commission's 2014 declaratory ruling displays a fundamental misunderstanding of the Commission's decision in *Carterfone* and how it relates to the issue at hand. Although it is correct that *Carterfone* held that third-party devices can only be connected to a telecommunications network as long as they do not cause harm to the underlying network,[421] the holding relevant here is that service providers *do not* bear the burden of ensuring compatibility with third-party devices; instead, that burden rests on the owner or use of a third-party device.[422] Similarly, here, we look to how the carrier defines its service, not to how that service might be used by a larger community. We find reliance on *Carterfone* as persuasive precedent justified given its status as *the* groundbreaking Commission decision concerning use of third-party equipment.[423]

137. Beyond the decision in *Carterfone*, the Commission's own regulations implementing section 214(a) have historically recognized that inconvenience to customers does not by itself trigger the requirement to obtain discontinuance authority. For instance, when telephone exchanges operated for only a limited number of hours per day, the Commission's rules allowed carriers to adjust the particular hours of operation without Commission approval so long as the total number of hours remained the same.[424] Thus, our precedent has long recognized that inconvenience alone does not trigger an approval requirement so long as the carrier provides the service promised.

138. We also do not find on point other Commission precedent identified by certain commenters. In arguing that we should look beyond the bounds of a carrier's tariff in defining what "service" a carrier offers for purposes of discontinuance authorization under section 214(a), NASUCA points to the example of a 2003 decision in which the Commission considered factors beyond the tariffed description in deciding whether to grant a request from Verizon to discontinue certain interstate collocation services.[425] In citing this case, NASUCA conflates the question of when approval for a

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418 Public Knowledge Comments at 12.

419 *See* 47 U.S.C. § 214(c).

420 *Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420, 424 (1968) (*Carterfone*); *see also* AT&T Comments at 61-62 (reiterating and supporting this argument).

421 *See Carterfone*, 13 F.C.C.2d at 423-425.

422 *See Carterfone*, 13 F.C.C.2d at 424.

423 *See 2014 Technology Transitions NPRM and Declaratory Ruling*, 29 FCC Rcd at 15017, para. 117 (citing *Carterfone* in its discussion of third-party devices).

424 *See Extension of Lines and Discontinuance of Service by Carriers*, 28 Fed. Reg. 13229, 13232 (Dec. 5, 1963) (codified at 47 CFR § 63.60(b)(2)); *see also* AT&T Comments at 62-63.

425 NASUCA et al. Reply at 31; *see Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22744, para. 13. Similarly, CWA tries to point to a past Commission document as proof that today's action is inconsistent with past

(continued….)

discontinuance application is required (which is the topic at issue in this Declaratory Ruling), with the question of which factors the Commission must weigh in deciding whether to grant such an application, which was the question in the 2003 decision cited by NASUCA.[426] While the decision of whether to grant a discontinuance authorization is a public interest evaluation that requires us to consider a broad array of factors,[427] the question of whether an application is required in the first place is much more circumscribed, turning on what "service" the carrier offers. As we have shown above, this "service" is limited by the terms of a carrier's tariff, and we need not look beyond the limits of that tariff in deciding whether a carrier's "service" is implicated. Thus, NASUCA's example is not pertinent to this discussion.[428]

139. Similarly, Public Knowledge argues that the Commission's past practices and precedent extend the scope of the term "service" in section 214 beyond the four corners of the tariff.[429] Yet, in support of this assertion, Public Knowledge cites only the fact that the agency continues to maintain and exercise authority over mergers and acquisitions that implicate detariffed services.[430] This example is irrelevant to the discussion at hand for two reasons. First, this Declaratory Ruling deals with a separate provision of section 214(a). While precedent involving the Commission oversight of mergers and acquisitions is instructive in this context, it is not dispositive. Second and more importantly, under our decision today the Commission can and does exercise authority over transactions *and* discontinuances involving detariffed services. Our reliance on objective sources—tariffs and service contracts—to define the service therefore does not undermine our holding.

140. *Filed Rate Doctrine*. We find that the filed rate doctrine supports the actions we take in this Declaratory Ruling. Under the filed rate doctrine, carriers are specifically prohibited from "extend[ing] to any person any privileges" with respect to a tariffed service except as specified in the tariff.[431] As the Supreme Court explained in *AT&T Co. v. Central Office Tel., Inc.*, this doctrine applies not only to rates because rates "have meaning only when one knows the services to which they are attached."[432] Thus, under this doctrine, no individual or community may enforce or rely on any aspect of a tariffed service that is not described in the tariff, a principle that comports with our decision in this Declaratory Ruling to define the limits of a carrier's "service" for purposes of section 214(a)

(Continued from previous page)
Commission precedent, but the language they site is not relevant to this issue, coming as it does from a Notice of Proposed Rulemaking that examines the Communications Act of 1934 generally, and not section 214 specifically. *See* CWA Comments at 32.

[426] *See Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22744, para. 13.

[427] *See Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, Memorandum Opinion and Order, 8 FCC Rcd 2589, 2600, para. 54 (1993), *remanded on other grounds, Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

[428] The Ad Hoc Telecom Users Committee makes a similar argument that is also irrelevant to the discussion at hand. *See* Ad Hoc Reply at 20-21. Again, we are not proposing in this Declaratory Ruling to change the method by which the Commission considers whether to grant a section 214(a) discontinuance application, but are merely dealing with the threshold issue of when such an application must be filed in the first place.

[429] Public Knowledge Comments at 10.

[430] Public Knowledge Comments at 10. Public Knowledge makes a similar argument in its reply comments, contending that the fact that the Commission has imposed section 214 service discontinuance obligations on interconnected Voice over IP (VoIP) service, which is a non-tariffed service, counsels against using a carrier's description in its tariff to determine what "service" is being offered for purposes of section 214(a). *See* Public Knowledge Reply at 8-9.

[431] 47 U.S.C. § 203(c)(3).

[432] *AT&T Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 215, 221-24 (1998).

discontinuance authorization based on the carrier's description of that service in its tariff.[433] The filed rate doctrine thus strongly supports our objective approach to interpretation.

141. The Ohio PUC argues that the filed-rate doctrine "does not limit how a consumer uses or relies on the service received nor does it limit the FCC in considering such reliance as a part of a Section 214(a) request for discontinuance."[434] Although a tariff may not limit how a consumer uses a service provided to it by a carrier, neither does this doctrine allow the consumer to require a carrier to provide for such uses if those uses fall outside the carrier's description in its tariff or service agreement.

142. *Contract Law*. Traditional principles of contract law also support our decision.[435] Under traditional principles of contract law, the "terms of the contract control, regardless of the parties' subjective intentions as shown by extrinsic evidence."[436] Thus, the terms of a carrier's service agreement with a customer define its obligations to that customer and vice versa.[437] To look elsewhere grants one party extra benefits for which it did not bargain, and without basis it treats contracts for telecommunications service as less binding than other contracts.[438] The contract between the carrier and the customer, as the objective source defining the service, is the best and only analogue to the tariff for detariffed services; and thus our reliance on the contract for detariffed services is supported by the statutory structure of sections 203 and 214 as well as the filed rate doctrine.

143. Some commenters argue that our decision violates the traditional requirement that courts look to evidence of custom and practice when interpreting the terms of a contract in certain circumstances.[439] Others argue that we must account for the imbalance in bargaining power as between

[433] *See* ADTRAN Comments at 7 (agreeing that under the filed rate doctrine, the "carrier contract or tariff defines the 'service' offered by the carrier"); AT&T Comments at 63.

[434] Ohio PUC Comments at 12; *see also* Public Knowledge Reply at 9-10. Similarly, CWA contends that the filed-rate doctrine and the Commission's actions in *Carterfone* are not relevant to this discussion. *See* CWA Comments at 32; CWA Reply at 13. We disagree. Dealing as they do with the treatment of tariffed services and of third-party devices that rely on underlying telecommunications services, we find them not only relevant to this discussion, but supportive of the actions we take in this Declaratory Ruling, for the reasons discussed herein.

[435] *See* ADTRAN Comments at 7 (agreeing that under contract law, the carrier contract or tariff defines the "service" offered by the carrier).

[436] *Tanadgusix Corp. v. Huber*, 404 F.3d 1201, 1205 (9th Cir. 2005); *see also Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 150-51 (2009) (recognizing that "it is black-letter law that the terms of an unambiguous private contract must be enforced irrespective of the parties' subjective intent" (citing 11 Williston on Contracts § 30:4 (4th ed. 1999)); Restatement (Second) of Contracts § 29 cmt. a (1981).

[437] *See* Verizon Comments at 40. Although CWA argues that the Commission should not rely on tenets of contract law in deciding how to define "service" for purposes of section 214(a), their arguments rely on a mistaken understanding of the actions that the Commission takes in this Declaratory Ruling. In their comments, CWA appears to mistakenly conflate contract law with the terms of an agreed upon contract, such as a customer service agreement. *See* CWA Comments at 33-34; CWA Reply at 12-13. Because we do not propose to rely on contract law in defining "service," for purposes of section 214(a), but instead on the explicit description of such "service" as provided in a carrier's tariff or customer service agreement, CWA's comments are not relevant to this discussion.

[438] *See* Restatement (Second) of Contracts § 203 (1981) (establishing the standards of preference in interpretation as "(b) express terms are given greater weight than course of performance, course of dealing, and usage of trade, course of performance is given greater weight than course of dealing or usage of trade, and course of dealing is given greater weight than usage of trade[.]"); *see also* Williston on Contracts § 1:1 (4th ed.) (defining a contract and discussing the goal of contract law "to hold parties to their agreements so that they receive the benefits of their bargains. It is not the function of the court to relieve a party to a freely negotiated contract of the burdens of a provision which becomes more onerous than had originally been anticipated.").

[439] *See, e.g.*, Ad Hoc Reply at 22-23.

the carriers who draft customer service agreements and the consumers who sign them,[440] and that, in the case of disputes, traditional principles of contract law require us to construe such agreements against the drafters (in this case, the carriers).[441] However, our decision to define what "service" is being offered for purposes of section 214(a) discontinuance authorization using the description in a carrier's tariff or customer service agreement does not preclude us from looking to custom and practice in resolving a dispute over terms of such a tariff or contract. To the contrary, our interpretation of service contracts will incorporate all principles of contractual interpretation as set forth in applicable law.[442] Thus, in cases where the applicable law requires us to look to custom and practice as an interpretive principle, we would do so. Likewise, where applicable law demands that we construe the terms of a customer service agreement as against the agreement's drafters, we would again do so. Any suggestions by commenters that we are ignoring these traditional principles of contractual interpretation in adopting our new standard of review are thus without merit.

144. Contract law also establishes how to determine when an agreement is reached, and the content of that agreement, in the absence of a written contract.[443] Thus, our interpretation provides clear guidance on how to define a service with respect to any non-tariffed services may be provided on a month-to-month basis without a written customer service agreement. Again, we will look to applicable contract law to determine what bargain the parties have struck.

145. *Existence of Detariffed Services*. We reject arguments that the Commission's detariffing of certain services precludes or counsels against our interpretation.[444] Given that the filed rate doctrine

[440] *See* Consumers Union Comments, GN Docket No. 14-28 at 7 (July 15, 2014), https://ecfsapi.fcc.gov/file/7521479540.pdf (asserting that carriers "have unequal bargaining power and dominant market power over consumers"); NASUCA et al. Comments at 31 (describing current customer service agreements in the telecommunications industry as "unilateral").

[441] Southern Co. Servs. Comments at 18 (arguing that, while it is appropriate to give the language of the tariff or service agreement the strongest weight in this analysis, "any ambiguity should be construed against the carrier under traditional principles of contract interpretation, together with an opportunity for users to bring other information to help in the analysis").

[442] In such cases, "applicable law" would be the laws of the state or other governing authority that a court would look to in interpreting the terms of the contract at issue.

[443] *See* Restatement (Second) of Contracts § 17(1) (1981) (identifying the requirement of a bargain, "[t]he formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration."); *id.* at § 17 cmt. b (stating "in modern times less formal contracts are far more important. The typical contract is a bargain, and is *binding without regard to form*.") (emphasis added); *see also* Williston on Contracts § 1:5 (4th ed.) (discussing express contracts, including contracts inferred or implied in fact— "[a]n express contract is a contract the terms of which are stated by the parties; an implied contract is a contract the terms of which are not explicitly stated. The legal effect of the two types of contracts are identical; the distinction is based on the way in which mutual assent is manifested."); 17A Am. Jur. 2d Contracts § 11 (discussing types of contracts generally, "[c]ontracts may be express, implied in fact, or constructive. . . . [A]n express contract is one in which the parties arrive at their agreement and express it in words, either *oral* or written. In the absence of an express contract, an implied contract may exist.") (emphasis added); 17A Am. Jur. 2d Contracts § 167 (stating "[p]arties may enter into oral contracts, and an oral contract is ordinarily no less binding than one reduced to writing, provided that the intent of the parties is ascertainable. However, a statute may require certain contracts to be in writing, and an oral or parol contract is unenforceable where a statute so requires."); *In re Ellsworth*, 326 B.R. 867, 870 (Bankr. M.D. Fla. 2005) (finding "[o]ral contracts are valid and enforceable under Florida law, and are subject to the same basic contract principles that govern written contracts."); *St. Joe Corp. v. McIver*, 875 So. 2d 375, 381 (Fla. 2004) (stating "[o]ral brokerage contracts, like other oral contracts, are valid and enforceable."); *Celta Agencies, Inc. v. Denizcilksanayi Ve Ticaaret, A.S.*, 396 F.Supp.2d 106, 115-16 (D.P.R. 2005) (stating "[i]t has been held that under maritime law an oral agreement is binding on the parties.").

