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

In the Matter of	)	
	)	
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
of
NTCA – THE RURAL BROADBAND ASSOCIATION,
WTA – ADVOCATES FOR RURAL BROADBAND,
EASTERN RURAL TELECOM ASSOCIATION, and the
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

I. INTRODUCTION

One of the Commission's key goals in this proceeding[1] is to establish clear "rules of the road" regarding the need to apply for regulatory approval under section 214 of the Communications Act of 1934, as amended, (the "Act") when carriers plan to replace existing

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

"legacy" TDM-based telecommunications services with advanced IP-based services. According to the Commission, uncertainty regarding the need to file section 214 discontinuance applications "could potentially impede the industry from actuating a rapid and prompt transition to IP and wireless technology."[2]

Unfortunately, rather than drawing clear lines informing carriers and consumers alike when service discontinuance might be deemed to occur, the Commission's *Report and Order* and its *Order on Reconsideration* in this proceeding have engendered considerable confusion and concern among the rate-of-return regulated local exchange carriers (RLECs) who have upgraded, or are planning to upgrade, their networks from TDM to IP technology. These carriers traditionally have not been involved in filing discontinuance of service applications before the FCC under section 214 of the Act. Yet they now find themselves wondering whether the Commission will second-guess whether network upgrades should have been preceded by the filing of an application for authority to "discontinue" services pursuant to section 214.

The Commission undoubtedly did not intend to create such confusion or to impose an entire new layer of federal telecommunications regulation that could frustrate, rather than promote, advanced technologies. The Rural Associations[3] accordingly suggest in these

---

[2] *Further Notice* ¶ 203.

[3] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. WTA – Advocates for Rural Broadband is a trade association representing more than 280 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities. ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River. NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See*

comments the Commission first clarify, as a bright line rule, that RLECs would rarely, if ever, need to file section 214 applications simply as a result of making network upgrades and broadband deployments that the Commission has encouraged, including associated conversions of local exchange and exchange access services from TDM to IP technology.

To the extent the Commission does adopt a set of criteria for determining whether planned service changes amount to "discontinuance" under section 214 of the Act, it should clarify such criteria are not intended to (and indeed, by law and administrative procedure, cannot) impose any new or additional service obligations on carriers. As discussed below, section 214 of the Act was intended to assure that customers do not experience *reductions* or *impairments* in service as a result of carrier-initiated network changes. Congress did not intend this provision of the Act to be used by the Commission as a vehicle for imposing substantive new regulations or as leverage to require carriers seeking authority to discontinue legacy services to expand or increase alternative service offerings.

II. BACKGROUND

The Commission's *Report and Order* in this proceeding addressed regulatory requirements applicable when incumbent local exchange carriers (ILECs) retire network facilities (particularly copper network plant) or discontinue, impair or reduce certain "legacy" telecommunications services.[4] With respect to copper retirements, the *Report and Order* refrained from imposing new federal approval requirements, but did require ILECs to provide notice to retail customers

---

generally, 47 C.F.R. §§ 69.600 et seq.; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

[4] *Report and Order* ¶ 12.

and interconnecting entities when such retirements remove copper lines to customers' premises.[5] With respect to service discontinuances, the *Report and Order* found that the federal approval requirements set forth in section 214 of the Act extend not only to situations where service discontinuances may affect a carrier's own retail customers, but also to discontinuances that may affect interconnecting carriers' customers as well.[6]

In the *Order on Reconsideration*, the Commission denied a petition filed by USTelecom that sought reconsideration of the Commission's earlier *Declaratory Ruling* in this proceeding.[7] There, the Commission found, in essence, that the question of whether a carrier has "discontinued" a service for purposes of section 214 could not be resolved simply by reference to a carrier's tariff or service contracts.[8] The Commission determined that while such documents provide "important evidence" as to the scope of a service provided, a carrier must also take into account the community served and "traditional reliance" on a given functionality, regardless of whether explicitly spelled out in a tariff or other document.[9] The Commission indicated it will evaluate whether an ILEC provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on a "totality-of-the-circumstances" functional evaluation.[10]

---

[5] *Id.* ¶ 29.

[6] *See id*. ¶¶ 16-18.

[7] *Order on Reconsideration* ¶ 181. *See Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd. 14968 (2014) (*Declaratory Ruling*).

[8] *Declaratory Ruling* ¶ 115.

[9] *Id. See also, Further Notice* ¶ 197.

[10] *Report and Order* ¶ 132.

