Ensuring Customer Premises Equipment Backup Power for Continuity of Communications
Technology Transitions
Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers
Special Access for Price Cap Local Exchange Carriers
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

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EXECUTIVE SUMMARY

Today, ILECs stand in an economically untenable position: three-quarters of consumers have abandoned legacy ILEC services for wireless and IP-based offerings. To compete, ILECs must upgrade their facilities to meet the demands of this converged multi-provider marketplace; yet outdated rules require them to maintain abandoned facilities and increasingly obsolete services, diverting precious capital away from next-generation networks. The transition to IP-based services is well underway on the wholesale side as well. Copper-based DS1 and DS3 links provided largely by ILECs have given way to higher capacity Ethernet services offered by ILECs, traditional CLECs and cable providers, none of which providers dominates the market.

In the face of these stark realities, the NPRM proposes overly restrictive, ILEC-specific copper retirement and discontinuance requirements that would hobble the ongoing industry-wide transition to IP-based services provided over fiber networks to consumer and business customers alike. The NPRM also explores rules that would impose on service providers the burden of providing backup power when such equipment could be better provided by others.

Mandates requiring ILECs to maintain unwanted, redundant networks divert capital from the upgrades necessary for the IP transition. To avoid unduly hindering the transition to more modern networks and facilities, to the benefit of all consumers, the Commission should only tweak, rather than overhaul, the copper retirement rules and the discontinuance process under Section 214(a) of the Act. Similarly, in a multi-provider market with numerous device manufacturers, there is no reason to require service providers to supply backup electric power for CPE.

Section 214 Discontinuance Rules. The Commission should avoid imposing new, asymmetric Section 214(a) discontinuance obligations on ILECs. Exit-approval requirements are appropriate only when retail customers will be left without any reasonably comparable alternative following the removal of a service offering. More stringent discontinuance obligations would be especially inappropriate in the context of the IP transition because Section 214(a) does not apply to the replacement of one offering by another. As legacy services reach the natural end of their life cycles, they are being replaced by higher capacity Ethernet and other IP-based services offered by CLECs, cable operators and others, and this customer-driven transition makes coerced continuation of the legacy services impractical and harmful to consumers’ interests.

Given the wealth of available competitive alternatives, the Commission should not hamper the IP transition by requiring, for the first time, approval under Section 214(a) for the replacement of one technology for another or the elimination of a wholesale offering absent any effect on retail customers. In fact, the need to eliminate an inefficient, redundant service has been held repeatedly to be a significant factor justifying discontinuance. A requirement that an ILEC offer equivalent wholesale access whenever it discontinues a wholesale input by other carriers would violate decades of precedent holding that only the effect on end users is relevant to Section 214(a) discontinuance.

Instead, the Commission should adopt a presumption that discontinuance of TDM voice service is permitted where there exists a reasonably comparable retail interconnected VoIP,
circuit-switched cable, 3G wireless, or TDM voice service alternative. That reasonable alternatives might be more administratively burdensome or costly than the discontinued service or result in some customer dislocation does not weigh heavily against discontinuance under Section 214(a). Moreover, the Commission should reject efforts to require, contrary to precedent, the provision of a replacement service matching all of the characteristics of a discontinued legacy wireline service. The Commission also should not change its interpretation of Section 214(a) by requiring Commission approval for the elimination of a discount plan or pricing structure.

**Copper Retirement Rules.** There is also no demonstrated need for significant changes to the Commission’s copper retirement rules. CenturyLink already voluntarily fulfills most of the requirements proposed in the NPRM regarding disclosure to interconnecting CLECs and retail customers. The Commission has adequate network modification and copper retirement notification rules, and the disclosure process is working well. CenturyLink provides advance notice of any material change affecting copper loops, even where those facilities are not being retired.

Overly burdensome network modification rules could interfere with and delay the transition of CenturyLink’s network to gigabit broadband service, forcing it to forego some fiber deployments that might otherwise occur. The proposed rules also threaten to impose a Commission approval requirement on what has until now been a notification process. The Commission’s proposal to extend copper retirement rules to retail customers is not consistent with Section 251(c)(5), which requires notice only to interconnecting carriers, and is unnecessary and superfluous for retail customers in the case of copper overbuilt with fiber.

