

November 9, 2017

Chairman Ajit Pai
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Via Fax

Re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84.

Dear Chairman Pai:

We represent a broad range of consumer, rural, elderly, labor, civil and human rights, and low-income organizations. We strongly support Federal Communications Commission (FCC or Commission) policies that accelerate deployment of affordable advanced networks to all Americans while at the same time protecting consumers during and after technology transitions. In recent years, the Commission has adopted common sense Technology Transition rules that carefully balance these important objectives. These rules are working and should be retained in this proceeding.

In the 2014 *Technology Transitions Order*, the Commission unanimously affirmed its obligation to protect and enhance the core statutory and enduring values of public safety, universal access, consumer protection, and competition during and after the transition from legacy copper landline systems to new advanced technologies. At that time, then-Commissioner and now-Chairman Ajit Pai declared his support for policies to ensure that “no consumer [would] lose access to service or critical functionalities” and that all residential and business customers would receive “clear, timely, sufficient notice” of technology transitions.¹

In the 2015 *Copper Retirement Order*, the Commission adopted rules to ensure that consumers, public safety officials, government entities, and competitive carriers would have the information and time they need to prepare for technology change. The Commission required carriers to provide 90-days advance notice to retail customers and 180-days advance notice to wholesale customers of copper retirement, including copper-to-fiber upgrades.²

In the 2016 *Services Discontinuance Order*, the Commission adopted rules to ensure that communities would continue to have access to vital communications service when a carrier

¹ In his statement in support of the 2014 *Technology Transitions Order*, then-Commissioner and now-Chairman Ajit Pai wrote: “[W]e cannot just turn off the PSTN [public switched network] overnight...[N]o one can be left behind – and today, we declare that ‘no consumer [may] lose [] access to service or critical functionalities’ and that residential and business customers must receive ‘clear, timely, and sufficient notice...’” See *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition et al*, Order, Report and Order and Further Notice of Proposed Rulemaking, GN Docket Nos. 13-5 and 12-353 et al., Jan. 31, 2014 (rel) at 111-112 (Statement of Commissioner Ajit Pai) and 3-24, 37-72 (Commission affirmation of four enduring values for technology transition).

² *Technology Transitions, et al, Report and Order*, GN Docket No. 13-5, RM-11358, Aug. 7, 2015 (rel).

makes an application under Section 214 of the Communications Act to “discontinue, reduce, or impair” service to a community. The Commission established reasonable timelines for public comment and review. In addition, the Commission adopted criteria to use in evaluating service discontinuance applications to ensure that every consumer and every community would have access to reliable, quality communications services. Such services include connectivity to health monitors, alarm systems, fax and credit card machines, and equipment for people who are hearing-impaired.³

When the Commission adopted the 2016 *Service Discontinuance* rules, industry, consumers, and labor came together to issue a joint statement of support.⁴

These common sense Technology Transition rules are working. Consumers have the information they need to upgrade to higher-speed broadband networks. As consumers make the transition, carriers are able to re-channel capital and operating expenses into broadband expansion. Verizon, for example, has migrated more than 3.8 million customers from copper to fiber networks in recent years.⁵ In its Technology Trials, AT&T held more than 61 educational meetings in rural Carbon Hill AL and 48 in Delray Beach FL to help consumers transition from legacy to advanced communications services.⁶ State consumer advocates and AARP report that the advance notice requirements provide the time and information consumers need to avoid confusion and make a safe, smooth technology transition.⁷

The Commission should retain these balanced, common sense technology transition rules. There remain 48 million Americans who continue to subscribe to the legacy copper network for essential communications service.⁸ Many reside in rural communities with no alternative for affordable, reliable communications service. Many are elderly consumers or other vulnerable populations. Current rules ensure that telecommunications companies cannot simply abandon

³ *Technology Transitions et al, Declaratory Ruling, Second Report and Order, and Order on Reconsideration*, GN Docket No. 13-5, WC Docket No. 13-3, RM-11358, July 15, 2016 (rel).

⁴ “FCC Adopts Rules for Legacy Phone Network Transition to Ensure an Upgrade for Everyone.” Joint statement of Harold Feld, Public Knowledge; David Young, Verizon; Debbie Goldman, Communications Workers of America; Robert Quinn, AT&T; Jon Banks, USTelecom Association, July 14, 2016 (<https://www.publicknowledge.org/press-release/fcc-adopts-rules-for-legacy-phone-network-transition-to-ensure-an-upgrade-f>).

⁵ Verizon Comments, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comments*, WC Docket No. 17-84, June 15, 2017 at 3, 17 and Smith Declaration at 2 (“*Accelerating Wireline Broadband Deployment*”).

⁶ AARP Comments, *Accelerating Wireline Broadband Deployment*, Docket No. 17-84, June 15, 2017 at v and 20-21.

⁷ We note that the draft FCC *Accelerating Wireline Broadband Deployment Report and Order* released Oct. 26, 2017 in paragraph 45 footnote 154 completely mischaracterizes Maryland Office of People’s Counsel (MD OPC) Comments in this proceeding. While the draft Order cites MD OPC as a source for the erroneous claim that advance notification caused customer confusion, in fact the MD OPC states that the FCC’s copper retirement rules are the very framework on which the most recent wave of large-scale copper retirement in Maryland was built. See Maryland Office of People’s Counsel Comments, *Accelerating Wireline Broadband Deployment*, Docket No. 17-84, June 15, 2017 at 3-6. See also AARP Comments, *Accelerating Wireline Broadband Deployment*, Docket No. 17-84, June 15, 2017 at i-ii; NASUCA Comments, *Accelerating Wireline Broadband Deployment*, Docket No. 17-84, June 15, 2017 at i.