[444] *See* AARP Comments at 24; DC PSC Reply at 7. Tariffs for telecommunications service are commonly understood to be open agreements or contracts between providers and the public, filed with a regulatory body, and

(continued….)

prohibits a carrier from providing any service not included in its tariff, the tariff itself thus provides an objective delineation of the service provided for purposes of section 214(a) discontinuance authorization.[445] Where there is freedom to bargain, the contract takes the place of the tariff in providing the objective delineation of the bargain between the parties.[446] For instance, though a service may be detariffed, consumers and carriers will still be able to rely on the agreed upon service agreement to determine what services have been contracted for and what contemplated changes to that service will trigger a requirement to obtain discontinuance authority under section 214(a). Our detariffing decisions repeatedly recognize that a contractual arrangement substitutes for tariffing.[447]

146. *Brand X*. The Supreme Court's decision in *Brand X* does not support the "functional test."[448] Although *Brand X* held that it was reasonable for the Commission to consider "the consumer's point of view," the issue in question was the regulatory classification of cable broadband pursuant to section 153 rather than the scope of a service under section 214(a). This distinction is important because neither the text of section 214(a) nor the relationship between section 203 and the filed rate doctrine and section 214 were relevant to the interpretations under section 153 being addressed by the Court. Further, looking to subjective evidence in a classification decision does not inject uncertainty in the same manner as here; a classification order resolves regulatory categorization of a particular service whereas here, carriers would be obligated to consider and guess at the regulator's view concerning subjective evidence every time they make a change to their services.

147. *Improved Clarity*. Rejecting the "functional test" and instead concluding that the description of services provided in a carrier's tariff or contract with its customers determines the scope of a "service" for purposes of the section 214(a) discontinuance requirements gives clarity to both carriers and customers. Looking to how customers use a service and determining which uses are significant and meaningful is inherently subjective,[449] and the Commission failed to identify fixed criteria to be used when guide applying the "functional test."[450] Further, carriers cannot know all of the myriad ways in which their services are used by customers,[451] and it would be impracticable to require them to account for all these many uses in deciding whether a planned discontinuance triggers a requirement to file an application with the Commission. Carriers have no means of knowing what devices their customers are using,[452] and therefore cannot be expected to account for their proper functioning. We cannot reasonably

(Continued from previous page)
outlining the terms and conditions of the service provided by the carrier, including rates, fees, and charges. *See, e.g.*, Ben Bronston, *Tariffs*, http://telecomlawyer.net/licenses/tariffs/ (last accessed Sept. 15, 2017); CornerStone Telephone, *Tariffs*, http://www.cornerstonetelephone.com/tariffs (last accessed Sept. 15, 2017).

[445] Under the filed rate doctrine, carriers are prohibited from "extend[ing] to any person any privileges" with respect to a tariffed service except as specified in the tariff. 47 U.S.C. § 203(c).

[446] Under traditional contract law, the terms of an unambiguous private contract must be enforced, irrespective of the parties' subjective intent. *See* 11 Williston on Contracts § 30:4 (4th ed. 1999); Restatement (Second) of Contracts § 29 cmt. a (1981).

[447] *See, e.g.*, *BDS Order*, 32 FCC Rcd at 3529-34, paras. 153-70.

[448] *See generally Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (*Brand X*); AT&T Comments at 65. *But see* CWA Comments at 31 (noting that the Supreme Court in *Brand X* emphasized the importance of considering the "consumer's point of view" in determining the existence of a telecommunications service).

[449] *See* AT&T Comments at 67-68.

[450] *See 2014 Technology Transitions NPRM and Declaratory Ruling*, 29 FCC Rcd at 15015-18, para. 114-19; *2015 Technology Transitions Order*, 30 FCC Rcd at 9471-78, paras. 181-201.

[451] *See supra* para. 120.

[452] *See* AT&T Comments at 68.

ask providers deploying new facilities to predict what equipment features third parties may use when selling their own equipment or services.[453] Yet this is precisely what carriers have been obligated to do in attempting to decipher which secondary devices and services are covered under the amorphous ambit of the "functional test." Given this, it is hardly surprising that over the past few years, the "functional test" has left both carriers and customers unclear as to whether particular changes to service offerings trigger a requirement to file a discontinuance application pursuant to section 214(a).[454] Because of this, the "functional test" standard has resulted in unnecessary and costly section 214(a) discontinuance filings and has levied additional burdens upon carriers, diverting funds and resources away from the development and deployment of new networks and technologies.[455] In contrast, our interpretation of "service" relies on objective criteria and well-established tariff doctrine and contract law.

148. *Promoting Modern Investment and Innovation*. Our objective interpretive approach will free carriers to invest in and provide newer and better service to more Americans. Providing regulatory clarity eliminates unnecessary compliance costs. As commenters have noted, the ambiguity around the "functional test" has not only resulted in unnecessary and costly filings,[456] but it can also delay network upgrades.[457] Our interpretation will eliminate unnecessary and costly discontinuance filings. In turn, providers will be freed to use the funds and resources to develop and deploy next-generation networks and services to more Americans. This outcome will benefit providers and consumers, who will be able to make use of the improved capabilities of next-generation services.

149. Further, while an express purpose of the "functional test"—which focused on the "practical functionality provided by the network on which consumers have come to rely"[458]—was to preserve legacy devices, it makes more sense from a cost and efficiency perspective to require third-party manufacturers of ancillary devices—as opposed to telecommunications carriers—to bear the cost of ensuring compatibility. As the manufacturers of such devices—and the parties who know their operation and uses first-hand—these companies are in the best position to adapt such devices to changes in the underlying telecommunications service for the least cost and with the smallest disruption to consumers.[459]

[453] *See* AT&T Comments at 68; Verizon Reply at 29. Nor was this the Commission's original intent when it first permitted the use of third-party equipment in connection with telecommunications services, emphasizing as it did that it is third parties who exercise that option—and not the underlying providers—who bear the risk that network improvements may eventually make their equipment obsolete, or necessitate inevitable upgrades. *See* Verizon Reply at 29.

[454] *See* ADTRAN Comments at 8; AT&T Comments at 67-68; NTCA Comments at 23; USTelecom Comments at 41; Verizon Comments at 40-41; CenturyLink Reply at 26. While Communications Workers of America argues in its comments that the "functional test" does not create uncertainty, and that "there is nothing to suggest that carriers do not know how their services are being used," this argument is directly contradicted by the comments of many carriers, the relevant portions of which are included herein. *See* CWA Comments at 35; *see also* AARP Reply at 14-15.

[455] *See* Frontier Comments at 27-28; ITTA Comments at 25; NTCA Comments at 23-24; USTelecom Comments at 41; *see also* USTelecom Reply at 25.

[456] *See* Frontier Comments at 27-28; ITTA Comments at 25; NTCA Comments at 23-24; USTelecom Comments at 41; USTelecom Reply at 25.

[457] *See* Frontier Comments at 27.

[458] *2014 Technology Transitions NPRM and Declaratory Ruling*, 29 FCC Rcd at 15108, para. 118.

[459] *See* AT&T Comments at 62 (arguing that "*Carterfone* makes clear that when third-party companies offer equipment or services meant to use a carriers' service as an input, it is those third parties, not the carrier, that are ultimately providing the ability to conduct a particular activity using the carrier's service," and who should ultimately be charged with updating that third-party service should the underlying telecommunications service be changed or upgraded).

By contrast, the least-costly way for a carrier to ensure compatibility is to retain its legacy service, which hinders its ability to invest in next-generation services. Moreover, the high level of competition in the market for CPE will help to incentivize companies to make sure any ancillary devices they produce are quickly adapted to account for changes in the underlying service; retailers who do not do so risk losing customers to any one of a vast number of competitors and new market entrants. We recognize that some consumers may lose the ability to use some legacy customer premises equipment (CPE) and third-party services under this framework without Commission approval,[460] and we find that the public interest benefits of enabling carriers to provide improved service to Americans, and service to more Americans, outweigh any losses as a result of possibly hastened obsolescence. Even where technology transitions and network upgrades *do* require some retailers to update certain TDM-based equipment or services, the customers who are inconvenienced by such updates will still enjoy the increased functionalities and capabilities of IP-based replacement services in exchange.[461] And we anticipate that the marketplace dynamics we describe above, which promote the availability of low-cost modern replacements, will minimize the impact on consumers, including the elderly, of third-party CPE and service obsolescence.

150. While NASUCA asserts that the elimination of the "functional test" will have a chilling effect on innovation in edge applications,[462] we believe that it will have the opposite effect. Our decision to define a carrier's "service" based on the description in their tariff or customer service agreement for purposes of section 214(a) discontinuance authorization promotes the ongoing technology transition from traditional TDM to IP-based networks and services. In doing so, it will help to hasten innovation in edge applications by encouraging engineers and designers to create new devices and platforms that are IP-compatible and which can take full advantage of the advanced speed and functionality that such next-generation networks allow.

151. *Assistive Technologies*. Some commenters express concern about the effect that discontinuances of legacy services could have on the compatibility of assistive technologies used by people with disabilities.[463] For example, some parties report that TTYs and analog captioned telephones do not translate well to an IP-based environment, and could leave customers reliant on such devices without access to general telephone services, including 911 services.[464] We understand that industry may be making some progress on this front. For example, Verizon and CenturyLink contend that their IP-

[460] *See, e.g.*, CWA Comments at 29; NASUCA et al. Comments at 30; Ohio PUC Comments at 10-12; Pennsylvania PUC Comments at 22-23; Ad Hoc Reply at 20-2122; CWA Reply at 12-14; NASUCA et al. Reply at 32; Austin Martinetti Comments.

[461] *See* CenturyLink Comments at 47.

[462] *See* NASUCA et al. Reply at 33; *see also* AARP Comments at 23-24 (claiming that the benefits of innovation at the network edge will be reduced or eliminated if we eliminate the "functional test" standard).

[463] *See* California PUC Comments at 32 (stating that forcing a transition on such consumers could be "especially disruptive" and "unreasonably costly"); AARP Comments at 14-15 (asserting that carriers should be required to include in their discontinuance applications "the specific alternative technologies that are available for individuals with disabilities, if existing technologies will no longer function"); NASUCA et al. Comments at 12-13 (noting the importance of adequate notice to determine the impact on functionality of assistive devices); *see also* CWA Sept. 26, 2017 *Ex Parte* Letter at 2; *Transition from TTY to Real-Time Text Technology et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13574, para. 8 (2016) (*RTT Order*).

[464] *See e.g.*, Letter from Christian Vogler, Ph.D., Director, Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, and Gregg C. Vanderheiden, Ph.D., Director, RERC on Universal Interface and IT Access, University of Maryland, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed Oct. 12, 2017) (RERCs *Ex Parte*); Letter from Kevin Colwell, Vice President, Ultratec, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed Oct. 13, 2017) (Ultratec Oct. 13, 2017 *Ex Parte* Letter); *see also* Consumer Groups and RERCs Comments at 3-4; NASUCA et al. at 15; Consumer Groups and RERCs Reply at 1-2.

based wireline services support TTY devices.[465] Indeed, Verizon reports that its network configuration utilizing dedicated bandwidth for each customer has resulted in its receipt of no complaints regarding the compatibility of assistive technologies such as TTY devices or captioned telephones with their IP-based services.[466] However, the record lacks information about the extent to which other carriers generally have conducted testing for interim solutions to ensure the compatibility of legacy assistive devices (such as TTYs) during the transition to an IP environment, or the extent to which they are working to develop permanent IP accessibility solutions once this transition is complete.[467] Two Rehabilitation Engineering Research Centers state that their experiences reveal inconsistencies in the reliability of TTY transmissions over IP-based transmissions. While acknowledging that in some testing, TTYs over IP networks "*seem* to work fine," they report that other testing with the same equipment and transmission lines can produce "severe garbling" and sudden failures "without warning" due to changes made in the IP networks.[468]

152. We remind carriers that are seeking to discontinue a legacy service in favor of an advanced service, including interconnected and non-interconnected VoIP,[469] that they must, as a matter of law, ensure that the replacement service is accessible, compatible and usable to persons with disabilities.[470] Among other things, this includes the obligation to ensure that the new service is compatible with peripheral devices and specialized customer premises equipment, such as TTYs and captioned telephones, that are used by people with disabilities.[471] It also includes the obligation to "work cooperatively with appropriate disability-related organizations" and for telecommunications services, to make "reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities."[472] Indeed, pursuant to the Twenty-First Century Communications and Video Accessibility Act (CVAA), the Commission must report to Congress, every two years, on industry compliance with requirements to make telecommunications and advanced communications accessible to

[465] *See, e.g.*, CenturyLink Comments at 46; Verizon Aug. 24, 2017 *Ex Parte* Letter at 2.

[466] Verizon Oct. 19, 2017 *Ex Parte* Letter at 2.

[467] Ultratec, a manufacturer of TTYs and captioned telephones, states that it is unaware of "testing to confirm the compatibility" of digital or IP networks with TTY services. Ultratec Oct. 13, 2017 *Ex Parte* Letter at 1.

[468] RERCs *Ex Parte* at 1 (emphasis in original) (noting that analog captioned telephones are even more sensitive to problems over IP transitions than TTYs because they transmit at higher speeds). The RERCs explain that even where the core network can provide effective communication for both of these devices, failures often occur in the last mile to the consumer. *See* RERCs *Ex Parte* at 1-2; Ultratec Oct. 13, 2017 *Ex Parte* Letter at 1.