CenturyLink is especially concerned about the proposed restrictions on “upselling” new and enhanced services. The Commission already has sufficient rules to address concerns of misleading marketing techniques. And ILECs should not be singled out for additional requirements effectively preventing them from marketing new offerings to customers after retiring copper loops. Given the absence of any documented justification for such forced speech, this proposal also would violate the First Amendment and discourage consumers from obtaining the benefits of superior service, thereby undermining the business case for fiber overbuild.

**Backup Power Rules.** Finally, rather than requiring service providers to supply backup power for the CPE that connects to their IP networks, the Commission should endorse the Communications Security, Reliability and Interoperability Council (“CSRIC”) best practices recommendations. The Commission has decoupled the provision of CPE and services for decades, resulting in a wealth of alternative equipment sources for consumers. CSRIC has recommended that voice service providers educate consumers on the need for backup power for their services, provide information about how to secure backup power, and make affordable battery backup power options available. Service providers are already implementing those recommendations, and the Commission should embrace them, rather than formulating new regulations. Self-regulation is preferable to new mandates especially because IP service providers are not in the separate business of providing CPE.
I. INTRODUCTION

The communications landscape is being completely remade by twin forces: the ongoing transition from legacy copper-based telephone networks to an all-purpose fiber network carrying Internet Protocol ("IP") services, and the simultaneous migration by consumers away from legacy ILEC services toward mobile and IP-based offerings offered by a wide array of providers.

These two sea changes are placing ILECs in a uniquely difficult position vis-à-vis their competitors: They must upgrade to far more efficient and robust fiber-optic facilities if they are to compete effectively in the converged, multi-provider marketplace, but they alone bear the high costs of maintaining existing legacy networks. Still more problematic, some advocate that ILECs and ILECs alone must be required to leave those legacy networks in place to ensure the continued availability of service characteristics that customers have shown they do not value. If

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1 These comments are filed by, and on behalf of, CenturyLink, Inc. and its subsidiaries.
these advocates have their way, ILECs will be left in an untenable position, forced to devote finite capital to maintaining and operating existing plant rather than using it to expand and enhance next-generation networks.

While the NPRM focuses on the ongoing shift to new technologies, and the alleged risks that this transition poses for ILEC customers, it unduly downplays the extent to which customers have voluntarily abandoned legacy ILEC offerings, and the effect this has had on basic network economics. On the retail side, the Commission acknowledges that approximately three-quarters of customers have switched from ILEC wireline networks to wireless or interconnected VoIP for their voice services.\(^2\) Indeed, as of June 2013, ILEC traditional switched lines had fallen to 70.5 million, or only 40 percent of lines served at the end of 2000,\(^3\) and interconnected VoIP accounted for 47 percent of residential fixed voice connections.\(^4\) Many of these VoIP lines are provisioned by cable operators. Indeed, Comcast is now the third largest provider of residential voice services in the country.\(^5\)

\(^4\) Mid-2013 Local Telephone Competition Report at 5, Figure 4.  
Further, 41% of households have "cut the cord," relying exclusively on wireless service.\textsuperscript{6} There were nearly 306 million wireless voice connections in the U.S. as of mid-2013, more than double the number of in-service access wirelines as of mid-2013.\textsuperscript{7} As a proportion of the total voice market—comprised of end-user switched access lines, interconnected VoIP subscriptions, and mobile wireless subscriptions—ILECs' aggregate fixed access market share fell from 60.5 percent in 2000 to \textit{less than 18 percent} by mid-2013.\textsuperscript{8} These facts demonstrate that the vast majority of consumers are well aware of the choices available to them and view IP-based and wireless services as meeting their needs.

On the wholesale side, the transition to IP-based access services—available from a wide variety of competitors—is well underway. Whereas the wholesale market was once dominated by DS1- and DS3-capacity links provided predominately by ILECs, today's carrier-grade wholesale marketplace has tilted firmly and irrevocably toward higher-capacity Ethernet services offered by a collection of ILECs, CLECs, and cable providers, none of whom dominates the market. By 2018, U.S. carrier Ethernet revenues are expected to top $10 billion.\textsuperscript{9} Indeed, equipment manufacturers have discontinued or are phasing out equipment supporting traditional DSn offerings. In short, ILEC-provisioned DSn wholesale offerings have declined dramatically as a relevant component of the marketplace.

\textsuperscript{6} See Declaration of Dr. Kevin Caves ¶ 26 (Oct. 6, 2014), attached as Appendix B to Petition for Forbearance of the United States Telecom Association, WC Dkt. No. 14-192 (Oct. 6, 2014) ("Caves Decl."). \textit{See also} Declaration of Professor John Mayo at ¶ 16 (Oct. 6, 2014) (reporting cut-the-cord rate of almost 42 percent based on independent research), attached as Appendix C to Petition for Forbearance of the United States Telecom Association, WC Docket No. 14-192 (Oct. 6, 2014).