⁸ FCC, *Voice Telephone Services as of June 30, 2016*, April 2017.

service to them without adequate advance notice and ensuring that an adequate replacement service exists.

But the draft *Wireline Broadband Deployment Report and Order*⁹ virtually ignores the detailed comments and reply comments many of us submitted in this proceeding.¹⁰ Instead, the draft Report and Order represents a major step backwards, putting consumers at risk, particularly in rural communities, the elderly, and vulnerable populations.

The draft Wireline Broadband Deployment Report and Order does the following:

- *Eliminates Direct Notice to Retail Customers of Copper Retirement.* The result, as AARP explained to the Commission, will generate customer confusion, place vulnerable communities at risk, and interfere with a smooth technology transition.¹¹
- *Reduces Notice Requirement to Competitive Carriers of Network Changes from 180 to 90 days.* The shortened notification period is insufficient time for competitive providers that use these facilities to serve their customers to establish an alternative means to provide service. Thus, the proposed change puts customers at an increased risk of losing their service provider, including Federal agencies and their ability to continue performing their mission critical functions.
- *Allows “De Facto” Copper Retirement.* Under current rules, carriers that “retire” copper service due to lack of maintenance are required to notify customers. The record in this proceeding clearly shows widespread neglect of legacy networks, particularly in rural communities.¹² The draft Report and Order eliminates the *de facto* retirement rule, giving a green light to carriers to neglect proper repair and maintenance of their copper networks.
- *Downgrades the Definition of Service to a Community.* Under current rules, an incumbent carrier cannot discontinue, reduce, or impair service unless there is a replacement service that is as good as the discontinued service. This is called the Functional Test. The FCC’s Order will now interpret “service” to include a carrier’s tariff. A tariff is a very basic

⁹ On Oct. 26, 2017, the FCC released the draft *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The item is scheduled for Commission vote on Nov. 16, 2017.

¹⁰ See Comments and Reply Comments of CWA; Public Knowledge; AARP; National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, Maryland Office of People’s Counsel, New Jersey Division of Rate Counsel, Office of the Ohio Consumers’ Counsel, Pennsylvania Office of Consumer Advocate, and the Utility Reform Network (“NASUCA Comments”); Pennsylvania Public Utility Commission; California Public Utilities Commission; Public Utilities Commission of Ohio; Letter from The Leadership Conference on Civil and Human Rights, American Civil Liberties Union, Common Cause, CWA, NAACP, National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, OCA – Asian Pacific American Advocates to Ms. Marlene Dortch; Alarm Industry Communications Committee; The Greenlining Institute.

Telecommunications for the Deaf and Hard of Hearing in *Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, June 15, 2017 (comments) and June 17, 2017 (reply comments).

¹¹ AARP Comments, *Accelerating Wireline Broadband Deployment*, WC Docket No. 17-84, June 15, 2017 at v.

¹² CWA Comments, *Accelerating Wireline Broadband Deployment*, WC Docket No. 17-84, June 15, 2017, at 16-23 and Appendices A1-A4; NASUCA Comments at 9 and attached Susan Baldwin Declaration, *Accelerating Wireline Broadband Deployment*, WC Docket No. 17-84, June 15, 2017.

description of what a carrier offers and at what rate. This means the Commission's remaining notice requirements will only apply to basic services, but will not include 911 services, ensure network reliability, or interconnection with devices consumers use such as medical monitors, alarm systems, fax and credit card machines, and equipment for people who are hearing impaired. In some cases, the sound of a dial tone may constitute service under the tariff test and therefore not even trigger a public comment and review.

Contrary to the proceeding's stated purpose, the radical rule changes in the draft Report and Order will make it more difficult to achieve the very goals the Commission aims to achieve. Reducing consumer protections and education during technology transitions could increase copper customers' resistance to change for fear that copper retirement or landline discontinuance will leave them worse off, while allowing carriers to neglect their legacy networks without the incentive to upgrade to fiber.

Replacing the Section 214 discontinuance Functional Test with the "Tariff Test" will result in a downgrade in service for millions of rural Americans. Fire Island NY is a clear example of the dangers that can occur when carriers do not consider how change in service impact a community. Verizon replaced its damaged copper network on Fire Island with a fixed wireless service that did not work with a range of third-party services and couldn't even complete 911 calls, sparking massive consumer, business, and first responder outrage.¹³

Without the Functional Test, carriers could deploy low-quality replacement networks that do not meet the needs of a community. This will particularly hurt rural and low-income communities where it is historically more expensive to deploy.

Next-generation networks will bring countless benefits to everyday Americans, but we must ensure the transition is an upgrade for all of us. The Commission should retain the current Technology Transition rules.

Sincerely,

Communications Workers of America
Public Knowledge
NAACP
The Leadership Conference on Civil and Human Rights
Common Cause
Center for Rural Strategies
Virginia Rural Health Association
California Center for Rural Policy
National Association of State Utility Consumer Advocates
Maryland Office of People's Counsel
The National Consumer Law Center, on behalf of its low-income clients

¹³ See Verizon Second Response to Information, Data, and Document Request, *Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150, Sept. 4, 2013 at 10; CWA Comments, *Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Service*, WC Docket No. 13-50, July 24, 2013 at 9-17.

United Church of Christ, OC Inc.
National Hispanic Media Coalition
Institute for Local Self-Reliance
Kentucky Resources Council
The Utility Reform Network (TURN)
Public Utility Law Project of New York
Appalshop, Inc.
Connecticut Office of Consumer Counsel
OCA - Asian Pacific American Advocates
Access Humboldt
Akaku Maui Community Media

cc: Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel