Dear Ms. Dortch:

On July 6, 2015, Sarah Morris of New America’s Open Technology Institute, Colin Oldberg of Common Cause, and Phillip Berenbroick and Meredith Rose of Public Knowledge (collectively, “attendees”) met with Nick Degani and Trey O’Callaghan of Commissioner Pai’s office to discuss the above-referenced proceeding.

The attendees expressed their continued concern with growing reports of carriers allowing copper networks to degrade to the point of de facto discontinuance of service, without seeking required approval from the Commission under section 214. Three primary issues require the Commission’s consideration: (1) setting appropriate technical standards by which to define “comparable” service for the purpose of copper retirement and section 214; (2) establishing a system for receiving complaints about degraded TDM service, or clarifying the availability of the Commission’s existing complaint systems, in order to track instances of de facto retirement by maintenance neglect; and (3) clarifying when a carrier’s obligations under section 214 trigger following the destruction of copper facilities due to a natural disaster. The Commission must, at a minimum, clarify its ability to receive complaints of copper abandonment, either under existing mechanisms or by establishing new ones.

The attendees support the establishment of clear, engineering-based metrics to determine whether substitute VoIP or wireless service is indeed comparable to TDM service that a carrier proposes to retire. The Commission was encouraged to reach out to technical and industry groups for examples of applicable standards. Wholesale contracts for large-scale users may provide a starting point in determining useful quality standards.
Attendees also expressed concern over *de facto* discontinuance of TDM service. Such instances—in which the carriers have allowed their copper network to degrade past the point of usability—have become increasingly visible and frequent in the media. As established in the February 2012 Declaratory Ruling on rural call completion, it is an unjust and unreasonable practice in violation of section 201(b) of the Act for a carrier that knows it is providing degraded service to certain areas to fail to correct the problem. Further, just as it is a form of unreasonable discrimination under section 202(a) of the Act to refuse to terminate a call to rural exchange simply to avoid high termination fees,\(^1\) it is a violation to refuse to service a network simply because doing so is expensive.\(^2\)

The frequency and severity of these abandonments are difficult to establish. A push toward deregulation on the state level, and the lack of a clear complaint mechanism available to consumers at the federal level, means that data on the frequency and severity of these occurrences is still anecdotal. Attendees strongly encourage the adoption of a *de facto* discontinuance complaint system, or, in the alternative, a public clarification that consumers may use the Commission’s existing complaint filing mechanisms to detail their degradation problems.

Attendees also expressed concern about the lack of clarity surrounding the necessity and timing of a carrier’s obligations under section 214 triggering after their TDM infrastructure is destroyed by a natural disaster. For example, after Hurricane Sandy destroyed TDM service on Fire Island in New York, Verizon opted to install Voice Link, a non-comparable voice-only fixed wireless service that could not support many of the applications or devices that previously ran over or connected to the copper network. Moreover, six months passed before Verizon filed its 214 application and notified customers that Verizon would be offering a vastly different service. Attendees encourage the Commission to clarify (a) that carriers must file a 214 notice when they plan to replace destroyed networks with new technologies, and (b) when, chronologically, these obligations trigger after a catastrophe.

Additionally, attendees expressed their support for a rule requiring carriers to provide residential customers with backup power options by using commercially available D-cell batteries. Consumers need widely available power alternatives in the event that their VoIP or wireless home service goes down in the event of an emergency. Forcing consumers to rely upon proprietary batteries that must be obtained from (and replaced/recharged by) the carrier itself creates a substantial public safety threat. By comparison, D-cell batteries are widely available and can be stockpiled indefinitely in proper conditions, thus providing consumers with hours of backup time. Moreover, current opt-in rates for proprietary CPE power solutions are not accurate predictors of real consumer need. Hurricane Sandy illustrated in striking detail that consumers grossly

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\(^2\) 47 U.S.C. § 202(a) specifically prohibits any unreasonable discrimination in “facilities” or based on “locality.”
underestimate the need for backup power until they are left without it. Public safety dictates that backup power options be universally available, and structured in such a way that consumers may prepare and stockpile commercially available sources of power, such as D-cell batteries.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020x108.

Respectfully submitted,

/s/ Meredith Rose
Staff Attorney
PUBLIC KNOWLEDGE