\textsuperscript{7} See \textit{Mid-2013 Local Telephone Competition Report} at 2, Figure 1 (showing switched access lines and VoIP subscriptions totaling slightly over 135 million lines).

\textsuperscript{8} Caves Decl. ¶¶ 10, 12.

These facts present difficult challenges for ILECs working to transition their networks and remain competitive. As Chairman Wheeler recently stated, "at this moment, only fiber gives the local cable company a competitive run for its money," and policy-makers therefore must work to promote additional fiber deployment.\(^{10}\) Rules that effectively require ILECs to maintain redundant networks would divert capital away from necessary upgrades, and thus would impede rather than promote the Chairman's goals. As the Commission's *National Broadband Plan* noted, "requiring an incumbent to maintain two networks – one copper and one fiber – would be costly, possibly inefficient and reduce the incentive for incumbents to deploy fiber facilities."\(^{11}\) Chairman Wheeler highlighted this point last year, stating that "[d]ue in part to outdated rules, the majority of the capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all."\(^{12}\) Moreover, to maintain legacy networks amidst a dwindling user base, ILECs would need to either recoup costs from a smaller universe of users by raising per-minute or per-megabyte rates or sell services at rates well below their actual costs, further starving efforts to transition to IP.

There is no reason to force ILECs into this impossible position. Once an ILEC deploys a fiber network, most of these remaining customers voluntarily choose to move to this new network. Verizon, for example, states that seven out of eight customers choose to migrate to


fiber-based services once Verizon deploys a fiber network, leaving only about 6 percent of customers in the area on Verizon’s copper network.  

The question thus is how the Commission can best ensure that customers served by legacy facilities are adequately protected without unduly hindering the transition to more modern networks and services, which will benefit all customers. To be sure, CenturyLink appreciates the Commission’s intention to plan, rather than merely react to, the eventual discontinuance of legacy networks and services. It also understands the Commission’s interest in ensuring that these transitions do not undermine its fundamental public policy objectives. At the same time, there is a real risk that the Commission’s efforts to “manage” this transition by adopting more stringent rules would delay this transition and its attendant benefits: new, more reliable and better-functioning services; lower prices; and meaningful competitive alternatives. Moreover, by establishing rules that enshrine today’s presumptions and offerings, the Commission could distort the marketplace’s natural evolution, such that investment and network architecture decisions are made not according to customer preferences and technological developments, but rather to satisfy top-down mandates. The Commission therefore should work to minimize the burdens and costs of any rules it considers adopting, to make sure they are both necessary and compatible with evolving networks and services.

In particular, the Commission should recognize that copper retirement and discontinuance processes have generally been working well. No party points to any significant problem with these processes. To the contrary, as noted above, customers are migrating in droves to IP-based services on their own, eviscerating any claim that they might be damaged by

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such transitions. As a result, the Commission should focus on tweaking, rather than overhauling, the copper loop retirement and Section 214 processes. Likewise, in a multi-provider environment that includes not only service providers but numerous independent device manufacturers and other participants, there is no reason to require that any specific market participant supply backup power—and especially no reason to place that obligation on the service provider, which might not supply any of the equipment at issue. Rather, the Commission should embrace the best practices developed by the Communications, Security, Reliability and Interoperability Council ("CSRIC"), and facilitate market responses to the migration away from line-powered copper lines.

II. THE COMMISSION SHOULD AVOID IMPOSING NEW, ASYMMETRIC OBLIGATIONS IN THE CONTEXT OF THE SECTION 214(A) DISCONTINUANCE PROCESS

As the Commission considers how best to promote the IP transition and the interests of consumers during the next phase of the communications marketplace’s development, it should seek out a balanced approach that preserves customer access to retail services without impairing any market participant’s ability to upgrade its offerings and compete in the marketplace. Specifically, it should remember that exit approval requirements are among the very most intrusive forms of regulation available to it, and that such mandates are only appropriate when retail customers will be left without any reasonably comparable alternative following the removal of a given service offering. Discontinuance requirements must always be designed to protect end-user consumers, not specific competitors, and must account for the broader evolution of the marketplace.