[469] S*ee* 47 U.S.C. § 153(1)(a).

[470] *See* 47 U.S.C. §§ 255 (requiring access to telecommunications services), 617 (requiring access to advanced communications services); 47 CFR Parts 6, 7, and 14.

See 47 U.S.C. §§ 255 (requiring access to telecommunications services), 617 (requiring access to advanced communications services); 47 CFR Parts 6, 7, and 14.

[471] The RERCs explain that IP-based solutions for captioned telephones usually require "both a voice line and an open Internet data connection to function" as an instance of how IP-based captioned telephones do not function as a "drop-in replacement" for analog captioned telephones. RERCs *Ex Parte* at 2. Extra steps may need to be implemented to ensure a seamless transition for such consumers.

[472] 47 CFR §§ 6.7(b)(3), (4), 7.7(b)(3)(4); s*ee also* RERCs *Ex Parte* at 2 (stating that what is needed is a "well thought out plan that does not leave consumer[s] without reliable communication and that minimizes the costs to industry over the long run."); California PUC Comments at 34 (noting that migration strategies are needed); Ultratec Oct. 13, 2017 *Ex Parte* Letter at 2 (noting that a key issue for transition is how to effectively support users during such a process).

people with disabilities.[473] We note these requirements do not stem from section 214—and thus they apply even when that section does not.

153. The problems associated with ensuring compatibility between accessibility technologies and IP-based services during technology transitions to IP services are not unique to the wireline environment. To address these concerns in the wireless context, the Commission recently adopted rules that allow wireless carriers to support real-time text (RTT) in lieu of TTY technology for communications using wireless IP-based voice services.[474] Similarly, we expect that wireline carriers will continue to ensure compliance with the Commission's accessibility rules when deploying advanced services and before seeking to discontinue any legacy services.[475] This can be achieved by finding interim solutions that allow the continued use of legacy assistive devices currently used by people with disabilities to access communications services, and by working with consumers to develop more permanent IP-based solutions that do not diminish the wireline access currently available to these consumers.[476]

154. *Terminating a Controversy or Removing Uncertainty*. The Commission is authorized to issue a declaratory ruling, either on its own or in response to a motion, to terminate a controversy or

[473] *See* Section 717(b)(1) of the Act, as added by the CVAA, codified at 47 U.S.C. § 618(b)(1). Biennial reports must be submitted to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives. *See id.*; *see also* Senate Report at 9; House Report at 27 (both stating that the report should "assess[] the level of compliance with the requirements of [the CVAA], as well as other matters related to the effectiveness of the Commission's complaint resolution process").

[474] *RTT Order*, 31 FCC Rcd at 13572, para. 6. In adopting these rules, the Commission explained that the "ongoing technology transitions from circuit switched to IP-based networks and from copper to wireless and fiber infrastructure, have affected the quality and utility of TTY technology, prompting discussions on transitioning to an alternative advanced communications technology for text communications." *Id.* at 13570, para. 3. Tier I wireless companies have informed the Commission of their plans to begin rolling out RTT by December 2017. *See, e.g.*, October 6, 2017 IP-Voice Accessibility Status Report of AT&T, GN Docket No. 15, 178, at 1 (filed Oct. 6, 2017). The Commission has an open proceeding on the use of real-time text in lieu of TTYs for wireline transmissions. *See Transition from TTY to Real-Time Text Technology et al.*, Notice of Proposed Rulemaking, 31 FCC Rcd 6247, 6290, para. 95 (2016); *RTT Order*, 31 FCC Rcd at 13577-78.

[475] The California PUC suggests that service providers be required to: (a) ensure the new service works with existing equipment or devices used by a customer with disabilities; or (b) offer the customer free, new equipment that is compatible with the new facilities; or (c) offer financial assistance and information about where to purchase compatible equipment. *See* California PUC Comments at 32. Although we do not adopt these suggestions as requirements in this Order, we strongly encourage that service providers ensure that state equipment distribution programs (EDPs), state utility commissions and TRS providers are notified of plans to convert plain old telephone service (POTS) to IP-based voice services. Such a process can include the collaboration of service providers, EDPs, state utility commissions, TRS providers, and perhaps organizations such as the Intergovernmental Advisory Committee (IAC), the National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) in order to ensure a seamless transition for TRS users. In particular, these organizations should ensure that customers of traditional TRS who use TTYs or captioned telephone services (CTS) will be aware of their service provider's plans to deploy IP-based voice services, and essential details about the transition, such as when the transition will occur, how that may impact the customer's use of traditional TRS or CTS, and as appropriate, the options available for their continued use of traditional TRS and CTS in the IP environment.

[476] For example, wireline companies may want to explore the use of RTT as an alternative for TTYs. For captioned telephone services, one solution might be the provision of an Internet access service plan that provides the consumer with dedicated access to the Internet for IP-based captioned telephones similar to the way that cable TV services use limited Internet access to carry out their functions. *See* RERCs *Ex Parte* at 2. This would eliminate the need for consumers who only need voice lines for their analog captioned telephones to pay more for Internet service in order to use IP versions of these devices.

remove uncertainty.[477] The "functional test" has generated substantial uncertainty.[478] Far from clarifying the issue of what "service" is being offered for purposes of section 214(a) discontinuance authorization, the original Declaratory Ruling adopting the "functional test" has instead injected greater uncertainty. We therefore issue this new Declaratory Ruling to remove uncertainty.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Expediting Applications that Grandfather Additional Data Services for Existing Customers

155. We propose to streamline the approval process for applications seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area.[479] We currently use 25 Mbps/3 Mbps as the speed benchmark for evaluating deployment of fixed advanced telecommunications capability, meaning a service that "enables users to originate and receive high quality voice, data, graphics, and video telecommunications" under section 706 of the Telecommunications Act of 1996.[480] As such, we think that comparatively lower speed services are ripe for streamlined treatment when higher speed services are available.[481] We seek comment on this proposal.

156. We propose a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers submitting such applications. Under this proposal, such services must be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. Through these proposed reforms, we seek to provide carriers with incentives to develop and deploy higher quality services operating at higher speeds. We seek comment on this proposal. We also seek comment on possible alternatives, including different speed thresholds and different time intervals.

157. Will streamlining the approval process for this class of applications promote competition in the market for higher-speed data services? Will it help speed the ongoing technology transition to next-generation IP-based services and networks, and encourage the deployment of better quality, higher-speed services? What are this proposal's benefits and costs?

158. Additionally, we seek comment on whether applications to discontinue these higher-speed data services after they have been grandfathered for a period of at least 180 days should be granted the same streamlined comment and auto-grant periods that we have adopted for previously grandfathered legacy data services in the above Order.[482] Should applications to discontinue higher-speed already-

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[477] 47 CFR § 1.2.

[478] *See* ADTRAN Comments at 7-8; AT&T Comments at 67; NTCA Comments at 23; USTelecom Comments at 41; Verizon Comments at 39-41; CenturyLink Reply at 26; *see also supra* para. 147.

[479] We acknowledge that data services subject to section 214 discontinuance authority typically have symmetrical upload and download speeds. Proposing non-symmetrical speed thresholds for streamlining purposes, however, provides maximum flexibility for carriers to the extent legacy data services having non-symmetrical download and upload speeds are subject to our discontinuance rules. *See BDS Order*, 32 FCC Rcd at 3474, paras. 6, 30.

[480] *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Thirteenth Section 706 Report Notice of Inquiry, 32 FCC Rcd 7029, 7034, para. 14 (2017).

[481] In the *Wireline Infrastructure Notice*, the Commission proposed to apply any streamlined discontinuance process to grandfathered low-speed legacy services below 1.544 Mbps, but sought comment on whether we should make streamlined processing available for applications to grandfather services at higher speeds, such as TDM services below 10Mbps or 25 Mbps. *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3290, para. 79.

[482] *See supra* Section III.C.2.

grandfathered services be subject to a 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application?

B. Utility Treatment of Overlashing or Drop Requests for Poles

159. We seek comment on the appropriate utility treatment of requests by attachers to: (1) overlash onto existing wires and cables already on a utility pole; or (2) connect service from an attacher's facilities on an existing utility pole directly to a customer location (also known as a drop). With regard to overlashing, Commission precedent holds that "neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment."[483] However, ACA states that "some utilities require, or seek to require, additional prior approvals for overlashing projects."[484] We seek comment on the frequency with which utilities require pre-approval or an application process for an overlashing request, and under what circumstances.[485] We also seek comment on the definition of what constitutes overlashing. For example, would attachments such as strand-mounted wireless small cells be considered as overlashing?[486] Or is overlashing limited to new wires and cables? Would it help attachers and utilities for the Commission to define what constitutes overlashing? Is there more than one type of overlashing, and do these different types warrant distinct regulatory treatment? Has overlashinig changed over time such that our approach should change? We also seek comment on whether codifying our existing precedent on overlashing would spur broadband deployment by clarifying for utilities and attachers our exact policy on overlashing.[487] We seek comment on whether to adopt requirements with respect to how attachers and utilities must implement overlashing requests; for instance, would a "notice and attach" approach, where the attacher does not require pre-approval, but provides the utility notice before overlashing, spur quicker broadband deployment, yet still address safety concerns?[488]

160. We also seek comment on utility treatment of drop requests. ACA states that although utilities generally permit an attacher to connect drops to a customer location after giving advance notice to the utility, some utilities require an application process for drops that involve the use of an additional

[483] *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141, para. 75 (2001) (*2001 Pole Attachment Order*); *see also Cable Television Ass'n of Georgia, et al., Complainants, v. Georgia Power Co., Respondent,* File No. PA 01-002, Order, 18 FCC Rcd 16333, 16340-41, para 13 (EB 2003). A utility can deny an overlashing request for reasons of pole safety or reliability, impose advance notice requirements, or charge the new attacher for the make-ready costs necessary to accommodate an overlashing request. *2001 Pole Attachment Order* at 12141-42, 12144-45, paras. 75, 77, 82.

[484] American Cable Ass'n Comments at 10 (and examples cited therein); *see also* NCTA Comments at 5-6.

[485] *See* Coalition of Concerned Utilities Reply at 29-30 ("overlashing must be subject to utility review through the applications process" because of potential safety concerns).

[486] *See* Letter from H. Russell Frisby, Jr., Counsel to Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at Attach., Pole Attachments: Safety and Reliability, at 22 (filed Oct. 4, 2017).

[487] *See* Letter from Steve Morris, Vice President & Associate General Counsel, NCTA to Marlene H. Dortch, Secretary, FCC at 2 (Oct. 20, 2017) (suggesting codifying a rule stating "an attacher shall not be required to obtain approval from or provide advance notice to a pole owner before overlashing additional wires cables, or equipments to its own facilities. The attacher shall inform the pole owner of the location and type of any facilities that have been overlashed.").

[488] *See* American Cable Ass'n Comments at 30-31 (advocating "notice and attach" approach); POWER Coalition Reply at 15-16 (maintain current Commission policy on overlashing).

pole.[489] We seek comment on any requirements we should adopt with respect to drop requests (such as whether a "notice and attach" process would work) and whether it is reasonable for a utility to impose additional requirements in the event that drops involve more than one pole.[490] We also seek comment on whether there are other types of attachments or pole work that should not fall within the Commission's standard pole attachment timeline.

C. Calculation of Waiting Period Under Section 51.333(b)

161. AT&T proposes that we revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice.[491] We seek comment on this proposal. Section 51.333(b) of the Commission's rules provides that the network change referenced in a short-term notice "shall be deemed final on the tenth business day after the release of the Commission's public notice."[492] According to AT&T, tying the effective date to release of the Commission's public notice is unnecessary because incumbent LECs are required to provide direct notice to interconnecting carriers.[493] Is AT&T correct? We seek comment on the benefits and burdens of revising the rule as AT&T suggests.

162. In connection with copper retirement notices, we found in the Order above that "having the waiting period run from the date we release a public notice of the filing, as has been the case for more than two decades, affords Commission staff the necessary opportunity to review filings for mistakes and/or non-compliance with the rules."[494] Are circumstances different for short-term network change notices than for copper retirement notices? Is there any reason Commission staff might not need the opportunity to review short-term network change notices for accuracy or completeness before the waiting period under the rule should begin to run? Are there other benefits associated with having the waiting period run from the time the Commission releases its public notice rather than from the date the incumbent LEC files its notice or certification with the Commission? Will altering the calculation of the waiting period in such a way help speed the ongoing technology transition to next-generation IP-based services and networks? Are there other advantages or disadvantages to calculating the waiting period in this manner? How would calculating the waiting period in this manner affect the deadline for objecting to a network change disclosure? Are there other issues we should consider in conjunction with considering this proposal?

D. Public Notice of Network Changes Affecting Interoperability of Customer Premises Equipment

163. AT&T also proposes that we eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment.[495] We seek comment on this proposal. Section 51.325(a)(3) requires that incumbent LECs provide notice pursuant to the Commission's network change disclosure rules of any changes to their networks that "will

[489] American Cable Ass'n Comments at 10-11 ("This issue arises because existing attachers may not be able to reach a new customer from their existing attachments. In these instances, the attacher often needs incidental access to one or more nearby poles to make the customer drop. This occurs, for instance, when a customer is on the other side of the street from a run of attached poles or is a block away from a run."); *see also* NCTA Comments at 7.

[490] *See* American Cable Ass'n Comments at 31-32.

