

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

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## Table of Contents

I.	INTRODUCTION AND SUMMARY .....	2
II.	THE COMMISSION’S PROPOSED CHANGES TO THE SECTION 214 PROCESS ARE UNWARRANTED .....	6
III.	SECTION 214 APPLICANTS CANNOT BE RESPONSIBLE FOR DEMONSTRATING THE ADEQUACY OF ALTERNATIVE SERVICES AVAILABLE FROM OTHER PROVIDERS.....	9
IV.	THE COMMISSION SHOULD REFRAIN FROM ADOPTING CERTAIN PROPOSALS IN THE <i>FNPRM</i> .....	11
	A.    The Commission Should Not Adopt the Proposed Criterion Relating to Network Security .....	13
	B.    The Commission Should Not Adopt the Proposed Criterion Relating to Customer Education and Outreach .....	13
	C.    The Commission Should Refrain From Adopting a Specific Testing Methodology for Any Performance or Service Quality Metrics It May Adopt .....	15
V.	THE COMMISSION SHOULD NOT FURTHER EXTEND INTERIM WHOLESALE ACCESS REQUIREMENTS FOR COMMERCIAL WHOLESALE PLATFORM SERVICES.....	17
VI.	CONCLUSION.....	18

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**COMMENTS OF ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits its comments in response to the August 7, 2015 Further Notice of Proposed Rulemaking (“*FNPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.<sup>1</sup> The *FNPRM* seeks comment on specific criteria for the Commission to use in evaluating applications to discontinue retail services pursuant to Section 214 of the Communications Act.<sup>2</sup> Specifically, the Commission seeks comment on possible criteria against which to measure what constitutes an adequate substitute for retail services that a

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<sup>1</sup> *In the Matter of 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*, GN Docket No. 13-5, WC Docket No. 05-25, RM-11358, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. Aug. 7, 2015) (“*Technology Transitions Order*” or “*FNPRM*,” as appropriate).

<sup>2</sup> 47 U.S.C. § 214.

carrier seeks to discontinue, reduce, or impair in connection with a technology transition (e.g., TDM to IP, wireline to wireless).<sup>3</sup>

The Commission also seeks comment on, among other things, whether to adopt expanded notice requirements or changes to the time periods for approving Section 214 applications<sup>4</sup> and whether to extend the interim condition adopted in the *Technology Transitions Order* requiring ILECs to provide reasonably comparable access to commercial wholesale platform services for a further period beyond completion of the special access proceeding.<sup>5</sup> ITTA urges the Commission to refrain from adopting such changes, as explained in more detail below.

## **I. INTRODUCTION AND SUMMARY**

As a threshold matter, ITTA continues to be concerned with an FCC regulatory approach that, in application, predominantly impacts ILECs. Such an approach perpetuates competitive disparities, ignores the current state of the marketplace, and undermines the Commission's technology transition and broadband deployment goals. ILECs, as the entities most likely to be adopting new technologies as they transition from legacy networks to next generation services, would be disproportionately impacted by changes to the Section 214 process. The Commission's IP transition policies should be focused on facilitating the implementation by ILECs of new technologies, rather than hamstringing them with burdensome regulatory obligations.

As long as the Commission persists in supporting policies and regulations that unfairly target ILECs, it will continue to exacerbate competitive disparities that are out of touch with the realities of today's marketplace. ILECs are no longer the market leaders in the provision of residential or business voice services. The communications marketplace has and continues to

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<sup>3</sup> See *FNPRM* at ¶ 202.

<sup>4</sup> See *id.* at ¶ 238.

<sup>5</sup> See *id.* at ¶ 244.

undergo a fundamental transformation as broadband networks and IP-enabled platforms are deployed, more consumers shift away from legacy TDM-based services to IP-based alternatives, and consumers increasingly choose mobile wireless products to meet all of their communications needs.