Thus, the Commission’s task here is to chart a course that promotes investment, deployment and network upgrades while ensuring that consumers have adequate notification that their options are changing. Its framework should account for the ultra-competitive state of the
market and the unprecedented number of alternatives available to customers, as well as for the ways in which customers treat different offerings as substitutes for one another.

The Commission's framework must also account for the inalterable core facts of network economics. The NPRM "focuses on the technological revolution involving the transition from networks based on . . . TDM[] circuit-switched voice services running on copper loops to all-Internet Protocol (IP) multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure." 14 Given the evaporating ILEC subscriber base and the migration of that base to competitive IP-based services provided by cable, CLEC and wireless providers, ILECs face rising per-user costs, and are in the process of transitioning their own networks. ILECs accordingly are now overbuilding their copper networks with fiber not to diminish the service available to customers but rather to provide the very functions that consumers are most demanding. They cannot upgrade their networks, however, if forced to maintain two parallel networks, or to engineer next-generation networks to mimic the functionalities of century-old copper lines. To maintain and promote robust competition, the Commission must ensure that ILECs and their customers are not alone saddled with the costly technologies of the past.

Finally, the Commission must remain mindful of what types of transitions are and are not likely to occur. In particular, it would be a mistake to view the discontinuance issue through the lens of the post-Superstorm Sandy Fire Island experience. 15 While the debate arising from Verizon's request to discontinue wireline service in Fire Island may have raised awareness of the eventual discontinuance of traditional wireline service, it hardly presented a representative test case for the rest of the country. As Verizon has noted, the devastation from the storm in the area of Fire Island was "unprecedented and unforeseeable, with some areas without commercial

14 NPRM ¶ 1.
15 Id. ¶¶ 4, 116.
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power or usable infrastructure for many months following the storm." 16 Verizon’s response to this involuntary discontinuance was further complicated by the unique characteristics of the Fire Island area. Unlike most parts of the country, Fire Island residents had limited choices for wireless service, no wireline voice alternative, and no cable broadband provider. The transitions at issue here are far different. They will generally involve shifts to more robust facilities with enhanced capabilities, in markets with numerous competitors offering products that customers have time and again demonstrated are, to them, equivalent to traditional telephone service.

Under these circumstances, the Commission’s charge is clear: It should promote the IP transition by facilitating investment and deployment of next-generation facilities. It should adhere to its precedents limiting the role of discontinuance approval mandates. And it should resist calls to use the Section 214 process as a back-door means of applying expansive new regulation.

In light of the above, the Commission should remain true to its long-standing discontinuance precedents, recognizing that the migration to next-generation facilities is both natural and desirable. The Commission should not hamper this transition by requiring, for the first time, approval for the replacement of one technology for another, the elimination of a wholesale offering absent any demonstrated effect on retail customers, or the elimination of a particular discount plan or pricing structure. Indeed, the Commission should adopt a presumption that discontinuances are permitted in all cases where there exists a reasonably comparable retail alternative. And it should reject efforts by some to require the provision of service matching all the particulars of legacy wireline service, particularly when end users are

voting with their feet — and their dollars — by choosing not to purchase services with those characteristics.

A. The Migration from Legacy Facilities to Next-Generation Facilities is Part of the Natural Life-Cycle of Communications Networks, and Should Be Celebrated, Not Feared.

Like the retirement of copper loops, the discontinuance of legacy services following deployment of more capable and efficient facilities is a positive development entirely consistent with the evolution of communications services. All communications services progress through a natural life cycle in which mature services are gradually replaced with new services that offer more attractive features. Today, this life cycle is epitomized by the replacement of legacy time-division multiplexing (“TDM”) platforms such as Frame Relay and ATM by newer services, such as Ethernet. This transition has been entirely market-driven. Many areas served by CenturyLink have reached, or are rapidly approaching, the “tipping point” where a critical mass of customers have transitioned away from legacy TDM services to more current and capable technologies, making the continued provision of those legacy services impractical, inefficient, and inimical to consumers’ interests. Burgeoning capacity needs have reduced the preeminent role once played by DSn-capacity facilities, culminating in a decisive and irreversible shift of the enterprise marketplace to competitively provisioned, packet-based Ethernet services.

See Roopashree Honnachari, Frost & Sullivan, Demystifying Carrier Ethernet Services: No One Size Fits All, BCS 5-02, at 1 (Apr. 6, 2011) (noting that Ethernet has “emerged as an attractive service option for customers migrating from ATM, Frame Relay, SONET and Private Line services”). Indeed, the Commission has likened this transition to other extraordinary technological achievements such as the advent of railroads and the telegraph. Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, Order, 29 FCC Red 1433, 1437-38 ¶¶ 10-11 (2014).