[491] *See* AT&T Comments at 34.

[492] 47 CFR § 51.333(b).

[493] AT&T Comments at 34.

[494] *See supra* para. 65.

[495] *See* AT&T Comments at 35-37.

affect the manner in which customer premises equipment is attached to the interstate network."[496] AT&T asserts that this rule is no longer necessary because incumbent LECs "do not have a significant presence in the market for manufacturing CPE . . . CPE manufacturers move at lightning speed to adapt to new technologies," and "incumbent LECs no longer "possess the market power that would enable them to adversely affect the CPE marketplace."[497] We seek comment on the benefits and costs of the current rule and whether the benefits outweigh the costs. Does section 51.325(a)(3) continue to afford relevant protections in the current marketplace? How frequently do incumbent LECs provide public notice of such network changes? Do interconnecting carriers rely on public notice of such network changes? Will eliminating the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment help speed the ongoing technology transition to next-generation IP-based services and networks?

164. We seek comment on the intersection of section 51.325(a)(3) with other rules and how that intersection should influence our approach here. In the *Notice*, the Commission sought comment on eliminating section 68.110(b), which requires that "[i]f . . . changes [to a wireline telecommunications provider's communications facilities, equipment, operations or procedures] can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service." [498] AT&T makes similar assertions in support of its arguments in favor of eliminating both sections 51.325(a)(3) and 68.110(b).[499] Unlike section 51.325(a)(3), which applies only to incumbent LECs, section 68.110(b) applies to all carriers. Do sections 51.325(a)(3) and 68.110(b) impose similar burdens on carriers or afford similar benefits to customers? Is there any reason to treat the two rules differently? Should we modify rather than eliminate or retain either section 51.325(a)(3) or 68.110(b)?

E. Applying Streamlined Notice Procedures for *Force Majeure* Events to All Network Changes

165. We seek comment on extending the streamlined notice procedures applicable to *force majeure* and other unforeseen events adopted in today's Order for copper retirements to all types of network changes.[500] The *Notice* sought comment on removing the copper retirement notice requirements in emergency situations.[501] It did not, however, ask about removing the notice requirements applicable to network changes other than copper retirements. We seek comment on whether the same benefits to be gained from the streamlined procedures adopted in the copper retirement context similarly apply to other types of network changes. The waiver orders discussed above are general in nature.[502] We seek comment on whether all incumbent LECs should have the same access to the relief afforded by these waiver orders in all situations, not just when copper retirements are implicated.

[496] 47 CFR § 51.325(a)(3).

[497] *See* AT&T Comments at 36-37.

[498] 47 CFR § 68.110(b); *see Wireline Infrastructure Notice*, 32 FCC Rcd at 3287-88, para. 70.

[499] *See* AT&T Comments at 36-37.

[500] *See supra* Section III.C.2.d; *see also* AT&T Comments at 38-39.

[501] *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3285, para. 63.

[502] *See supra* para. 73.

F. Forbearance from Section 214(a) Discontinuance Requirements for Services with No Existing Customers

166. CenturyLink and AT&T propose that we forbear from applying the section 214(a) discontinuance requirements when carriers seek to discontinue, reduce, or impair services with no existing customers.[503] We seek comment on this proposal and whether we should, on our own motion, grant this forbearance. We specifically seek comment on forbearing from section 214(a) and our part 63 implementing rules when carriers seek to discontinue, reduce, or impair services with no existing customers. We seek comment on whether such action would satisfy the criteria for granting forbearance.[504] Is maintaining the requirement to obtain discontinuance authorization in such cases necessary to protect consumers or other stakeholders? Can enforcement of section 214(a)'s requirements be necessary for the protection of consumers when there are no affected customers? Is enforcement of these requirements where there are no affected customers necessary to ensure that the charges and practices of carriers are not unjustly or unreasonably discriminatory? Is forbearance from section 214(a)'s requirements in this context otherwise consistent with the public interest? We anticipate that because the services in question lack customers, applying the section 214(a) discontinuance requirement here is not necessary to ensure just charges or protect consumers, and we seek comment on this view. Is forbearance in this context consistent with the public interest? In this regard, will forbearing from applying section 214(a)'s discontinuance requirements in the context of services without existing customers help speed the ongoing technology transition to next-generation IP-based services and networks?

167. Alternatively, should we further streamline the discontinuance process for "no customer" applications, generally? In the Order, we substantially streamline the discontinuance process for "no customer" applications for legacy voice and data services below 1.544 Mbps. Specifically, we reduce the auto-grant period from 31 days to 15 days and reduce the timeframe within which a carrier must not have had any customers or request for service from 180 days to 30 days. Should we adopt these same streamlined rules for all "no customer" discontinuance applications or some larger subset than just the legacy services below 1.544 Mbps that the record currently supports?

168. We note that under our current rules, there is no deadline for filing comments in response to an application to discontinue, reduce, or impair services with no existing customers.[505] We seek comment on whether we should establish a set comment period for such applications in the unlikely event that any party may wish to comment on requests to discontinue, reduce, or impair services with no existing customers. How long should any such comment period be? Should we apply a uniform period of public comment to applications from both dominant and non-dominant carriers, or should each type of provider be subject to a different comment period?

G. Further Streamlining of the Section 214(a) Discontinuance Process for Legacy Voice Services

169. Several commenters propose that we further streamline the section 214(a) discontinuance process for legacy voice services.[506] We seek comment on what further steps we can take to streamline

[503] *See* AT&T Comments at 48-49; CenturyLink Comments at 45 (arguing that for a service with no customers, "a discontinuing carrier should be required simply to notify the Commission that it has discontinued the service, without a need for prior Commission approval").

[504] *See* 47 U.S.C. § 160(a) (setting forth the standard for when the Commission may forbear from applying its regulations).

[505] *See* 47 CFR § 63.71(g).

[506] *See* AT&T Comments at 40-41; CenturyLink Comments at 40-43; Verizon Comments at 37-39; ITTA Comments at 17-20; USTelecom Comments at 37-38.

the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon's proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area.[507] As Verizon notes, this approach provides an alternative to forbearance from section 214(a) discontinuance requirements for legacy voice services.[508] Verizon asserts that adoption of this streamlined test "would compel carriers to maintain legacy services only in those rare instances . . . where their absence would cut consumers off from the nation's telephone network" and would "free[] carriers to focus on rolling out and improving the next-generation technologies their customers demand."[509]

170. We seek comment on the benefits and burdens of streamlining section 214(a) discontinuances for legacy voice services and on the benefits and burdens of Verizon's specific recommendation. Would such rule changes reduce unnecessary costs and burdens associated with the deployment of next-generation services and thereby spur broadband such deployment? Would such changes help speed the ongoing technology transition to next-generation IP-based services and networks?

171. As to Verizon's proposal, would the information sought under this kind of two-part test be sufficient to allow the Commission to certify that the "public convenience and necessity" would not be adversely affected by the proposed discontinuance, as section 214(a) requires? If not, what information should be required? If we were to adopt this approach, what would be the best means to implement this type of test? What type of showing would a carrier be required to make under each prong? Would a simple certification be sufficient, or should some other evidence of available alternatives be required? What types of voice services should be considered as sufficient alternatives to legacy TDM-based voice service that would satisfy the second prong? Are there specific characteristics that a voice service should be required to have in order to satisfy the second prong? Finally, we seek comment on any alternative approaches to streamlining the section 214(a) discontinuance process for legacy voice services.

172. Alternatively, Verizon requests that we forbear from applying section 214(a)'s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services.[510] CenturyLink and WTA similarly request that we eliminate the requirement to file a section 214(a) application altogether for any discontinuance that is part of a network upgrade.[511] We seek comment on these proposals and whether we should, on our own motion, grant forbearance when carriers upgrade their networks and simultaneously transition the services provided over those networks to next-generation technology, e.g., TDM to IP. We specifically seek comment on forbearing from both section 214(a)'s discontinuance requirements and our part 63 implementing rules. We seek comment on whether such action would satisfy the criteria for granting forbearance.[512] Is enforcement of our discontinuance requirements under section 214(a) and part 63 of our implementing rules in cases where carriers seek to transition from legacy services to next-generation services not necessary to ensure that the charges and practices of carriers are not unjustly or unreasonably discriminatory? Is enforcement of these discontinuance requirements necessary to ensure consumer protection during the ongoing technology transition to next-generation networks and services? Will forbearing from applying our discontinuance requirements under section 214(a) and part 63 of our

[507] *See* Verizon Comments at 38-39.

[508] *Id*. at 37.

[509] *Id*. at 39.

[510] *See* Verizon Comments at 35-36.

[511] *See* WTA Comments at 5-8; CenturyLink Comments at 39-40.

[512] *See* 47 U.S.C. § 160(a).

implementing rules in this context be consistent with the public interest? Will forbearance in this context help speed the ongoing technology transition to next-generation IP-based services and networks? Is forbearance even necessary in light of the actions we take today in the Order to revise our section 214(a) discontinuance rules?

173. Verizon asserts that current market dynamics demonstrate that next-generation voice services are readily available, as evidenced by a decisive shift by consumers away from legacy voice services, and towards competing fiber, IP-based and wireless alternatives.[513] In such a competitive environment, Verizon asserts that "freeing providers from Section 214(a) in this market will promote competition among those providers on the merits of their next-generation services" and that therefore "forbearance [from the section 214(a) discontinuance process] is in the public interest" where providers seek to replace legacy services with next-generation alternatives.[514] We seek comment on these assertions and on the benefits and burdens associated with forbearing from section 214(a)'s discontinuance requirements when carriers seek to replace legacy voice services with next-generation services. How would forbearance from these rules affect competitive market conditions for telecommunications services? Would forbearance from our section 214(a) discontinuance requirements in circumstances where carriers seek to replace legacy voice services with next-generation alternatives better incentivize the deployment of high-speed broadband than the streamlining proposals discussed above? Why or why not?

H. Eliminating Outreach Requirements Adopted in the *2016 Technology Transitions Order*

174. ITTA proposes that we eliminate the outreach requirements adopted in the *2016 Technology Transitions Order*.[515] We seek comment on this proposal. These requirements mandate that carriers offer an adequate outreach plan when discontinuing legacy retail services.[516] These requirements apply to transitioning wireline TDM-based voice service to a voice service using a different technology such as Internet Protocol (IP) or wireless. The requirements further specify that an adequate outreach plan must, at a minimum, involve: "(i) the development and dissemination of educational materials provided to all customers affected containing specific information pertinent to the transition, as specified in detail below; (ii) the creation of a telephone hotline and the option to create an additional interactive and accessible service to answer questions regarding the transition; and (iii) appropriate training of staff to field and answer consumer questions about the transition."[517] We seek comment on the benefits and burdens of these requirements.

175. ITTA asserts that these requirements are "unduly burdensome and prescriptive," in addition to being unnecessary, because our preexisting discontinuance notice process already provides "affected customers and other stakeholders with adequate information of what is to occur and what steps they may need to take."[518] ITTA further asserts that regardless of any notice requirements maintained by the Commission, carriers "would continue to have incentives due to marketplace forces to communicate with customers in connection with technology transitions when customers are impacted by such changes."[519] We seek comment on ITTA's assertions. Are the burdens imposed by these outreach

[513] *See* Verizon Comments at 33-35.

[514] *See id*. at 36.

[515] *See* ITTA Comments at 21; *see also 2016 Technology Transitions Order*, 31 FCC Rcd at 8348-52, paras. 179-86.

[516] *See 2016 Technology Transitions Order*, 31 FCC Rcd at 8348, para. 179.

[517] *See id*. at 8350, para. 181.

[518] *See* ITTA Comments at 21.

[519] *See id*.

requirements adopted in the *2016 Technology Transitions Order* unduly burdensome such that they should be eliminated or revised? Or do those requirements afford necessary protections to affected consumers of legacy services? Should we modify those requirements rather than retain or eliminate them, and if so how? Will eliminating or modifying these requirements help speed the ongoing technology transition to next-generation IP-based services and networks?

I. Rebuilding and Repairing Broadband Infrastructure After Natural Disasters

176. We are committed to helping communities rebuild damaged or destroyed communications infrastructure after a natural disaster as quickly as possible. We recognize the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria. We are concerned that unnecessarily burdensome government regulation may hinder rather than help recovery efforts, and laws that are suited for the ordinary course may not be appropriate for disaster recovery situations. We seek comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

177. We emphasize that we appreciate the importance of working cooperatively with state and local authorities. How can we ensure that any preemptive action we take helps rather than inhibits state and local efforts? More generally, how can we best work with state and local regulators to get broadband infrastructure operational after a natural disaster? We seek comment on our legal authority to preempt state and local laws in this context, including our authority under sections 253 and 332(c)(7) of the Act and section 6409 of the Spectrum Act. If we should preempt certain state or local laws, should we do so by rule or by adjudication? Should we limit the scope of any preemption in this context only to periods in which a community is recovering from a natural disaster, and if so how should we delimit that timeframe?

VI. PROCEDURAL MATTERS

A. Congressional Review Act

178. The Commission will send a copy of this Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[520] In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.[521]

B. Final Regulatory Flexibility Analysis

179. As required by the Regulatory Flexibility Act of 1980 (RFA),[522] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in Appendix C.

C. Paperwork Reduction Act of 1995 Analysis

180. The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business

[520] *See* 5 U.S.C. § 801(a)(1)(A).

[521] *See* 5 U.S.C. § 605(b).