The paradigm shift away from reliance on legacy PSTN-based services offered by ILECs to IP-enabled platforms and applications for the delivery of voice services is well documented. As the Commission observed in the *Technology Transitions Order*, 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services.<sup>6</sup> Furthermore, 44 percent of households have “cut the cord” and rely entirely on mobile wireless for their voice service.<sup>7</sup> Overall, almost 75 percent of U.S. residential voice customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities.<sup>8</sup>

The combined effect of the increasing market share for VoIP service providers, the growth in mobile wireless subscribership, and the overall shrinking of the wireline voice services

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<sup>6</sup> *Technology Transitions Order* at ¶ 9.

<sup>7</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601, 5637, ¶ 90 (2015) (citing Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2014*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (2014), at 5 (*available at*: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf>).

<sup>8</sup> Verizon Comments, GN Docket No. 13-5, *et al.* (filed Feb. 5, 2015), at 1-2, 4 (citing USTelecom, *Research Brief: Voice Competition Data Support Regulatory Modernization* (2014), at 1 (*available at*: [http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014\\_0.pdf](http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf)); *see also* USTelecom Comments, GN Docket No. 13-5, *et al.* (filed Feb. 5, 2015), at 3-4 (projecting that “the portion of customers relying either exclusively or mostly on traditional landlines will be only 11 percent by the end of 2015”).

market has had a dramatic impact on ILECs that the Commission cannot ignore.<sup>9</sup> Given that ILEC-provided services are one of many communications service options available to today's consumers, it is inequitable to saddle ILECs with regulations that place them at a competitive disadvantage in relation to their competitors.

By supporting policies and regulations that disproportionately impact ILECs, the Commission also creates disincentives for broader investment in next-generation networks and services and delays the transition to all-IP networks. When ILECs must comply with unnecessary or burdensome regulatory requirements, it diverts valuable resources away from broadband investment and delays the transition to next generation services.

Therefore, the Commission should refrain from making changes to the Section 214 discontinuance process as proposed in the *FNPRM*. There is no indication that the current process is not working, and adopting the proposed "adequate substitute" criteria as well as other suggested modifications (e.g., expanding the 214 notice requirements and extending the time periods for approving Section 214 applications) would only impose additional burden and delay. Also, the discontinuance process should not be used to impose additional or new obligations on carriers, particularly when such matters are the subject of pending industry-wide proceedings. If the FCC wants to mandate new standards for service, it can and should do that independently of the carrier- and service-specific Section 214 process.

Should the Commission nonetheless codify any of the proposed criteria relating to alternative services as part of its Section 214 inquiry, the burden of demonstrating the adequacy of such services from sources other than the carrier seeking discontinuance authority should not

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<sup>9</sup> The Commission also cannot ignore the availability and popularity of over-the-top voice applications, such as Google Voice, Skype, and Face Time that countless consumers use to make phone calls, in considering the current competitive landscape for voice services.

rest with the applicant. Carriers are not in a position to know or determine whether the detailed criteria proposed by the Commission are met by other carriers' service offerings.

While some of the proposed criteria such as the principle that an alternative service should permit similar functionalities as the service the applicant wishes to discontinue may seem reasonable on their face, some of the criteria proposed by the Commission cannot be adopted. For instance, the Commission cannot require applicants to demonstrate the adequacy of network security relating to an alternative service because it does not have statutory authority to do so.

To the extent the Commission adopts metrics in connection with any criteria for network capacity and reliability or service quality, it should avoid implementing a specific testing methodology for carriers to demonstrate compliance. Rather, the Commission should focus on developing standardized data collection and certification requirements, and allow carriers some flexibility with respect to the precise testing methodology used to verify network performance and/or service quality so long as it produces reasonably reliable results.

Finally, the Commission should not extend the interim condition requiring reasonably comparable access to commercial wholesale platform services for some period beyond completion of the special access proceeding, as some commenters suggest. The special access proceeding will afford the Commission the opportunity to reevaluate the appropriate duration of this interim rule. Indeed, this evaluation will likely lead the Commission to conclude that its interim conditions relating to reasonably comparable wholesale access are unnecessary.