See, e.g., Reply Comments of Alcatel-Lucent, GN Docket No. 13-5, at 2 (filed Aug. 7, 2013) (“[In 2012], Alcatel-Lucent saw IP extension shipments outperform TDM extensions by a wide margin as a consequence of key global IMS developments. North America led the world in the transition to IP networks. . . . [T]raditional TDM voice services have declined at rates as high as
services are economical substitutes for DS1 and DS3 facilities and provide speeds many times higher than those legacy offerings.

Wireless providers particularly appreciate the flexibility that Ethernet offers because it is easily scalable as demand grows at a particular cell site. This has drastically undercut reliance on DSn circuits. For instance, from March 2011 to December 2012 the number of DS1 special access circuits AT&T provided to wireless providers had dropped by more than 30 percent, and AT&T sales of DS1 circuits to wireline customers had likewise begun to decline.\textsuperscript{19} Those trends continued in the period from March 2011 to August 2014, when the number of DS1 special access circuits AT&T provided to wireless providers in its incumbent territories dropped by more than 60 percent.\textsuperscript{20} CenturyLink’s experience is similar – from January 2012 to December 2014, the number of DS1 special access circuits it provides declined by 36 percent.

It is not surprising, then, that customers have increasingly viewed Ethernet services as a superior alternative to traditional services like ATM, Frame Relay, SONET, and Private Line, as well as DS1s and DS3s.\textsuperscript{21} Consumer demand has driven the robust growth of the Ethernet

\textsuperscript{19} AT&T Reply Comments, Casto Reply Declaration, WC Docket No. 05-25, at ¶¶ 28-29 (filed Mar. 12, 2013).

\textsuperscript{20} Letter from Robert C. Barber, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 5 (Oct. 10, 2014) (“Barber Letter”).

\textsuperscript{21} See, e.g., Nav Chandler, IDC, \textit{U.S. Carrier Ethernet Services 2013-2017 Forecast}, IDC #243425 (Sept. 2013) (“Demand for Ethernet connectivity remains robust, in particular for high-bandwidth usage and as an alternative to frame relay or even private line.”); The Insight Research Corporation, \textit{US Carriers and Ethernet Services: 2013-2018}, at 73 (Aug. 2013) (“Customers continue leaving private line and frame relay for Ethernet, as well as placing new applications on Ethernet rather than expanding their use of legacy services.”).
services market. This migration, which continued to accelerate last year, is widely anticipated to persist into the foreseeable future. U.S. carrier Ethernet revenues, which crossed $4 billion in 2013, are expected to top $10 billion in 2018. Equipment manufacturers have discontinued or are phasing out supporting equipment, making it difficult (and soon impossible) to maintain the facilities and equipment used to provide traditional, wireline voice telecommunications services. Even today, when obsolescent legacy equipment fails, CenturyLink technicians are forced to scavenge spare parts from decommissioned assets in the network or try to track them down through after-market sources.

Faced with these marketplace realities, CenturyLink has been developing plans to gradually transition its TDM networks and services to an all-Ethernet network to keep pace with consumers’ demand and offer an ever-more-robust range of services. With more than 4,000 central offices, and estimated costs in the billions of dollars, the transition will likely stretch over a decade or longer. To help facilitate this migration, the Commission should continue to recognize the market’s irrevocable (and desirable) migration away from DSn-capacity services toward Ethernet offerings and account for all competitors in the market. The rise of scalable Ethernet offerings as the industry standard has occurred in a marketplace in which a host of providers compete for customers with disparate needs. As the Commission has recognized, enterprise broadband services frequently bring in revenues sufficient to justify competitive deployment. In recent years, dozens of competitive fiber providers have capitalized on

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24 See, e.g., Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services, Memorandum Opinion and
mushrooming bandwidth needs and the falling costs of fiber deployment by providing carrier- and enterprise-grade Ethernet services over their ever-more ubiquitous long-haul and metropolitan networks. There are no "incumbents" in this market segment. Every major cable operator now competes aggressively for enterprise customers. Business Ethernet services are also "being offered by numerous non-incumbents, including CLECs and formerly IP/MPLS virtual network operators (VNOs)." In mid-year 2014, the top ten business Ethernet service providers included tw telecom, Level 3, and XO Communications. XO emphasizes that its network assets include "Ethernet access and services to more than 2 million business locations nationwide." Level 3 has observed that "the market will continue to move toward Ethernet based services and higher speed interfaces," and boasts that it has "positioned [itself] to be able to deliver these capabilities for both our own IP network needs as well as those of our suppliers’ own network.") (citation omitted).