[522] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.[523]

181. In this document, we have assessed the effects of reforming our pole attachment regulations, network change notification procedures, and section 214(a) discontinuance rules, and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

182. In addition, this document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Initial Regulatory Flexibility Analysis

183. An initial regulatory flexibility analysis (IRFA) is contained in Appendix D. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Further Notice of Proposed Rulemaking. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

E. Filing Instructions

184. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

[523] *See Wireline Infrastructure Notice of Proposed Rulemaking*, 32 FCC Rcd at 3306, para. 127.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

185. *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

F. *Ex Parte* Information

186. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written e*x parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

G. Contact Person

187. For further information about this proceeding, please contact Michele Levy Berlove, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C313, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-1477, Michele.Berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C235, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-0357, Michael.Ray@fcc.gov.

VII. ORDERING CLAUSES

188. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 201, 202, 214, 224, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 202, 214, 224, 251, and 303(r), this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED.

189. IT IS FURTHER ORDERED that parts 1, 51, and 63 of the Commission's rules ARE AMENDED as set forth in Appendix A, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget approval of the rules, and on the effective date announced therein.

190. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective 30 days after publication in the Federal Register, except for 47 CFR §§ 1.1424, 51.325(a)(4), 51.325(c)-(e), 51.329(c)(1), 51.332, 51.333(a)-(c), (f), (g), 63.60(d)-(i), and 63.71(k), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date.

191. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to Congress and

the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

192. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, Parts 1, 51 and 63 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority for part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310v, 332, 1403, 1404, 1451, 1452, and 1455.

SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES

2. Amend section 1409 by revising paragraph (c) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. The Commission shall exclude from actual capital costs those reimbursements received by the utility from cable operators and telecommunications carriers for non-recurring costs.

* * * * *

3. Amend section 1424 to read as follows:

§ 1.1424 Complaints by incumbent local exchange carriers.

Complaints by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a rate, term, or condition for a utility pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part, as relevant. In complaint proceedings where an incumbent local exchange carrier (or an association of incumbent local exchange carriers) claims that it is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system for purposes of obtaining comparable rates, terms or conditions, the incumbent local exchange carrier shall bear the burden of demonstrating that it is similarly situated by reference to any relevant evidence, including pole attachment agreements. If a respondent declines or refuses to provide a complainant with access to agreements or other information upon reasonable request, the complainant may seek to obtain such access through discovery. Confidential information contained in any documents produced may be subject to the terms of an appropriate protective order.

4. Add new section 1425 to subpart J to read as follows:

§ 1.1425 Review Period for Pole Access Complaints.

(a) Except in extraordinary circumstances, final action on a complaint where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility should be expected no later than 180 days from the date the complaint is filed with the Commission.

(b) The Enforcement Bureau shall have the discretion to pause the 180-day review period in situations where actions outside the Enforcement Bureau's control are responsible for delaying review of a pole access complaint.

PART 51 – INTERCONNECTION

1. The authority for part 51 continues to read as follows:

Authority: Sections 1-5, 201-05, 207-09, 218, 220, 225-27, 251-54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 201-05, 207-09, 218, 220, 225-27, 251-54, 256, 271, 303(r), 332, 1302.

2. Amend section 51.325 by revising paragraph (a)(4), deleting paragraphs (c) and (e), and redesignating paragraph (d) as (c), to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

> (4) Will result in a copper retirement, which is defined for purposes of Part 51 Subpart D as: (1) the removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops; or (2) the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in §51.319(a)(3).

2. Section 51.329 is amended by revising paragraph (c)(1) to read as follows:

§ 51.329 Notice of network changes: Methods for providing notice.

* * * * *

(c) *Specific filing requirements*. Commission filings under this section must be made as follows:

> (1) The public notice or certification must be labeled with one of the following titles, as appropriate: "Public Notice of Network Change Under Rule 51.329(a)," "Certification of Public Notice of Network Change Under Rule 51.329(a)," "Short Term Public Notice Under Rule 51.333(a)," "Certification of Short Term Public Notice Under Rule 51.333(a)," "Public Notice of Copper Retirement Under Rule 51.333," or "Certification of Public Notice of Copper Retirement Under Rule 51.333."

* * * * *

3. Delete section 51.332 in its entirety.

§ 51.332 [Repealed].

4. Amend section 51.333 by revising the heading and paragraphs (a) through (c), and adding paragraphs (f) and (g), to read as follows:

§51.333 Notice of network changes: Short term notice, objections thereto and objections to copper retirement notices.

(a) If an incumbent LEC wishes to (i) provide less than six months' notice of planned network changes, or (ii) provide notice of a planned copper retirement, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by §51.327(a) or §51.329(a)(2), as applicable. The certificate of service shall include:

* * * * *

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices or copper retirement notices. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

* * *

(2) *Copper retirement notice.* Notices of copper retirement, as defined in § 51.325(a)(4), shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section, except that notices of copper retirement involving copper facilities not being used to provision services to any customers shall be deemed approved on the 15th day after the release of the Commission's public notice of the filing. Incumbent LEC copper retirement notices shall be subject to the short-term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days' notice of such a change except where the copper facilities are not being used to provision services to any customers.

(c) *Objection procedures for short term notice and copper retirement notices.* An objection to an incumbent LEC's short term notice or to its copper retirement notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

* * * * *

(f) *Resolution of objections to copper retirement notices.* An objection to a notice that an incumbent LEC intends to retire copper, as defined in § 51.325(a)(4) shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper facilities at issue.

(g) *Limited exemption from advance notice and timing requirements for copper retirements*.

(1) *Force majeure* events.

(i) Notwithstanding the requirements of this section, if in response to a *force majeure* event, an incumbent LEC invokes its disaster recovery plan, the incumbent LEC will be exempted during the period when the plan is invoked (up to a maximum 180 days) from all advanced notice and waiting period requirements associated with copper retirements that result in or are necessitated as a direct result of the *force majeure* event.

(ii) As soon as practicable, during the exemption period, the incumbent LEC must continue to comply with § 51.325(a), include in its public notice the date on which the carrier invoked its disaster recovery plan, and must communicate with other directly interconnected telephone exchange service providers to ensure that such carriers are aware of any changes being made to their networks that may impact those carriers' operations.

(iii) If an incumbent LEC requires relief from the copper retirement notice requirements longer than 180 days after it invokes the disaster recovery plan, the incumbent LEC must request such authority from the Commission. Any such request must be accompanied by a status report describing the incumbent LEC's progress and providing an estimate of when the incumbent LEC expects to be able to resume compliance with the copper retirement notice requirements.

(iv) For purposes of this section, "*force majeure*" means a highly disruptive event beyond the control of the incumbent LEC, such as a natural disaster or a terrorist attack.

(v) For purposes of this section, "disaster recovery plan" means a disaster response plan developed by the incumbent LEC for the purpose of responding to a *force majeure* event.

(2) Other events outside an incumbent LEC's control

(i) Notwithstanding the requirements of this section, if in response to circumstances outside of its control other than a *force majeure* event addressed in paragraph (g)(1) of this section, an incumbent LEC cannot comply with the timing requirement set forth in paragraph (b)(2) of this section, hereinafter referred to as the waiting period, the incumbent LEC must give notice of the copper retirement as soon as practicable and will be entitled to a reduced waiting period commensurate with the circumstances at issue.

(ii) A copper retirement notice subject to paragraph (g)(2) of this section must include a brief explanation of the circumstances necessitating the reduced waiting period and how the incumbent LEC intends to minimize the impact of the reduced waiting period on directly interconnected telephone exchange service providers.

(iii) For purposes of this section, circumstances outside of the incumbent LEC's control include federal, state, or local municipal mandates and unintentional damage to the incumbent LEC's copper facilities not caused by the incumbent LEC.

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority for part 63 continues to read as follows:

AUTHORITY: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

2. Amend section 63.60 by redesignating paragraphs (d) through (h) as (e) through (i), and adding new paragraph (d), to read as follows:

§ 63.60 Definitions.

* * * * *

(d) *Grandfather* means to maintain the provision of a service to existing customers while ceasing to offer that service to new customers.

* * * * *

3. Amend section 63.71 by adding new paragraph (k), to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(k) Notwithstanding the above, the following requirements are applicable to certain legacy services operating at speeds lower than 1.544 Mbps:

(1) Notwithstanding paragraphs (a)(5)(i) and (ii) above, if any carrier, dominant or non-dominant, seeks to: (1) grandfather legacy voice or data service operating at speeds lower than 1.544 Mbps; or (2) discontinue, reduce, or impair legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (k)(4) below, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(2) For applications to discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days, in order to be eligible for automatic grant under paragraph (k)(4) of this section, an applicant must include in its application a statement confirming that it received Commission authority to grandfather the service at issue at least 180 days prior to filing the current application.

(3) An application filed by any carrier seeking to grandfather legacy voice or data service operating at speeds lower than 1.544 Mbps for existing customers shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

(4) An application filed by any carrier seeking to discontinue, reduce, or impair a legacy data

service operating at speeds lower than 1.544 Mbps that has been grandfathered for 180 days or more preceding the filing of the application, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.

(5) An application seeking to discontinue, reduce, or impair a legacy voice or data service operating at speeds lower than 1.544 Mbps for which the requesting carrier has had no customers and no reasonable requests for service during the 30-day period immediately preceding the filing of the application, shall be automatically granted on the 15th day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.

* * * * *

APPENDIX B

Draft Proposed Rules for Public Comment

For the reasons set forth above, Part 63 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority for part 63 continues to read as follows:

AUTHORITY: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

2. Amend section 63.71 by adding new paragraph (l), to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(l) Notwithstanding the above, the following requirements are applicable to data service operating at download/upload speeds of less than 25 Mbps/3 Mbps in a service area in which the carrier provides alternative data services of equivalent quality at download/upload speeds of 25 Mbps/3 Mbps or higher:

> (1) Notwithstanding paragraphs (a)(5)(i)-(ii) and (k)(1) above, if any carrier, dominant or non-dominant, seeks to grandfather data service operating at download/upload speeds of less than 25 Mbps/3 Mbps in a service area in which the carrier provides data services of equivalent quality at speeds of 25 Mbps/3 Mbps or higher, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

> (2) An application filed by any carrier seeking to grandfather data service operating at download/upload speeds of less than 25 Mbps/3 Mbps for existing customers in a service area in which the carrier provides data services of equivalent quality at speeds of 25 Mbps/3 Mbps or

higher shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. Such service must be grandfathered for a minimum of 180 days before a carrier can filed an application with the Commission to discontinue, reduce, or impair the previously grandfathered service.

APPENDIX C

Comments & Replies

Comments	Abbreviation
AARP	AARP
ACT - The App Association, Southern DNA, TM Technologies, Alchemy Security, FMS, Inc., Cosmic Innovations, Dogtown Media, 1564B, Remine, NeuEon, Colorado Technology Consultants	ACT
ADTRAN, Inc.	ADTRAN
Alarm Industry Communications Committee	AICC
Alliant Energy Corporation, WEC Energy Group, Inc., Xcel Energy Services Inc.	Alliant et al.
American Cable Association	American Cable Ass'n
Arctic Slope Regional Corporation	Arctic Slope
AT&T Services, Inc.	AT&T
California Association of Competitive Telecommunications Companies (CALTEL)	CALTEL
California Public Utilities Commission	California PUC
Carl Como Tutera	
CenterPoint Energy Houston Electric, LLC, Virginia Electric and Power Company d/b/a Dominion Energy Virginia, Florida Power & Light Company	POWER Coalition
CenturyLink	CenturyLink
Charter Communications, Inc.	Charter
Chuck Matzker	Matzker
Cindy Russell	Russell
Cindy Sage, MA; Lennart Hardell, MD, PhD; David O. Carpenter, MD; (BioInitiative Working Group)	BioInitiative Working Group
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee	City of San Antonio et al.
City and County of San Francisco	City of San Francisco
City of Alexandria, Virginia; Arlington County, Virginia; Henrico County, Virginia	Virginia Commenters
City of Chicago	City of Chicago
City of Eden Prairie, Minnesota	City of Eden Prairie
City of New York	City of New York
City of Norfolk, Virginia	City of Norfolk
City of Philadelphia	City of Philadelphia
Cityscape Consultants	Cityscape
Coalition of Concerned Utilities	Coalition of Concerned Utilities
Comcast Corporation	Comcast
Communications Workers of America	CWA
Community Associations Institute	CAI
Competitive Carriers Association	CCA
CompTIA - The Computing Technology Industry Association)	CompTIA
CCIA - Computer & Communications Industry Association	CCIA
Conterra Broadband Services, Southern Light, LLC, Uniti Group, Inc.	Competitive Fiber Providers

Corning Incorporated	Corning
County of Cumberland	County of Cumberland
CPS Energy	CPS Energy
Crown Castle International Corp.	Crown Castle
CTIA	CTIA
DuPage Mayors and Managers Conference	DuPage
Edison Electric Institute	Edison Electric
EMF Safety Network and Ecological Options Network	
Eric Langley	Langley
ExteNet Systems, Inc.	ExteNet
Fiber Broadband Association	Fiber Broadband Ass’n
Frontier Communications	Frontier
Google Fiber, Inc.	Google Fiber
Harris Corporation	Harris Corp.
Hongwei Dong	Hongwei Dong
Illinois Electric Cooperative	Illinois Electric
INCOMPAS	INCOMPAS
Information Technology and Innovation Foundation	ITIF
Irregulators	Irregulators
ITTA - The Voice of Mid-Size Communications Companies	ITTA
Michigan Public Service Commission	Michigan PSC
JEA	JEA
Jennifer Brens	Brens
Jonathan Mirin	Mirin
Joyce Lombardi, Maryland Office of People's Counsel	Maryland OPC
Leadership Conference on Civil and Human Rights	LCCHR
League of Arizona Cities and Towns, League of California Cities, League of Oregon Cities	League of Arizona Cities et al.
League of Minnesota Cities	League of Minnesota Cities
Level 3	Level 3
Liberty Cablevision of Puerto Rico LLC	Liberty Cablevision
Lightower Fiber Networks	Lightower
Lumos Networks Inc., Lumos Networks of West Virginia Inc., Lumos Networks LLC	Lumos
Martin Blank, Henry Lai, Magda Havas, Joel Moskowitz, Elizabeth Kelley	
Marty Feffer	Feffer
Merry Callahan	Callahan
Michael H. Hain, Nittany Media, Inc.	Nittany Media
Minnesota Cities Coalition	Minnesota Cities Coalition
Minnesota Telecom Alliance	Minnesota Telecom Alliance
Mobilitie, LLC	Mobilitie
Montgomery County, Maryland	Montgomery County
Multicultural Media, Telecom and Internet Council (MMTC), League of United Latin American Citizens (LULAC), Hispanic Technology and Telecommunications Partnership (HTTP), National Black Caucus of State Legislators (NBCSL), National Foundation for Women Legislators (NFWL), National Organization of Black Elected Legislative Women (NOBEL Women), National Organization of Black County Officials (NOBCO), National Association of Black County Officials (NABCO)	Multicultural Media et al.