Comments in earlier phases of this proceeding expressed significant concerns about this uncertainty. NTCA, for example, emphasized the need for the Commission to strike a balance between ensuring that carrier transitions to IP services do not harm consumers and a discontinuance regime that promotes, rather than inhibits, that transition.[11] NTCA specifically warned against the creation of potential "regulatory tripwires" that would create uncertainty and slow, rather than incent, further investment and progress in the ongoing IP transition.[12]

These concerns notwithstanding, the *Further Notice* seeks comment on proposed specific criteria for use in evaluating whether planned network changes would constitute a discontinuance or impairment of service warranting submission of a formal application under section 214 of the Act and the Commission's implementing regulations.[13] The *Further Notice* suggests a number of criteria carriers might use to determine whether a service is being "discontinued" such that the carrier would need to file an application for approval under section 214. These criteria fall into nine general categories (including network capacity and reliability, service quality, device interoperability, service for individuals with disabilities, PSAP and 911 service, communications security (cybersecurity), service functionality, coverage, and consumer education).[14]

---

[11] NTCA Comments, PS Docket No. 14-174, at 9, 11 (filed Feb. 5, 2015).

[12] *Id.* at 3, 10. As an example of this concern, NTCA specifically asked whether a rural local exchange carrier that deploys fiber-to-the-premise technology and provides IP-enabled voice 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"? *Id.*, n.18. It would appear the answer would be "no" but under the *Declaratory Ruling*, even as affirmed in the *Order on Reconsideration*, carriers cannot be sure.

[13] *Further Notice* ¶¶ 207-208.

[14] *Id.* ¶ 208.

III. DISCUSSION

A. The Commission Should Confirm that RLECs Would Rarely, if Ever, be Required to Seek Section 214 Approval from the Commission for Routine Network Upgrades.

RLECs have traditionally focused on improving and expanding services to customers in difficult-to-serve rural areas, using a variety of technologies designed to overcome challenges caused by low subscriber density, difficult terrain, extreme weather conditions and other problems uniquely associated with rural areas. By and large, they have not been required to expand resources analyzing whether specific network upgrades, reconfigurations or service rearrangements designed to take advantage of newer network technologies might somehow trigger a requirement to seek authorization from the Commission to discontinue services pursuant to section 214 of the Act. Yet this seems to be exactly what the Commission's *Report and Order* and its *Order on Reconsideration* contemplate.

RLECs now find themselves wondering whether service or facility upgrades that once might have been considered routine now in fact require prior Commission approval. Given this uncertainty, and the severe consequences that may occur for carriers found to be in violation of Commission rules, RLECs engaged in network upgrades appear to have no choice but to submit applications under section 214 and the Commission's implementing rules "just to be on the safe side."

The Commission can and should avoid this result – and the administrative costs and delays in network investments that would ensue – in a straightforward fashion. Before adopting specific standards or criteria for evaluating whether technology transitions will require carriers to submit 214 filings, the FCC should confirm its expectation that RLECs would rarely, if ever, need to file applications for approval under section 214 simply as a consequence of converting legacy TDM voice services to IP technology. Such broadband deployments in the vast majority

of cases represent advances, not reductions or impairments, in services offered by RLECs to their rural consumers. These carriers should not be required to undertake complex nine-point analyses or to submit[15] and obtain Commission approval of unnecessary service discontinuance applications prior to upgrading their networks.

Confirmation along the lines suggested above would be wholly consistent with the Commission's intent in this proceeding as well as past precedent. The Commission is quite clear that it does not intend the policies announced in the *Report and Order* or the *Declaratory Ruling* to constitute "new" rules. To the contrary, the Commission consistently describes its actions as conforming to existing precedent under section 214.[16] Yet under that same precedent, RLECs rarely, if ever, have needed to file for section 214 discontinuance authority simply as a consequence of upgrading their networks.

As the Rural Associations have often explained, RLEC managers typically live in the communities they serve and are thoroughly familiar with their customers' needs. The Rural Associations know of no RLEC network changes or upgrades that had the effect of reducing, eliminating or impairing service to their customers. Unless and until there is evidence that such

[15] There is also a significant question as to *when* a section 214 discontinuation application would have to be filed. Given that substantial broadband deployments entail years of planning, the negotiation of financing and contractor arrangements, and actual construction and testing, should not Commission approval of the associated TDM-to-IP changes be obtained at the beginning of the process? However, if that is the case, the associated notices required by section 63.71(a) of the Commission's Rules would be provided well over a year before the actual service cut-over, and would not be able to accurately predict the cut-over period for each area affected. On the other hand, if the section 214 discontinuance application is not filed until the month or so before the planned service cut-over, what happens to all the investment and construction if the application is denied? Finally, if the answer to the last question is that section 214 discontinuation applications will never be denied under these circumstances, why are they required?

[16] *E.g., Report and Order* ¶¶ 101-102, 107-108.

service reductions have occurred, RLECs should not have to conduct a multi-point analysis of service factors to determine whether service is being "discontinued" or "impaired" in some manner.