25 See, e.g., Barber Letter at 2-3 ("Comcast just reported that its business services revenue increased 22 percent in the second quarter of 2014 to an annual run-rate of $4 billion, and Cablevision similarly reported that its second quarter revenues increased 6.7 percent to $88 million."); Corrected Transcript of Time Warner Cable, Inc. ("TWC"), Q4 2012 Earnings Call, at 3-4 (Jan. 31, 2013) (Robert D. Marcus, TWC President & Chief Operating Officer, noting that, in 2012, TWC doubled the number of commercial buildings connected to fiber, and enjoyed "organic growth of more than 20%" among enterprise customers).

26 Charles Carr, Yankee Group, Forecast: Carrier Ethernet is Finally Unleashed, at 4 (Apr. 26, 2011).


In addition to these market leaders, there are at least 35 other competitive providers providing business Ethernet services in various regions of the U.S. today.\textsuperscript{30}

The nationwide migration to Ethernet backhaul services for wireless cell sites also illustrates the intense competition for enterprise broadband services. Cell sites with high traffic volumes produce sufficient demand to justify the deployment of Ethernet or other high-capacity services, thereby attracting multiple bids. As a Time Warner Cable Business Class executive recently observed: “The competitive landscape [for mobile backhaul services] has widened considerably in the last five years. When five years ago there were four or five competitive threats bidding on an opportunity, in many cases today that has tripled, and I’ve even seen quadruple numbers in the market.”\textsuperscript{31}

Competitive alternatives are not limited to providers relying on fiber. Competitors relying on unbundled ILEC loops are also transforming the industry with robust deployment of Ethernet over Copper (“EoC”) services. Although EoC is clearly a transitional technology, likely to be supplanted by new non-ILEC fiber deployments over time, today it offers additional options for competitors, with speeds greater than 100 Mbps in certain areas today.\textsuperscript{32}

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\textsuperscript{29} Level 3 Communications, Inc., Form 10-K, at 18 (SEC filed Feb. 27, 2014), available at http://d1lge852tjjqw.cloudfront.net/NasdaqGlobal-LVLT/fb1d05c4-ab76-4d5b-9974-a2109d013563.pdf.


\textsuperscript{32} See Adtran, High Performance Ethernet, available at http://www.adtran.com/web/page/portal/Adtran/group/4208. See also Letter from Joshua M. Bobeck et al., Counsel to Mpower Communications Corp., U.S. TelePacific Corp., ACN Communications Services, Inc., Level 3 Communications, TDS Metrocom, LLC, and Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary,
past several years, competitors have successfully launched and marketed EoC services in numerous areas served by CenturyLink. In February 2014, for example, Integra Telecom announced that it had expanded its EoC footprint to 187 on-network Local Serving Offices, enabling the carrier to reach more than 460,000 businesses in over 14,000 commercial buildings in California, Colorado, Idaho, Minnesota, Oregon, Utah and Washington. To be sure, EoC is not likely to serve as a long-term alternative to fiber-based Ethernet, but this option is bridging the gap as competitive fiber is built out, and underscores the wealth of competitive options in the marketplace.

As an ILEC that also provides services as a CLEC out of region, CenturyLink understands the importance of alternative access in helping to facilitate the TDM-to-IP transition. Because CenturyLink's wireline footprint is limited, and having the flexibility to offer new products and services is key to its success, CenturyLink must rely on the services of other wholesale providers to serve its customers and support the strategic services in which it is investing for the future. For instance, in its CLEC service territories, CenturyLink currently obtains Ethernet Local Access to buildings not served by its own network, through a combination of CLECs primarily using their own facilities and EoC, cable companies using fiber and hybrid fiber coax to provide Ethernet, and ILECs offering wholesale services. CenturyLink is currently working toward serving more than [BEGIN CONFIDENTIAL] [END


CONFIDENTIAL] customer locations through contracts with cable companies. Notably, such
cable facilities are completely independent of ILEC networks.