National Association of Regulatory Utility Commissioners	NARUC
National Association of State Utility Consumer Advocates, Ohio Consumers Counsel, New Jersey Division of Rate Counsel, Maine Office of the Public Advocate, Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, The Utility Reform Network	NASUCA et al.
National League of Cities	National League of Cities
National Rural Electric Cooperative Association	NRECA
NATOA	NATOA
NCTA - The Internet & Television Association	NCTA
Next Century Cities	Next Century Cities
NTCA - The Rural Broadband Association	NTCA
ONE Media, LLC	ONE Media
Oregon Telecommunications Association	Oregon Telecom Ass'n
Pat Furey (City of Torrance)	City of Torrance
Pennsylvania Public Utility Commission	Pennsylvania PUC
Power and Communication Contractors Association	PCCA
Public Knowledge	Public Knowledge
Public Utilities Commission of Ohio	Ohio PUC
Puget Sound Energy	Puget Sound Energy
R Street Institute	R Street Inst.
San Diego County	San Diego County
Smart Communities and Special Districts Coalition	Smart Communities et al.
Southern Company Services, Inc.	Southern Co. Servs.
Southern Light, LLC, Uniti Group Inc.	Southern Light & Uniti Group
Sprint	Sprint
Tekify Fiber	Tekify Fiber
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Communication Service for the Deaf, Inc. (CSD), Hearing Loss Association of America (HLAA), Cerebral Palsy and Deaf Organization (CPADO), Deaf Seniors of America (DSA), Association of Late-Deafened Adults (ALDA), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC), Gallaudet University, Trace Research & Development Center	Consumer Groups and RERCs
Texas Public Utilities Commission	Texas PUC
The American Public Power Association	APPA
The Greenlining Institute	Greenlining Insiutute
The National Organization of Black Elected Legislative Women	NOBEL Women
Thomas A. Schatz (Citizens Against Government Waste	CAGW
T-Mobile USA, Inc.	T-Mobile
USTelecom Association	USTelecom
Utilities Technology Council	UTC
Various Oregon Electric Utilities	Oregon Elec. Utils.
Verizon[1]	Verizon
Washington Independent Telecommunications Association	WITA

[1] Verizon filed two separate sets of comments on the same date in this docket, one of which was also filed in WT Docket No. 17-79. All references to Verizon Comments in the Order are to the comments filed solely in this docket.

Washington State Cities Coalition	Washing State Cities
Wei Shen	Wei Shen
Windstream	Windstream
Wireless Infrastructure Association	WIA
Wireless Internet Service Providers Association	WISPA
WTA - Advocates for Rural Broadband	WTA

Replies	**Abbreviation**
AARP	AARP
Ad Hoc Telecom Users Committee	AdHoc
African American Mayors Association	African American Mayors Ass’n
Alarm Industry Communications Committee	AICC
Alliant Energy Corporation, WEC Energy Group, Inc., Xcel Energy Services Inc.	Alliant et al.
Alliant Energy Corporation, Xcel Energy Services Inc.	Alliant & Xcel
Ameren Corporation, American Electric Power Service Corporation, Duke Energy Corporation, Entergy Corporation, Oncor Electric Delivery Company LLC, Southern Company, Tampa Electric Company	Ameren et al.
American Cable Association	American Cable Ass’n
American Public Power Association	APPA
Association of American Railroads	Ass’n of American Railroads
AT&T Services, Inc.[2]	AT&T
Austin Martinetti	Austin Martinetti
Betty Ann Kane, Chairman, DC Public Service Commission	DC PSC
BT Americas, Inc.	BT Americas
Catherine Kleiber	Catherine Kleiber
CenterPoint Energy Houston Electric, LLC; Florida Power & Light Company; Virginia Electric and Power Company d/b/a Dominion Energy Virginia	POWER Coalition
CenturyLink	CenturyLink
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee	City of San Antonio et al.
City and County of San Francisco	City of San Francisco
City of Baltimore, Maryland	City of Baltimore
City of Mukilteo	City of Mukilteo
City of New York	City of New York
City of Philadelphia	City of Philadelphia
Coalition of Concerned Utilities	Coalition of Concerned Utilities
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), Colorado Municipal League (CML)	CCUA et al.
Comcast Corporation	Comcast

[2] AT&T filed two separate sets of reply comments on the same date in this docket, one of which was also filed in WT Docket No. 17-79. All references to AT&T Reply Comments in the Order are to the comments filed solely in this docket.

Communications Workers of America	CWA
Competitive Carriers Association	CCA
Conterra Broadband Services; Southern Light, LLC; Uniti Group Inc.	Competitive Fiber Providers
CPS Energy	CPS Energy
Crown Castle International Corp.	Crown Castle
CTIA	CTIA
Dan Kleiber	Dan Kleiber
Deloitte LLP	Deloitte
Edison Electric Institute	Edison Electric
Environmental Health Trust	Environmental Health Trust
ExteNet Systems, Inc.	ExteNet
Fiber Broadband Association	Fiber Broadband Ass'n
Florida Coalition of Local Governments[3]	Florida Coalition
Frontier Communications	Frontier
Google Fiber, Inc.	Google Fiber
Helen Mickiewicz	Helen Mickiewicz
Illinois Electric Cooperative	Illinois Electric
Intelliwave LLC	Intelliwave
Irregulators	Irregulators
Jennifer Wood	Jennifer Wood
Karen Spencer	Karen Spencer
League of Arizona Cities and Towns, League of California Cities, League of Oregon Cities	League of Arizona Cities et al.
Loudoun County, Virginia	Loudoun County
Lumos Networks Inc., Lumos Networks of West Virginia Inc., Lumos Networks LLC	Lumos
MACTA – The Minnesota Association of Community Telecommunications Administrators	MACTA
Metropolitan Area Communications Commission	MACC
National Association of Regulatory Utility Commissioners	NARUC
National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of People's Counsel, New Jersey Division of Rate Counsel, Office of the Ohio Consumer's Counsel, Pennsylvania Office of Consumer Advocate, The Utility Reform Network	NASUCA et al.
National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Towns and Townships, National Association of Regional Councils, United States Conference of Mayors, Government Finance Officers Association	NATOA et al.
NRECA - National Rural Electric Cooperative Association	NRECA
NCTA - The Internet & Television Association	NCTA
Office of the Illinois Attorney General- Lisa Madigan	Illinois Att'y General
Olemara Peters	Olemara Peters
PD Thomas	PD Thomas
Public Knowledge	Public Knowledge
Puerto Rico Telephone Company, Inc., D/B/A Claro	Puerto Rico Telephone

[3]

Quintillion Networks, LLC, Quintillion Subsea Operations, LLC	Quintillion
Rebecca Carol Smith	Rebecca Carol Smith
Smart Communities and Special Districts Coalition	Smart Communities et al.
Soula Culver	Soula Culver
Steven D. Hughey, Michigan Public Service Commission	Michigan PSC
Sue Present	Sue Present
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Hearing Loss Association of America (HLAA), National Association of the Deaf (NAD), Cerebral Palsy and Deaf Organization (CPADO), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC), Gallaudet University, Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC), Trace Research & Development Center	Consumer Groups and RERCs
The Greenlining Institute	Greenlining Institute
T-Mobile USA, Inc.	T-Mobile
U.S. Chamber of Commerce	U.S. Chamber of Commerce
U.S. Conference of Mayors	U.S. Conference of Mayors
U.S. TelePacific Corp. d/b/a TPx Communications	TelePacific
USTelecom Association	USTelecom
Utilities Technology Council	UTC
Verizon	Verizon
Windstream	Windstream
Wireless Infrastructure Association	WIA
Wireless Internet Service Providers Association	WISPA
Zayo Group, LLC	Zayo

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (*Wireline Infrastructure Notice*) for the wireline infrastructure proceeding.[2] The Commission sought written public comment on the proposals in the *Wireline Infrastructure Notice*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.[3]

A. Need for, and Objectives of, the Rules

2. In the *Wireline Infrastructure Notice*, the Commission proposed to remove regulatory barriers to infrastructure investment at the federal, state, and local level; suggested changes to speed the transition from copper networks and legacy services to next-generation networks and services; and proposed to reform Commission regulations that increase costs and slow broadband deployment.[4] In so doing, the Commission sought to better enable broadband providers to build, maintain, and upgrade their networks, leading to more affordable and available Internet access and other broadband services for consumers and businesses alike.[5]

3. Pursuant to these objectives, this Order adopts changes to Commission rules regarding pole attachments, network change notifications, and section 214 discontinuance procedures. The Order adopts changes to the current pole attachment rules that: (1) codify the elimination from the pole attachment rate formulas those capital costs that already have been paid to the utility via make-ready charges, (2) establish a 180-day shot clock for Enforcement Bureau resolution of pole access complaints, and (3) allow incumbent LECs to request nondiscriminatory pole access from other LECs that own or control poles, ducts, conduits, or rights-of-way.[6] The modifications to our pole attachment rules we adopt today will reduce costs for attachers, reform the pole access complaint procedures to settle access disputes more swiftly, and increase access to infrastructure for certain types of broadband providers. The Order also adopts changes to the Commission's part 51 network change notification rules to expedite the copper retirement process and to more generally reduce regulatory burdens to facilitate more rapid deployment of next-generation networks.[7] Finally, the Order adopts rule changes to the section 214(a) discontinuance process that streamline the review and approval process for three types of section 214(a) discontinuance applications, including applications to: (i) grandfather low-speed legacy voice and data services; (ii) discontinue previously grandfathered low-speed legacy data services; and (iii) discontinue low-speed services with no customers.[8] The Order also clarifies that solely wholesale services are not subject to

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

[2] *Acceleration Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Wireline Infrastructure Notice*).

[3] *See* 5 U.S.C. § 604.

[4] *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3267, paras. 1-2.

[5] *See id*.

[6] *See supra* Section III.A.

[7] *See supra* Section III.B.

[8] *See supra* Sections III.C.1-3.

discontinuance approval obligations under the Act or our rules.[9] These rules will eliminate unnecessary regulatory process encumbrances when carriers decide to cease offering legacy services that are rapidly and abundantly being replaced with more innovative alternatives, speeding the transition to next-generation network infrastructure and services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Wireline Infrastructure Notice*.[10] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[11] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[12] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[13]

7. The majority of our changes will affect obligations on incumbent LECs and, in some cases, competitive LECs. Certain pole attachment rules also affect obligations on utilities that own poles, telecommunications carriers and cable television systems that seek to attach equipment to utility poles, and other LECs that own poles.[14] Other entities that choose to object to network change notifications for copper retirement or section 214 discontinuance applications may be economically impacted by the rules in the Order.

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.[15] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is

[9] *See supra* Section III.C.4.

[10] *See* 5 U.S.C. § 604(a)(4).

[11] *See* 5 U.S.C. § 601(6).

[12] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[13] *See* 15 U.S.C. § 632.

[14] The definitions of utility and telecommunications carrier for purposes of our pole attachment rules are found in 47 U.S.C. § 224(a)(1) and (a)(5), respectively.

[15] *See* 5 U.S.C. § 601(3)-(6).

an independent business having fewer than 500 employees.[16] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[17]

9. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[18] Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).[19]

10. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[20] U.S. Census Bureau data from the 2012 Census of Governments[21] indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[22] Of this number there were 37, 132 General purpose governments (county[23], municipal and town or township[24]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[25] and special

[16] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

[17] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small business are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[18] 5 U.S.C. § 601(4).

[19] Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. *See* http://nccsweb.urban.org/tablewiz/bmf.php where the report showing this data can be generated by selecting the following data fields: Show: "Registered Nonprofit Organizations"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

[20] 5 U.S.C. § 601(5).

[21] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Program Description Census of Government *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#*.

[22] *See* U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

[23] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

[24] *See* U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[25] *See* U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. There were 12,184 independent school districts with enrollment populations less than 50,000.

districts[26]) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.[27] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[28]

11. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[29] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[30] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[31] Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[32] Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[33] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

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[26] *See* U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01. The U.S. Census Bureau data did not provide a population breakout for special district governments.