For all the above reasons, as part of any order adopting criteria for evaluating whether network upgrades or new service deployments amount to "discontinuances" or "impairments" under section 214 of the Act, the Commission should confirm that RLECs seeking to transition their networks and legacy exchange or exchange access services from traditional TDM technology to IP-based technology in accordance with the Commission's efforts to encourage broadband deployment and adoption do not need to file an application for service discontinuance under section 214 of the Act.[17] Such assurance by the Commission would materially reduce confusion among those seeking to advance broadband and avoid unnecessary impediments to the ongoing technology transition in rural America.

B. The Commission Should Make Clear that Adoption of Criteria for Evaluating Proposed Service Discontinuances Under Section 214 Will Not Impose Additional Obligations on ILECs.

The FNPRM suggests that grants of discontinuance authority under section 214 will hinge on whether new services meet certain criteria in nine general areas.[18] These include:

1. Network capacity and reliability;
2. Service quality;
3. Device and service interoperability;
4. Service for individuals with disabilities;
5. PSAP and 9-1-1 service;

[17] In the alternative, if the Commission is not willing to provide blanket authorization for all RLEC TDM-to-IP conversions, it should specify the types of rare or unusual circumstances that would require an RLEC to file and obtain grant of a Section 214 discontinuance application for a TDM-to-IP conversion.

[18] *Further Notice* ¶ 208.

6. Communications security;
7. Service functionality;
8. Coverage; and
9. Consumer education.

As noted above, the Rural Associations strongly support the Commission in its efforts to assure that consumers, particularly those living in the rural areas served by the Associations' members, have access to and receive high-quality telecommunications services. The Rural Associations further agree that a mere conversion from traditional TDM-based services to IP-based services do not result in reductions or impairments of such services.

This proceeding should not, however, be used as a vehicle for the Commission to impose new service requirements on carriers seeking to upgrade from legacy TDM to IP-based technology. Simply put, if a new IP-based service meets the same standards as service provided using legacy TDM technologies, no "discontinuance" or "impairment" has occurred under section 214 and the inquiry ends there. A new service should not be required to meet new standards or regulations that were not provided by prior service arrangements.

Thus, for example, evaluations of whether IP services will afford the same or greater capacity as existing TDM services; whether IP services will meet the same reliability standards as TDM services (notwithstanding simultaneous use by large numbers of users or connecting devices); and/or whether IP communications are routed correctly and completed in a timely fashion similar to TDM communications may well be reasonable.[19] However, such evaluations

[19] Indeed, the Rural Associations have strongly advocated for Commission action to assure that interexchange calls destined for rural America are delivered and completed in a timely and reliable fashion. *See e.g.*, Comments of NECA, NTCA, WTA and ERTA, WC Docket No. 13-39 (filed May 13, 2013), Reply Comments (filed June 11, 2013); Reply Comments of NECA, NTCA, ERTA, and WTA, WC Docket No. 13-39 (filed Feb. 18, 2014).

can and should be made by the Commission on a nationwide basis, and need not be made by individual carriers implementing commercially available IP technologies and equipment.

Similarly, it appears reasonable for the Commission to inquire in the course of evaluating IP service arrangements whether they meet existing quality standards established by a state regulatory agency or any standards previously established pursuant to notice and comment rulemaking by the Commission itself (if state standards have not been established or are no longer in force.) Similar observations could be made about the need to assure that ordinary devices (meeting the Commission's Part 68 standards) continue to "work" with new services; that devices intended to provide disabled users with access to telecommunications networks continue to function properly; and that emergency services remain reachable by consumers served by updated technology. But questions with respect, for example, to "Communications Security" should not and cannot be used as a vehicle to impose new cybersecurity requirements that do not apply today, and which are instead still being evaluated for tailored adoption and implementation by carriers on a voluntary basis consistent with the NIST Framework and the Executive Order that contemplated such a voluntary framework.[20]

IV. CONCLUSION

For the reasons described above, the Commission should clarify, as a bright line rule, that RLECs would rarely, if ever, need to file section 214 applications simply as a result of making broadband deployments, including associated upgrades of local exchange and exchange access services from TDM to IP technology. To the extent the Commission does require such carriers to undertake reviews of such deployment in terms of the specific criteria described in the *Further*

[20] *See Further Notice* ¶ 227.

Notice, it should clarify such criteria do not impose any new or additional service obligations on carriers.

Respectfully Submitted,

NTCA-THE RURAL BROADBAND ASSOCIATION
By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

EASTERN RURAL TELECOM ASSOCIATION
By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
PO Box 6263
Raleigh, NC 27628
(919) 708-7464

WTA – ADVOCATES FOR RURAL BROADBAND
By: /s/ Derrick B. Owens
Derrick B. Owens
Vice President of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy, Regulatory Counsel
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW, Suite 300
Washington, DC 20037
(202) 659-0830

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
By: /s/ Richard Askoff
Richard Askoff
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

October 26, 2015