B. The NPRM's Proposals Regarding Section 214(a) Would Disregard Decades of Direct Precedent.

The NPRM asserts that the Commission is not seeking "to impose any new wholesale
access obligations on incumbent carriers,"35 but then proposes to require ILECs, as a condition of
discontinuing a service used as a wholesale input, to provide CLECs "equivalent wholesale
access on equivalent rates, terms and conditions."36 This proposal would contradict existing
Section 214 precedent in at least two ways.

First, the NPRM's proposals would reverse decades of precedent holding that
discontinuance requirements do not apply to wholesale services. To be sure, the Commission
concedes that Section 214(a) does not apply to the discontinuance of a wholesale service if there
is no effect on service to retail end-users, and states that it does not "propose to change course
from this precedent."37 However, it then does just that, by proposing to impose a presumption
that elimination of a wholesale service "will discontinue, reduce, or impair service" to retail end-
users.38 The Commission suggests that this presumption would be rebuttable,39 but then
proposes to require ILECs that seek to discontinue wholesale services to provide CLECs
equivalent wholesale access, irrespective of any impact, or the lack thereof, on end-users.40

Requiring an ILEC to provide CLECs with services that are equivalent to services that the ILEC

35 NPRM at ¶ 6 (emphasis in original).
36 Id.
37 Id. ¶ 102.
38 Id. ¶ 103.
39 Id.
40 See id. ¶ 110.
is discontinuing would “change course from” the Commission’s precedent by putting “the primary focus” of a service discontinuance on the CLECs using the ILEC services as inputs, rather than on “the end service provided by a carrier to . . . the using public,” which the Commission has always considered the focus of Section 214(a). Second, the NPRM breaks with precedent by proposing that the replacement of one facility by another might constitute a “discontinuance” of the facility being replaced under Section 214(a). The Commission has repeatedly held otherwise. Section 214(a) discontinuance requirements arose in a world radically different from today’s, when discontinuance of services provided by state-sanctioned monopolists threatened to leave customers without any service at all. In fact, the discontinuance approval requirement did not even appear in the original Communications Act. Section 214(a) originally was limited to approval of the construction, extension or acquisition of new facilities and transmission over such facilities. Only in 1943 did Congress add the discontinuance limitation, “to minimize service disruptions . . . result[ing] from the complete monopolization of the telegraph market . . . .” Its purpose was clear: Congress was concerned that discontinuance by the only carrier serving a market . . . would leave the public without adequate communications service.” As the Commission recognized in 1980, Section 214’s discontinuance provision did not apply where one offering was being replaced with another, similar offering:

We believe that application of Section 214 in situations where the accessibility of a service remains virtually unchanged, while the

41 Id. ¶ 102.

42 Western Union Telegraph Co., 74 F.C.C.2d 293, 296-97 ¶¶ 7-9 (1979) (“Western Union”).


method of customer access varies, is not required by the statute and would be inappropriate in a technologically dynamic market.\textsuperscript{45}

Indeed, the Commission has traditionally interpreted Section 214(a) to encourage and promote technological service upgrades. For example, in Lincoln County, the Commission held that the “removal” of facilities and associated reconfiguring of the routing of calls from the dismantled facilities to other facilities, without any impact on end users, does not constitute a discontinuance requiring a Section 214 application.\textsuperscript{46} The NPRM would turn this proposition on its head, treating the shift to superior technology as a “discontinuance” and requiring \textit{de facto} Commission approval for such transitions.

C. The NPRM’s Proposals Regarding Section 214(a) Would Harm Consumers.

As noted above, competition is rapidly shrinking the ILEC wireline subscriber base. Now, when only one-quarter of all households obtain legacy voice service from an ILEC, and ILEC legacy and VoIP services combined account for less than one-fifth of all U.S. voice connections, the wide range of competitive alternatives discussed above has made discontinuance requirements less important, not more. End users are abandoning ILEC legacy services for a wide assortment of service choices from cable companies, wireless operators, CLECs and other VoIP providers. As a result, consumers are “discontinuing” service more rapidly than ILECs can transition their networks to accommodate users’ demands for non-legacy services. In these circumstances, expansive new discontinuance limitations would undermine, rather than promote, consumer interests.


\textsuperscript{46} Lincoln County Tel. System, Inc., 81 F.C.C.2d 328, 335 ¶ 22 (1980).
As the Commission consistently has recognized, exit restrictions impose real harms and are to be avoided except where absolutely necessary. As the Commission explained in 1980's Domestic PMS Order:

We have no desire to impose burdens on firms wishing to continue providing service in a more efficient and cost-effective manner. A restriction on firms’ ability to do so . . . would essentially require carriers to subsidize the continued use of . . . facilities to the detriment of [their] ratepayers. Second, by restricting carriers’ ability to respond to changing market conditions in the most efficient technological manner possible, we would hamper their ability to perform in a competitive market.47

Similarly, the First Competitive Carrier Order acknowledged that a pro-competitive application of the discontinuance approval mandate is appropriate:

[I]n a competitive marketplace ease of exit is essential. If regulatory exit barriers are not lowered, carriers may be discouraged from entering high risk markets for fear that they may not be able to discontinue service in a reasonably short period of time if it proves unprofitable. Ease of exit is also a fundamental characteristic of a competitive market. We have already found that the overall public is best served in these areas by the development of this competition, even though some customer dislocations might be attendant thereto.48

More recently, in the Verizon Expanded Interconnection Order, the Commission permitted Verizon to discontinue its physical collocation service and offer virtual collocation instead because “requiring it to continue offering . . . physical collocation services . . . creates a financial burden for Verizon, due to the administrative burdens of maintaining two separate regulatory offerings for the same service and the opportunities for regulatory arbitrage.”49 And in the Wireline Broadband Order, the Commission recognized the need for a pro-competitive

47 Domestic PMS Order, 75 F.C.C.2d at 376 ¶ 104.
48 First Competitive Carrier Order, 85 F.C.C.2d at 49 ¶ 147.
application of Section 214(a),\(^{50}\) so as not to burden carriers with “costly redundant systems and duplicative processes that result in operational inefficiencies”\(^{51}\) and thereby “harm the public interest by impeding the deployment of innovative broadband infrastructure and services responsive to consumer demands.”\(^{52}\) Thus, inefficiencies in the form of impediments to technological innovation that are caused by having to continue providing an unneeded service have always been a significant factor justifying discontinuance.

The rationale for strict discontinuance requirements has been undercut even more by the technological metamorphoses and other sweeping changes in the telecommunications market over the past several decades. As described above, the accelerating intensity of competition and precipitous collapse of ILEC legacy businesses have revolutionized the retail telecommunications marketplace. When ILECs transition to new technologies, the availability of the services at issue “remains virtually unchanged” – only “the method of customer access varies.”\(^{53}\) Indeed, consumers are abandoning ILEC wireline legacy services for other platforms and technologies on their own, irrespective of ILECs’ migration to new technologies. Under these circumstances, strict wholesale conditions on discontinuance applications are “not required by the statute and would be inappropriate…”\(^{54}\) The NPRM’s approach would impose

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\(^{51}\) *Id.* at 14889 ¶ 68.

\(^{52}\) *Id.* at 14907-08 ¶ 100 n.302. *See also id.* at 14891 ¶ 71 (“these costs, inefficiencies, and delays” can “substantially impede network development” and technological innovation).

\(^{53}\) *Domestic PMS Order*, 75 F.C.C.2d at 376 ¶ 103.

\(^{54}\) *Id.*
"constraints on broadband innovation and infrastructure investment" and leave ILECs and their customers saddled with "costly redundant systems and duplicative processes."

Consumers already are abandoning ILEC legacy wireline services in favor of other technology platforms and providers, such as Ethernet over Fiber. If ILECs were blocked from transitioning their operations to the services sought by consumers, consumers would be stuck with services they do not want – or forced to shift to other providers – and ILECs will be kept out of the new services markets as viable competitors. The forced inefficiencies and costs that would be imposed by the Commission’s proposal thus could harm competition and consumers. ILECs’ competitors, of course, would not face these constraints. They could upgrade their networks without worrying about the immense operational expenses associated with running duplicative networks – and without subjecting customers to the charges necessary to cover those costs.

Ultimately, then, the requirements contemplated by the NPRM would render ILECs’ offerings far more expensive than their competitors’, placing a heavy thumb on the economic scale and effectively reducing competition. Such a retrograde approach to discontinuance requirements has no place in the broadband era and would hobble the IP transition, harming consumers.

D. The Commission Should Establish a Rebuttable Presumption in Favor of Approving Discontinuance of a Retail Service if at Least One Competitive Alternative is Available.

Given the dramatic erosion of the ILECs’ subscriber base and the migration of that base to competitive IP-based services provided by cable, CLEC and wireless providers, ILECs and other carriers should be permitted to discontinue declining end user services for which any

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55 Wireline Broadband Order, 20 FCC Rcd at 14899 ¶ 86.
56 Id. at 14889 ¶ 68.