[27] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

[28] *Id.*

[29] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Categories," http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[30] *See* 13 CFR § 120.201, NAICS Code 517110.

[31] 2012 U.S. Economic Census, NAICS Code 517110, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[32] *See* 13 CFR § 120.201, NAICS Code 517110.

[33] 2012 U.S. Economic Census, NAICS Code 517110, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

13. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[34] According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[35] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[36] Of this total, an estimated 1,006 have 1,500 or fewer employees.[37]

14. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[38] Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[39] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[40] In addition, 72 carriers have reported that they are Other Local Service Providers.[41] Of this total, 70 have 1,500 or fewer employees.[42] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[43] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of

[34] *See* 13 CFR § 120.201, NAICS Code 517110.

[35] 2012 U.S. Economic Census, NAICS Code 517110, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[36] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at 5-5, Tbl. 5.3 (2010), (*Trends in Telephone Service*).

[37] *Id*.

[38] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[39] *See* Trends in Telephone Service at 5-5, Tbl. 5.3.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] 13 CFR § 121.201, NAICS code 517110.

interexchange services.[44] Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[45] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[46] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[47] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[48] Of these, an estimated 279 have 1,500 or fewer employees.[49] Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

17. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[50] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.[51] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[52] Of this total, an estimated 261 have 1,500 or fewer employees.[53] Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[54] Industry data

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[44] *See* Trends in Telephone Service at 5-5, Tbl. 5.3.

[45] *Id*.

[46] 13 CFR § 121.201, NAICS code 517110.

[47] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[48] *See* Trends in Telephone Service at 5-5, Tbl. 5.3.

[49] *Id*.

[50] NAICS Code 517210. *See* https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#.

[51] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[52] *See* Trends in Telephone Service at 5-5, Tbl. 5.3.

[53] *Id*.

[54] 47 CFR § 76.901(e)

indicate that there are currently 4,600 active cable systems in the United States.[55] Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.[56] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[57] Current Commission records show 4,600 cable systems nationwide.[58] Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[59] Thus, under this standard as well, we estimate that most cable systems are small entities.

19. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.[60] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[61] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[62] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[63] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. *All Other Telecommunications.* "All Other Telecommunications" is defined as follows: "This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station

[55] Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See* www.fcc.gov/coals.

[56] *See* SNL KAGAN at https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8 (subscription required).

[57] 47 CFR § 76.901(c).

[58] Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See* www.fcc.gov/coals.

[59] *Id*.

[60] *Assessment and Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, 31 FCC Rcd 5757, Appendix E para. 23 (2016) (citing Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009).

[61] 47 CFR § 76.901(f).

[62] *Assessment & Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd 5757, Appendix E para. 23 (2016).

[63] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry."[64] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[65] For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million.[66] Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

21. *Electric Power Generation, Transmission and Distribution*. The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."[67] This category includes electric power distribution, hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business.[68] According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.[69]

22. *Natural Gas Distribution.* This economic census category comprises: "(1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers."[70] The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees.[71] According to Census Bureau data for 2012, there were 422

[64] https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6.

[65] 13 CFR § 121.201; NAICS Code 517919.

[66] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ1, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table.

[67] U.S. Census Bureau, 2017 NAICS Definitions, "2211 Electric Power Generation, Transmission and Distribution," https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

[68] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, "Sector 22 - Utilities" at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

[69] U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012," NAICS codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 22112,221121, (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

[70] U.S. Census Bureau, 2017 NAICS Definitions, "221210 Natural Gas Distribution," https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf .

[71] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, "Sector 22 - Utilities" at 5 (2016),

(continued….)

firms in this category that operated for the entire year.[72] Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational.[73] Thus, the majority of firms in this category can be considered small.

23. *Water Supply and Irrigation Systems*. This economic census category "comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses."[74] The SBA has developed a small business size standard for this industry, which is all such firms having $27.5 million or less in annual receipts.[75] According to Census Bureau data for 2012, there were 3,261 firms in this category that operated for the entire year.[76] Of this total, 3,035 firms had annual sales of less than $25 million[77] Thus, the majority of firms in this category can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. *Pole Attachment Reforms.* The Order adopts the *Wireline Infrastructure Notice*'s proposal to amend section 1.1409(c) of our rules to exclude capital expenses already recovered via non-recurring make-ready fees from recurring pole attachment rates. It also establishes a 180-day "shot clock" for Enforcement Bureau resolution of pole access complaints filed under section 1.1409 of our rules. Finally, the Order interprets sections 224 and 251(b)(4) of the Act in harmony to create a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, are guaranteed access to poles owned or controlled by competitive LECs and *vice versa*, subject to the rates, terms, and conditions for pole attachments described in section 224.

25. *Network Change Notifications*. The Order adopts changes to the Commission's part 51 network change notification rules to expedite the copper retirement process and to more generally reduce regulatory burdens to facilitate more rapid deployment of next-generation networks. First, the Order finds that section 51.325(c)'s prohibition on incumbent LECs communicating with other entities about planned network changes prior to giving the requisite public notice of those changes pursuant to the Commission's rules impedes incumbent LECs' ability to freely communicate, engage, and coordinate with the parties that will ultimately be affected by those changes. The Order thus eliminates this prohibition. Second, the Order finds that the rules adopted by the Commission in 2015 governing the copper retirement notice

(Continued from previous page)
https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

[72] U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012," NAICS code 2212 (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

[73] *Id*.

[74] U.S. Census Bureau, 2017 NAICS Definitions, "221310 Water Supply and Irrigation Systems," https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

[75] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, "Sector 22 - Utilities" at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

[76] U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012," NAICS code 221310 (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

[77] U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the U.S.: 2012," NAICS code 221310 (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

process imposed far-reaching and burdensome notice obligations on incumbent LECs that frustrate their efforts to modernize their networks. The Order revises these rules and returns to the Commission's longstanding balance to help carriers get more modern networks to more Americans at lower costs.

26. Specifically, the Order: (1) eliminates *de facto* retirement from the definition of copper retirement; (2) reduces the scope of direct notice by eliminating notice to retail customers and government entities, and returning to direct notice to directly interconnecting "telephone exchange service providers" rather than all directly interconnected "entities"; (3) replaces the detailed certification requirements with a generally-applicable certificate of service; (4) eliminates the requirement that copper retirement notices include "a description of any changes in prices, terms, or conditions that will accompany the planned changes"; (5) reduces the waiting period from 180 days to 90 days generally but to 15 days where the copper being retired is not used to provision service to any customers; (6) reinstates the pre-2015 objection procedures and eliminates the good faith communication requirement; (7) reinstates the pre-2015 objection resolution "deemed denied" provision; and (8) precludes the need to seek a waiver as a result of situations beyond an incumbent LEC's control by adopting flexible "*force majeure*" provisions.

27. *Section 214(a) Discontinuances*. The Order adopts the *Wireline Infrastructure Notice*'s proposal to streamline the approval process for discontinuance applications to grandfather low-speed (i.e., below 1.544 Mbps) legacy voice and data services for existing customers, and applies a uniform reduced public comment period of 10 days and an automatic grant period of 25 days for all carriers making such applications to the Commission. The Order also adopts the *Wireline Infrastructure Notice*'s proposal to streamline the discontinuance process for applications seeking authorization to discontinue legacy data services below 1.544 Mbps that have previously been grandfathered for a period of at least 180 days, and applies a uniform reduced public comment period of 10 days and an auto-grant period of 31 days to all such applications. Discontinuing carriers that wish to avail themselves of this streamlined process may do so by including a simple certification that they have received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. This certification must reference the file number of the prior Commission authorization to grandfather the services the carrier now seeks to permanently discontinue. The Order also adopts the *Wireline Infrastructure Notice*'s proposal to streamline the discontinuance process for services that have no customers or have had no requests for the service for a period of time. For low-speed legacy services, the Order therefore reduces the period within which a carrier has had no customers or no requests for the service to be eligible for streamlining from the prior 180 days to 30 days, and further reduces the auto-grant period to 15 days. Finally, the Order clarifies that a carrier must consider only its own end-user customers when determining whether it must seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

28. In this Order, the Commission modifies its pole attachment rules to reduce costs for attachers, reform the pole access complaint procedures to settle access disputes more swiftly, and increase access to infrastructure for certain types of broadband providers. It also relaxes or removes regulatory requirements on carriers seeking to replace legacy network infrastructure and legacy services with advanced broadband networks and innovative new services. Overall, we believe the actions in this document will reduce burdens on the affected carriers, including any small entities.

29. *Pole Attachments*. The Order found that codifying the exclusion of capital expenses already recovered via make-ready fees from recurring pole attachment rates would help eliminate any confusion regarding the treatment of capital expenses already recovered by a utility via make-ready fees. As detailed in the Order, the Commission considered arguments that it is unnecessary to codify this exclusion. However, the Order determined that this exclusion will enhance the deployment of broadband services to the extent that codifying the exclusion will keep recurring pole attachment rates low and uniform for attachers. The Order also found broad support in the record for establishing a 180-day shot

clock for resolving pole access complaints, finding that establishment of such a shot clock could expedite broadband deployment by resolving pole attachment access disputes in a quicker fashion. As described in the Order, the Commission considered, but rejected, arguments opposing a shot-clock, as well as those requesting a shorter shot clock. Finally, the Order found it reasonable to interpret sections 224 and 251(b)(4) of the Act in harmony to create a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, are guaranteed access to poles owned or controlled by competitive LECs and *vice versa*, subject to the rates, terms, and conditions for pole attachments described in section 224. In making this finding, the Order evaluated arguments that this interpretation will discourage deployment or create additional burdens for competitive LECs. However, the Order found that the disparate treatment of incumbent LECs and competitive LECs prevents incumbent LECs from gaining access to competitive LEC-controlled infrastructure and in doing so dampens the incentives for all LECs to build and deploy the infrastructure necessary for advanced communications services.

30. *Network Change Notifications*. First, for rules pertaining to network changes generally, the Order eliminates the prohibition on incumbent LEC disclosures regarding potential network changes prior to public notice of those changes, but retains the procedures for objecting to short-term notices of network changes. In adopting this change, the Order considered, but rejected, suggestions that the Commission should require incumbent LECs to provide notice of network changes to all interconnecting entities before providing public notice, and arguments that competing service providers might use the objection process to unwarrantedly delay a network change. Second, recognizing the uniqueness of copper retirements, the Order retains the distinction between copper retirements and other types of planned network changes. In making this determination, the Commission evaluated, but discounted, arguments that copper retirements require no special treatment as compared to other types of network changes. Third, the Order reduces the regulatory burdens associated with the copper retirement notice process by (i) narrowing the definition of copper retirement, (ii) reducing the scope of recipients and the required content of direct notice, and (iii) reducing the waiting period before an incumbent LEC can implement a planned copper retirement while reinstating the objection and associated resolution procedures previously applicable to copper retirement notices. As explained in the Order, the Commission considered arguments against these rule changes but found that our rules will afford sufficient time to accommodate planned changes and address parties' needs for adequate information and consumer protection. Finally, the Order adopts streamlined copper retirement notice procedures related to *force majeure* events. In adopting these rules, the Commission considered, but rejected, alternative solutions, including arguments that the Commission should proceed solely via waiver in this context.

31. *Section 214(a) Discontinuance Process*. The Order streamlines the review and approval process for three types of Section 214(a) discontinuance applications, those that: (i) grandfather low-speed legacy voice and data services; (ii) discontinue previously grandfathered low-speed legacy data services; and (iii) discontinue low-speed legacy services with no customers. The Order streamlines the approval process for discontinuance applications to grandfather low-speed legacy services by adopting a uniform reduced public comment period of 10 days and an automatic grant period of 25 days for all carriers seeking to grandfather legacy low-speed services for existing customers. For applications seeking authorization to discontinue legacy data services below 1.544 Mbps that have previously been grandfathered for a period of at least 180 days, the Order applies a uniform reduced public comment period of 10 days and an auto-grant period of 31 days to all such applications. For applications to discontinue low-speed legacy voice and data services below 1.544 Mbps for which the carrier has had no customers and no request for service for at least a 30-day period prior to filing, the Order adopts a 15-day auto-grant period. In adopting these rules, the Order evaluated alternative approaches, and found that the adopted streamlining rules strike the appropriate balance to provide relief to carriers who wish to transition away from the provision of legacy services for which there is rapidly decreasing demand, while at the same time ensuring that potential consumers of these services have readily available alternatives. Finally, the Order clarifies that a carrier need not seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act when a change in service directly affects

only carrier-customers. In adopting this clarification, the Commission noted that in many circumstances the carrier-customer will be able to obtain wholesale service from another source without causing a disruption of service for the end user, and found that this less burdensome approach better conforms with the text of the Act and Commission precedent. The Order therefore rejects arguments that the Commission should retain the 2015 interpretation predicated on the view that as a practical matter, if a carrier discontinues wholesale service to a carrier-customer, that carrier-customer may be unable to obtain wholesale service from another provider and may have no choice but to discontinue service to its end users, resulting in a downstream discontinuance of retail service.

G. Report to Congress

32. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[78] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.[79]

[78] *See* 5 U.S.C. § 801(a)(1)(A).

[79] *See* 5 U.S.C. § 604(b).

APPENDIX E

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[606] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies on which the Commission seeks comment in this Further Notice of Proposed Rule Making (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 133 of this Notice. The Commission will send a copy of this Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[607] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[608]

A. Need for, and Objectives of, the Proposed Rules

2. The Further Notice proposes to adopt streamlined treatment for all carriers seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area.[609] It proposes to adopt a uniform reduced public comment period of 10 days and an auto-grant period of 25 days, and require that such services be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services.[610] The Further Notice also seeks comment on whether applications to discontinue higher-speed grandfathered data services should be subject to a streamlined 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authorization to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application.[611] The Further Notice also seeks comment on the appropriate utility treatment of requests by attachers to: (1) overlash new wires and cables onto existing wires and cables already on a utility pole; or (2) connect service from an attacher's facilities on an existing utility pole directly to a customer location (also known as a drop). The Further Notice asks whether the Commission should codify or better explain its policies with regard to this type of pole work in order to spur broadband deployment.[612] The Further Notice also seeks comment on a variety of recommendations for additional reforms to the Commission's network change disclosure rules and the section 214(a) discontinuance authorization process. First, the Further Notice seeks comment on a proposal to revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice.[613] Second, the Further Notice seeks comment on a proposal to eliminate the requirement that incumbent LECs provide public notice of network changes affecting the

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[606] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[607] *See* 5 U.S.C. § 603(a).

[608] *See id.*

[609] *See supra* Section III.A.

[610] *See supra* Section III.A.

[611] *See supra* Section III.A.

[612] *See supra* Section III.B.

[613] *See supra* Section III.C.

interoperability of customer premises equipment.[614] Third, the Further Notice seeks comment on extending the streamlined notice procedures applicable to *force majeure* and other unforeseen events adopted in today's Order for copper retirements to all types of network changes.[615] Fourth, the Further Notice seeks comment on whether we should forbear from requiring compliance with the discontinuance requirements of section 214(a) in all instances where a carrier seeks to discontinue, reduce, or impair services with no existing customers.[616] Alternatively, the Further Notice seeks comment on whether we should further streamline the discontinuance process for all "no customer" applications, regardless of the speed of the services being discontinued.[617] Fifth, the Further Notice seeks comment on ways to further streamline the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon's proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area.[618] We also seek comment on Verizon's request that we forbear from applying section 214(a)'s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services.[619] Sixth, the Further Notice seeks comment on whether we should eliminate the outreach requirements adopted by the Commission in the *2016 Technology Transitions Order*.[620] Lastly, in light of the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria, we seek comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.[621]

B. Legal Basis

3. The proposed action is authorized under sections 1-4, 201, 202, 214, 224, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 201, 202, 214, 224, 251, and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposals on which the Further Notice seeks comment, if adopted.[622] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[623] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[624] A "small-business concern" is one which: (1) is independently owned and

[614] *See supra* Section III.D.

[615] *See supra* Section III.E.

[616] *See supra* Section III.F.

[617] *See supra* Section III.F.

[618] *See supra* Section III.G.

[619] *See supra* Section III.G.

[620] *See supra* Section III.H.

[621] *See supra* Section III.I.

[622] *See* 5 U.S.C. § 603(b)(3).

[623] *See* 5 U.S.C. § 601(6).

operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[625]

5. The majority of the proposals on which we seek comment in the Further Notice will affect obligations on incumbent LECs and, in some cases, competitive LECs, and telecommunications carriers.[626] Our actions, over time, may affect small entities that are not easily categorized at present. Other entities, however, that choose to object to network change notifications for copper retirement under the proposals on which we seek comment and section 214 discontinuance applications may be economically impacted by the proposals in this Further Notice.

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.[627] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[628] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[629]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[630] Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).[631]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[632] U.S. Census Bureau data from the 2012 Census

(Continued from previous page)
[624] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[625] *See* 15 U.S.C. § 632.

[626] The definition of telecommunications carrier for purposes of our pole attachment rules is found in 47 U.S.C. § 224(a)(5).

[627] *See* 5 U.S.C. § 601(3)-(6).

[628] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

[629] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small business are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[630] 5 U.S.C. § 601(4).

[631] Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. *See* http://nccsweb.urban.org/tablewiz/bmf.php where the report showing this data can be generated by selecting the following data fields: Show: "Registered Nonprofit Organizations"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

[632] 5 U.S.C. § 601(5).

of Governments[633] indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[634] Of this number there were 37, 132 General purpose governments (county[635], municipal and town or township[636]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[637] and special districts[638]) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.[639] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[640]

9. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities

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[633] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Program Description Census of Government *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#*.

[634] *See* U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

[635] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

[636] *See* U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[637] *See* U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. There were 12,184 independent school districts with enrollment populations less than 50,000.

[638] *See* U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01. The U.S. Census Bureau data did not provide a population breakout for special district governments.

[639] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

[640] *Id.*

and infrastructure that they operate are included in this industry."[641] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[642] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[643] Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 12 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[644] Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[645] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

11. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 13 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[646] According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[647] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[648] Of this total, an estimated 1,006 have 1,500 or fewer employees.[649]

12. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 12 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated

[641] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Categories," http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[642] *See* 13 CFR § 120.201, NAICS Code 517110.

[643] 2012 U.S. Economic Census, NAICS Code 517110, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[644] *See* 13 CFR § 120.201, NAICS Code 517110.

[645] 2012 U.S. Economic Census, NAICS Code 517110, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[646] *See* 13 CFR § 120.201, NAICS Code 517110.

[647] 2012 U.S. Economic Census, NAICS Code 517110, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[648] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at 5-5, Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[649] *Id*.

with fewer than 1,000 employees.[650] Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[651] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[652] In addition, 72 carriers have reported that they are Other Local Service Providers.[653] Of this total, 70 have 1,500 or fewer employees.[654] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

13. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 13 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[655] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[656] Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[657] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

14. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 13 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[658] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[659] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[660] Of these, an estimated 279 have 1,500 or fewer employees.[661] Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

[650] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[651] *See Trends in Telephone Service*, at 5-5, Tbl. 5.3.

[652] *Id*.

[653] *Id*.

[654] *Id*.

[655] 13 CFR § 121.201, NAICS code 517110.

[656] *See Trends in Telephone Service*, at 5-5, Tbl. 5.3.

[657] *Id*.

[658] 13 CFR § 121.201, NAICS code 517110.

[659] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[660] *See Trends in Telephone Service*, at 5-5, Tbl. 5.3.

[661] *Id*.

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[662] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.[663] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[664] Of this total, an estimated 261 have 1,500 or fewer employees.[665] Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[666] Industry data indicate that there are currently 4,600 active cable systems in the United States.[667] Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.[668] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[669] Current Commission records show 4,600 cable systems nationwide.[670] Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[671] Thus, under this standard as well, we estimate that most cable systems are small entities.

17. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate

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[662] NAICS Code 517210. *See* https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#.

[663] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[664] *See Trends in Telephone Service*, at 5-5, Tbl. 5.3.

[665] *Id*.

[666] 47 CFR § 76.901(e)

[667] Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See* www.fcc.gov/coals.

[668] *See* SNL KAGAN at https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8 (subscription required).

[669] 47 CFR § 76.901(c).

[670] [670] Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See* www.fcc.gov/coals.

[671] *Id*.

exceed $250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.[672] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[673] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[674] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[675] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

18. *All Other Telecommunications.* "All Other Telecommunications" is defined as follows: "This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry."[676] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[677] For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million.[678] Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

19. *Electric Power Generation, Transmission and Distribution*. The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."[679] This category includes electric power distribution,

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[672] *Assessment and Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, 31 FCC Rcd 5757, Appendix E para. 23 (2016) (citing Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009).

[673] 47 CFR § 76.901(f).

[674] *Assessment & Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd 5757, Appendix E para. 23 (2016).

[675] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

[676] https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6.

[677] 13 CFR § 121.201; NAICS Code 517919.

[678] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ1, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table.

[679] U.S. Census Bureau, 2017 NAICS Definitions, "2211 Electric Power Generation, Transmission and Distribution," https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business.[680] According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.[681]

20. *Natural Gas Distribution.* This economic census category comprises: "(1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers."[682] The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees.[683] According to Census Bureau data for 2012, there were 422 firms in this category that operated for the entire year.[684] Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational.[685] Thus, the majority of firms in this category can be considered small.

21. *Water Supply and Irrigation Systems*. This economic census category "comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses."[686] The SBA has developed a small business size standard for this industry, which is all such firms having $27.5 million or less in annual receipts.[687] According to Census Bureau data for 2012, there were 3,261 firms in this category that operated for the entire year.[688] Of this total, 3,035 firms had annual sales of less than $25 million[689]

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680 U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, "Sector 22 - Utilities" at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

681 U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012," NAICS codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 22112,221121, (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

682 U.S. Census Bureau, 2017 NAICS Definitions, "221210 Natural Gas Distribution," https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf .

683 U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, "Sector 22 - Utilities" at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

684 U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012," NAICS code 2212 (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

685 *Id*.

686 U.S. Census Bureau, 2017 NAICS Definitions, "221310 Water Supply and Irrigation Systems," https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

687 U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, "Sector 22 - Utilities" at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

688 U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012," NAICS code 221310 (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

689 U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the U.S.: 2012," NAICS code 221310 (issued March 2016), https://www.census.gov/data/tables/2012/econ/census/utilities.html.

Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. The Further Notice seeks comment on a number of proposals that would affect reporting, recordkeeping, and other compliance requirements. We would expect the proposals on which the Further Notice seeks comment to reduce reporting, recordkeeping, and other compliance requirements. The proposals taken as a whole would have a beneficial reporting, recordkeeping, or compliance impact on small entities because all carriers would be subject to fewer such burdens. Each of these changes is described below.

23. The Further Notice proposes to adopt a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area. Under this proposal, such services must be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. We seek comment on these proposals, and on whether applications to discontinue these higher-speed data services after they have been grandfathered for a period of at least 180 days should be subject to a streamlined 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authorization to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. The Further Notice seeks comment on the appropriate regulatory treatment (if any) for pole work that is not subject to the standard Commission pole attachment timeline (e.g., overlashing, drops), including whether to require prior written notice to utilities when attachers attempt such work.

24. The Further Notice also seeks comment on a variety of recommendations for additional reforms to the Commission's network change disclosure rules and the section 214(a) discontinuance authorization process. First, the Further Notice seeks comment on a proposal to revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice. Second, the Further Notice seeks comment on a proposal to eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. Third, the Further Notice seeks comment on extending the streamlined notice procedures applicable to *force majeure* and other unforeseen events adopted in today's Order for copper retirements to all types of network changes. Fourth, the Further Notice seeks comment on whether we should forbear from requiring compliance with the discontinuance requirements of section 214(a) in all instances where a carrier seeks to discontinue, reduce, or impair services with no existing customers. Alternatively, the Further Notice seeks comment on whether we should further streamline the discontinuance process for all "no customer" applications, regardless of the speed of the services being discontinued. Fifth, the Further Notice seeks comment on ways to further streamline the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon's proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. We also seek comment on Verizon's request that we forbear from applying section 214(a)'s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services. Sixth, the Further Notice seeks comment on whether we should eliminate the outreach requirements adopted by the Commission in the *2016 Technology Transitions Order*. Lastly, in light of the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria, we seek comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[690]

26. In the Further Notice, we propose to adopt a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area. Under this proposal, such services must be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. We seek comment on these proposals, and on whether applications to discontinue these higher-speed data services after they have been grandfathered for a period of at least 180 days should be subject to a streamlined 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authorization to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application.

27. In the Further Notice, we further seek comment on how best to treat pole work that is not subject to our standard required pole attachment timeline. While one of the proposals on which we seek comment would impose a notice burden on attachers before attempting such work, such a burden potentially could be offset by not requiring such work to be pre-approved by the utility pole owner or regulated pursuant to the Commission's standard pole attachment timeline.

28. In the Further Notice, we also seek comment on several proposals to reform the Commission's network change disclosure rules and the section 214(a) discontinuance authorization process. If adopted, many of these proposals would reduce the economic impact on small entities by significantly reducing the reporting, recordkeeping, and additional compliance burdens on such entities. To that end, the Commission seeks comment on proposals to (1) revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice, and (2) eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. The Further Notice also seeks comment extending the streamlined notice procedures applicable to *force majeure* and other unforeseen events adopted in today's Order for copper retirements to all types of network changes. In addition, the Further Notice seeks comment on whether we should forbear from requiring compliance with the discontinuance requirements of section 214(a) in all instances where a carrier seeks to discontinue, reduce, or impair services with no existing customers. Alternatively, the Further Notice seeks comment on whether we should further streamline the discontinuance process for all "no customer" applications, regardless of the speed of the services being discontinued. The Further Notice also seeks comment on ways to further streamline the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon's proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. Alternatively, we seek comment on Verizon's request that we forbear from applying section 214(a)'s discontinuance requirements to carriers

[690] *See* 5 U.S.C. § 603(c).

seeking to transition from legacy voice services to next-generation replacement services. The Further Notice also seeks comment on whether the Commission should eliminate the outreach requirements adopted by the Commission in the *2016 Technology Transitions Order*. Lastly, in light of the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria, the Further Notice seeks comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

29. The Commission believes that the proposals upon which the Further Notice seeks comment will benefit all carriers, regardless of size. The proposals would further the goal of reducing regulatory burdens, thus facilitating investment in next-generation networks and promoting broadband deployment. We anticipate that a more modernized regulatory scheme will encourage carriers to invest in and deploy even more advanced technologies as they evolve. We also believe that preempting state or local laws that inhibit the restoration of communications infrastructure will help to facilitate swifter and more effective recoveries from natural disasters such as hurricanes.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

30. None.