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

In the Matter of	)	
	)	
Ensuring Customer Premises Equipment Backup Power for Continuity of Communications	)	PS Docket No. 14-174
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers	)	RM-11358
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

COMMENTS AND REPLY OF
NTCA–THE RURAL BROADBAND ASSOCIATION TO
OPPOSITIONS TO PETITION FOR RECONSIDERATION OF
THE UNITED STATES TELECOM ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA") hereby replies to Oppositions and Comments filed in response to the Petition for Reconsideration submitted by the United State Telecom Association ("USTelecom") in the above-referenced proceedings.[1] In its Petition, USTelecom seeks reconsideration of a Declaratory Ruling issued by the Federal Communications Commission (the "Commission") in November 2014 regarding what constitutes a "service" under

[1] Petition for Reconsideration of the United States Telecom Association, PS Docket No. 14-174, *et al*. (filed Dec. 23, 2014) ("Petition").

Section 214 of the Communications Act of 1934, as amended.[2] In particular, USTelecom argues that the definition articulated in the Declaratory Ruling is impermissibly vague and introduces, rather than resolves, confusion or controversy over what constitutes the "discontinuance" of a service.[3] NTCA concurs with USTelecom that the change enacted by the Declaratory Ruling is likely to create more uncertainty and engender more disputes than its resolves. To the extent that the Commission and other stakeholders perceive a generally applicable problem that requires resolution through a changed interpretation of Section 214, a proper rulemaking process should be pursued to consider and ultimately implement any such change. NTCA therefore supports reconsideration of the Declaratory Ruling as requested by USTelecom.

NTCA does not quibble here with the views of those who oppose the Petition as to whether a change of the kind announced by the Declaratory Ruling ultimately has substantive merit. But even assuming *arguendo* there were merit to the Commission's decision and public policy dictates revised interpretations along the lines of that articulated in the Declaratory Ruling, there are substantial concerns both as to the *process* pursuant to which the ruling was released and its *practical consequences*. Both concerns justify reconsideration and the development of a more robust, carefully considered record by which to understand and address the impacts of such a ruling on consumers, on providers, and on technology transitions as a whole.

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[2] *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174; *Technology Transitions*, GN Docket No. 13-5, *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358*; Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25*; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling (rel. Nov 25, 2014) ("Declaratory Ruling").

[3] Petition at 2.

With respect first to process, those supporting the Declaratory Ruling do not and cannot argue that the record has been thoroughly developed with respect to the purported "clarification." For example, even as COMPTEL contends that Section 214 may not have been clear,[4] the only "record" to which COMPTEL or others like Public Knowledge can cite in support of the Commission's purported "clarification" revolves around the narrow "Fire Island" debate involving Verizon and AT&T's proposed wire center "trials."[5] As entities that did not participate in what were two proceedings involving discrete questions specific to two carriers and potentially affected consumers and competitors, NTCA and its members (and a host of others that are neither AT&T or Verizon nor competitors of them) have been unfairly disadvantaged and severely and unlawfully prejudiced by a sweeping Declaratory Ruling that resolves not only any concerns the Commission may have with respect to those two carriers but also applies broadly to the operations of every other common carrier. A rulemaking proceeding – with proper notice, a clear statement of proposals, meaningful opportunity for public review and comment, and more thoughtful analysis of a fully developed record – is the appropriate and lawful platform for consideration and disposition of issues of such broad applicability.

Of even greater concern – and helping to underscore why a thoughtful rulemaking process is more appropriate than a summary decision – the Declaratory Ruling creates new uncertainty and confusion rather than resolving it. The Rural Broadband Policy Group argues, for example, that the ruling "provides certainty for providers" by clarifying when they need to seek Section 214

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4 Opposition of COMPTEL, PS Docket No. 14-174, *et al*. (filed Jan. 23, 2015), at 3.

5 *Id*. at 2-3; Opposition of Public Knowledge, PS Docket No. 14-174, *et al*. (filed Jan. 23, 2015), at 8; *see also* Declaratory Ruling at footnotes 229-235 (citing exclusively to filings involving Verizon's "Fire Island" plans and AT&T's proposed trials).

discontinuance and "provides certainty for consumers" with respect to the services "they have come to expect from their provider."[6] But it does no such thing. Instead, the ruling introduces an ambiguously stated set of "functional test" factors – a "totality of the circumstances" test in the Commission's own words[7] – from which providers must attempt to divine whether a change in underlying technology might arguably equate in some other party's subjective perspective to a discontinuance of service and thereby generate a challenge.

NTCA has argued consistently that core principles of consumer protection, competition, and universal service must be sustained in any technology transition.[8] It has also argued consistently that sensible, well-defined "rules of the road" – rather than complete disregard of regulatory frameworks – are more essential than ever to achieve these objectives and at the same time encourage reasonable technology transitions.[9] NTCA has argued consistently too that technology transitions (*e.g.,* IP "pixie dust") do not in and of themselves alter basic network realities or justify departure from or jettisoning of existing rules and duties of carriers.[10] But what the Commission has done in the Declaratory Ruling, even if a well-intended attempt to protect

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6 Opposition of the Rural Broadband Policy Group, PS Docket No. 14-174, *et al*. (filed Jan. 23, 2015), at 2.

7 Declaratory Ruling, at ¶117.

8 *See, e.g.*, Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353 (filed Nov. 19, 2012), at 6-7, 11.

9 *See, e.g., id*. at 9-10; Comments of NTCA, GN Docket No. 14-28 (filed July 18, 2014), at 4-5.

10 *See, e.g.,* Reply Comments of NTCA and the Western Telecommunications Alliance, GN Docket No. 13-5 (filed Aug. 7, 2013), at 9.

consumers in the midst of technology transitions, is the direct opposite of bright-line rulemaking and clear "rules of the road" that will encourage investment and sensible technology transitions.

If anything, the Declaratory Ruling provides *less* clarity, all but inviting "Monday Morning Quarterbacking" of any technological change within underlying networks and thereby deterring, rather than encouraging, network and service-related updates by providers who fear encountering unforeseen regulatory trip-wires. As just one example, if a rural local exchange carrier deploys fiber-to-the-premise technology and provides IP-enabled voice atop that network but continues to do so as a local exchange service (and offers related exchange access services) subject to the very same state and federal regulations and tariffs as the day before, might that constitute a "discontinuance"? Prior to the Declaratory Ruling, the answer would have unequivocally been no; the answer should remain the very same today. But there is now reasonable concern that the Declaratory Ruling opens the door for future transitions to be held up or questioned after the fact in a way that could chill investment or consume limited resources in a protracted regulatory dispute over whether "discontinuance" has occurred based upon the "totality of the circumstances." Any delay, in turn, could frustrate the ability to obtain and use financing and introduce delay pending regulatory resolution in the deployment of fiber networks, a troubling development across all of rural America and particularly in colder climates where construction seasons are shorter. In this regard, the Declaratory Ruling is poised to create more uncertainty than it terminates and to stymie, rather than promote, technology transitions that work for the benefit of consumers.

The issues the Commission has attempted to confront in the Declaratory Ruling are very important – and very complex. They deserve more careful consideration than a rapid-fire response to the proposals of two larger carriers seeking to take rather unique paths toward technology transitions, and a brighter-line rule is needed to strike a better balance between promoting sensible technology transitions and protecting consumers. The Commission should therefore reconsider its ruling and proceed to consider these very important questions in a more paced and proper manner through notice-and-comment rulemaking.

Respectfully Submitted,

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