## II. THE COMMISSION'S PROPOSED CHANGES TO THE SECTION 214 PROCESS ARE UNWARRANTED

The Commission notes in the *FNPRM* that it has always applied certain criteria in evaluating the adequacy of alternative services in the context of Section 214 applications.<sup>10</sup> There is no record evidence that the current process is not working. Indeed, the Commission previously took steps to streamline the Section 214 discontinuance process and now appears to be proposing changes that would make it more administratively burdensome, not only by adopting various criteria by which to evaluate the adequacy of alternative services,<sup>11</sup> but also by proposing to require additional notice and to extend the length of time for approval of Section 214 applications.<sup>12</sup>

There is no need for the Commission to modify the Section 214 discontinuance process as proposed in the *FNPRM*. The “adequate substitute” inquiry is but one factor among several that the Commission evaluates to determine whether a proposed discontinuance of service will adversely affect the “public convenience and necessity.”<sup>13</sup> Yet, the Commission now proposes to expand this single factor into a set of at least eight detailed criteria that alternative available services would have to satisfy in order to be deemed “adequate.”<sup>14</sup>

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<sup>10</sup> See *FNPRM* at ¶ 204.

<sup>11</sup> See *id.* at ¶ 208.

<sup>12</sup> See *id.* at ¶ 238.

<sup>13</sup> See 47 U.S.C. § 214(a). The relevant factors include: (1) the financial impact of the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. See *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, ¶ 8 (2003).

<sup>14</sup> These criteria include: (1) network capacity and reliability; (2) service quality; (3) device and service interoperability, including interoperability with vital third-party services (through existing or new devices); (4) service for individuals with disabilities, including compatibility

Adopting such criteria would turn a straightforward element of the Section 214 evaluation – whether alternative communications services will be available to a particular community following discontinuance – into a complicated examination of the specific features and functions of replacement or alternative services, as well as the uses to which those services may be put and the equipment with which they may be used. The Commission has not identified any reason why the current environment requires a new and complicated set of criteria for judging whether alternative services are adequate and why the criteria the Commission has employed to evaluate the numerous changes to and discontinuances of services that it has considered for the last seven decades as technology has evolved are lacking.

In addition to rejecting the proposed criteria, the Commission also should refrain from making other changes to the Section 214 discontinuance process. Specifically, the Commission should not extend the time periods for granting approval of Section 214 applications or require advance notice of proposed discontinuances to align with the new time periods for notices of copper retirement (i.e., 90 or 180 days, depending on whether retail or wholesale customers are involved).<sup>15</sup>

As explained in Section IV.B. below, the existing notice procedures in Section 63.71 of the Commission’s rules are sufficient to provide proper notice to affected customers. Given the Commission’s emphasis on maintaining a streamlined Section 214 process, it makes no sense to modify the time period for approval of Section 214 applications or to require carriers to provide

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with assistive technologies; (5) PSAP and 911 service; (6) cybersecurity; (7) service functionality; and (8) coverage. *See FNPRM* at ¶ 208. In addition, the Commission proposes to include as part of its evaluation whether the carrier has an adequate customer education and outreach plan in place. *See id.* at ¶ 233.

<sup>15</sup> *See id.* at ¶ 238.

advance notice beyond the obligations currently in place.<sup>16</sup> To the extent it would serve a legitimate public interest objective to provide customers with additional time to take certain actions in connection with a proposed discontinuance, the Commission has the option to remove a Section 214 application from streamlined processing.

The Commission also must not use the discontinuance process to impose additional or new obligations on carriers. A determination that the new service meets the same requirements as the old service, as evaluated pursuant to the Commission's existing case-by-case approach, should suffice. The Commission cannot require the new service to comply with new service requirements or have additional attributes that the old service did not (e.g., text-to-911 functionality,<sup>17</sup> HD voice capability,<sup>18</sup> etc.), as suggested in the *FNPRM*.

Moreover, as other commenters have pointed out, efforts to build new obligations or attributes into the discontinuance regime would short-circuit ongoing policy debates over the characteristics that should and should not be mandated in a competitive, multi-platform communications environment, and would unfairly target ILECs for special obligations that their competitors do not face.<sup>19</sup> For example, questions regarding 911 service and disabilities access are already subject to existing laws<sup>20</sup> or are being addressed in other proceedings.<sup>21</sup> Issues such

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<sup>16</sup> *See id.* (“We emphasize we wish to maintain a streamlined process for carriers that satisfy our existing criteria for such treatment and the adequate substitutes proposal discussed above if adopted.”).

<sup>17</sup> *See id.* at ¶ 223 (proposing to require IP network providers to implement real time text to replace TTY text services).

<sup>18</sup> *See id.* at ¶ 224 (proposing to require IP network providers to include HD voice as a feature for users with disabilities).

<sup>19</sup> *See, e.g.,* CenturyLink Comments, GN Docket No. 13-5, *et al.* (filed Feb. 5, 2015), at 25.

<sup>20</sup> *See, e.g.,* 47 U.S.C. §§ 255, 617-620; 47 C.F.R. §§ 6.5(c), 6.9, 7.9, 14.20(a)(4), (5) (setting forth generally applicable laws and regulations governing service providers and equipment manufacturers with respect to ensuring access for disabled consumers).

as these present industry-wide questions that are properly considered in industry-wide proceedings. Should the FCC want to mandate new standards for service, it can and should do so on an industry-wide basis outside of the Section 214 process.

### **III. SECTION 214 APPLICANTS CANNOT BE RESPONSIBLE FOR DEMONSTRATING THE ADEQUACY OF ALTERNATIVE SERVICES AVAILABLE FROM OTHER PROVIDERS**

To the extent the Commission adopts any of the proposed criteria, which it should not, the burden of demonstrating the adequacy of alternative services from sources other than the carrier seeking discontinuance authority should not rest with the applicant. It is quite alarming for the Commission to suggest that in each case in which a carrier must demonstrate the existence of an adequate substitute service, the carrier must consider existing services offered by third parties.<sup>22</sup> Carriers are not in a position to know or determine whether the detailed criteria proposed by the Commission are met by other carriers' service offerings.

For instance, the Commission proposes that the adequate substitute test should evaluate whether an alternative service affords the same or greater capacity and affords the same reliability as the existing service, even when large numbers of communications take place simultaneously, and when large numbers of connections are initiated in or terminated at a communications hub.<sup>23</sup> This means that the applicant would need to confirm that alternative services provided by another carrier are routed to the correct location, connections are completed, connection quality does not deteriorate under stress, and connection setup does not

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<sup>21</sup> See, e.g., *911 Governance and Accountability*, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208 (2014).

<sup>22</sup> See *FNPRM* at ¶ 213.

<sup>23</sup> See *id.* at ¶ 216.

exhibit noticeable latency.<sup>24</sup> Furthermore, the Commission proposes to adopt metrics for latency, jitter, packet loss, and speed through-put to evaluate the performance, successful routing, completion of connections, and quality deterioration of the service being offered.<sup>25</sup>

Similarly, the Commission proposes that applicants should be required to demonstrate that the alternative service provided by another carrier meets minimum service quality standards, such as standards set by the state commission responsible for the relevant service area, or in the absence of such standards, federal service quality standards adopted by the Commission.<sup>26</sup> For instance, the Commission might require that voice services be provided with an “R Factor” score at or above a minimum level, that data services meet certain speeds as measured either by internal network management system tools or by external systems (such as the Measuring Broadband America-based hardware approach), or it might adopt additional metrics for service quality, such as repeat trouble/repair reports.<sup>27</sup>

The Commission also proposes that, as part of the evaluation, applicants be required to demonstrate that alternative services available from other providers permit similar service functionalities as the service sought to be discontinued,<sup>28</sup> allow for as much or more interoperability of both voice and non-voice devices as the service to be retired,<sup>29</sup> allow at least the same accessibility, usability, and compatibility with assistive technologies as the service being discontinued,<sup>30</sup> comply with applicable state, Tribal, and federal regulations regarding the

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<sup>24</sup> *See id.*

<sup>25</sup> *See id.* at ¶ 217.

<sup>26</sup> *See id.* at ¶ 218.

<sup>27</sup> *See id.*

<sup>28</sup> *See id.* at ¶¶ 229-30.

<sup>29</sup> *See id.* at ¶¶ 219-21.

<sup>30</sup> *See id.* at ¶ 222.

availability, reliability, and required functionality of 911 service,<sup>31</sup> offer comparably effective protection from network security risks,<sup>32</sup> and will remain available in the affected service area to the persons to whom the discontinued service had been available.<sup>33</sup>

Applicants have no means to gauge network capacity and reliability of services or service quality available from alternative sources, and they certainly have no means of measuring whether alternative services offered on other networks meet any specific performance or service quality thresholds established by the Commission. Likewise, applicants have no visibility into the functionality, interoperability, disability access functions, 911/PSAP service capabilities, or data integrity of services from alternative sources. It also would be impossible for applicants to demonstrate that the substitute service from an alternative source will remain available in the affected service area to the persons to whom the discontinued service had been available.

Thus, under no circumstances should the burden of demonstrating the adequacy of alternative services from sources other than the carrier seeking discontinuance authority rest with the applicant. Providers can only be responsible for determining the adequacy of substitute services they offer and cannot be responsible for vouching for the adequacy of alternative services offered by other service providers.

#### **IV. THE COMMISSION SHOULD REFRAIN FROM ADOPTING CERTAIN PROPOSALS IN THE *FNPRM***

ITTA again cautions the Commission not to introduce additional burdens to the Section 214 process by requiring carriers to go through a detailed analysis and certification with respect to each and every factor identified in the *FNPRM*. Section 214 does not require that a reasonable

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<sup>31</sup> *See id.* at ¶ 225.

<sup>32</sup> *See id.* at ¶¶ 227-28.

<sup>33</sup> *See id.* at ¶ 231.

substitute be an “exact substitute[] for” the discontinued service.<sup>34</sup> Thus, at most, the Commission might require that the alternative service offered by the carrier permits similar, *but not identical*, service functionalities as the service for which the carrier seeks discontinuance authority, so long as there is consumer demand for the service. Otherwise, the burden of conducting a time-consuming evaluation of the proposed criteria outweighs any purported public interest benefit.

For instance, measuring latency, jitter, packet loss, and speed through-put to evaluate the performance, successful routing, completion of connections, and quality deterioration of the service being offered is a costly and painstaking process that could require changes to the carrier’s network. Conducting an evaluation as to whether the replacement service meets certain service quality standards that will vary from jurisdiction to jurisdiction also would be burdensome. Similarly, conforming to specific technical standards so as to ensure a replacement service has as much or more interoperability with both voice and non-voice devices (or newer technology-based equivalent devices) as the service to be retired would be problematic, not only because it may not be technically feasible, but also because it would perpetuate the specific characteristics associated with the legacy service regardless of whether it is now obsolete. Furthermore, complying with these and some of the other proposed criteria would be excessive if the carrier can certify as to the threshold question that the replacement service has similar service functionalities that are actually in demand by consumers.

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<sup>34</sup> *AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 13225, 13229, ¶ 9 (1999), *recon. denied*, 16 FCC Rcd 13636 (2001).

### **A. The Commission Should Not Adopt the Proposed Criterion Relating to Network Security**

The Commission proposes in the *FNPRM* to require a carrier to demonstrate in its Section 214 discontinuance application that a substitute service offered by the requesting carrier or alternative services available from other providers in the relevant service area offer comparably effective protection from network security risks.<sup>35</sup> The Commission cannot adopt this requirement because it lacks the requisite authority to do so.<sup>36</sup>

Furthermore, when it comes to data security, the stakes are exceptionally high. A cyber attack affecting a portion of the communications network could cripple the economy and have a devastating impact on the health and security of the nation. Thus, as a practical matter, detailed information regarding cyber risk management practices, including from an unaffiliated provider of a substitute service, would not (and should not) be available, as disclosure of such information would pose significant security risks.

### **B. The Commission Should Not Adopt the Proposed Criterion Relating to Customer Education and Outreach**

Citing concerns about the level of consumer education and outreach around technology transitions generally, the Commission seeks comment in the *FNPRM* on whether its evaluation should consider whether the carrier has an adequate customer education and outreach plan in place.<sup>37</sup> There is no need for the Commission to take any steps relating to customer education and outreach in the context of Section 214 discontinuance applications because the application process already entails provision of notice to affected customers and other stakeholders.

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<sup>35</sup> See *FNPRM* at ¶ 227.

<sup>36</sup> See, e.g., *Technology Transitions Order*, Dissenting Statement of Commissioner O’Rielly, at 179 (stating that “I also take issue with particular criteria, such as cybersecurity, as we have no statutory authority in that space.”).

<sup>37</sup> See *FNPRM* at ¶ 233.

Specifically, the Commission’s rules provide that a carrier seeking to discontinue, reduce, or impair service “shall notify all affected customers of the planned discontinuance, reduction, or impairment of service, and shall notify and submit a copy of its application to the public utility commission and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense...”<sup>38</sup> The notice to “each affected customer”<sup>39</sup> also must include instructions that a customer may file comments within 15 or 30 days (depending on the carrier’s status as dominant or non-dominant) following the Commission’s release of a public notice of the proposed discontinuance should they wish to object.<sup>40</sup>

There is no evidence in the record that this decades-old process has been in any way insufficient in ensuring that customers are aware that a carrier is proposing to discontinue service and of the specific steps they may take to raise any concerns or objections with the Commission. Furthermore, even if the Commission’s rules did not contain notice requirements, carriers would continue to have incentives, either out of necessity or due to marketplace forces, to communicate with customers in connection with technology transitions when customers are impacted by such changes. In light of these considerations, there is no need for the Commission to adopt any additional requirements relating to customer education and outreach in connection with the Section 214 discontinuance process.

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<sup>38</sup> 47 C.F.R. § 63.71(a).

<sup>39</sup> *Id.*

<sup>40</sup> *See* 47 C.F.R. §§ 63.71(a)(5)(i)-(ii).

### **C. The Commission Should Refrain From Adopting a Specific Testing Methodology for Any Performance or Service Quality Metrics It May Adopt**

In the *FNPRM*, the Commission poses several questions about how carriers might measure network reliability and service quality should it adopt those criteria in connection with evaluating the adequacy of alternative services as part of the Section 214 discontinuance process. The Commission suggests that network performance and quality could be measured in a variety of ways, including ping or other User Datagram Protocol-based tests, such as the FCC Measuring Broadband America Program.<sup>41</sup> Other methodologies could also be employed, such as requiring an upper limit over-subscription ratio at defined points in the network, dual homing to at least two different upstream providers, multiple links to a single upstream provider, a utilization limit above which additional ports and links would be required, and in the case of voice services, an “R Factor” score at or above a minimum threshold value or the ability to access a dial tone within three seconds at a 98 percent success rate during busy periods.<sup>42</sup>

To the extent the Commission adopts criteria relating to network capacity and reliability or service quality, it should avoid implementing a specific testing methodology for carriers to demonstrate compliance. Instead, the Commission should focus on developing standardized data collection and certification requirements, and allow carriers some flexibility with respect to the precise testing methodology used to verify network performance so long as it is reasonable and produces reasonably reliable results based on the network configuration the provider has in place.

The Commission must bear in mind that a variety of carriers, both large and small, must comply with Section 214 obligations. It is imperative that any compliance testing be conducted

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<sup>41</sup> See *FNPRM* at ¶ 217.

<sup>42</sup> See *id.* at ¶¶ 217-18.

in a way that minimizes the burden and expense for such providers. Specifying a particular hardware or software option may inhibit a provider from employing a more cost effective alternative that is perfectly suitable for measuring compliance based on its size and/or network configuration.<sup>43</sup>

As indicated above, one of the proposed methodologies suggested by the Commission is the Measuring Broadband America Program. However, there are myriad reasons why this approach would not be suitable for measuring network reliability and service quality for most carriers. Among other things, the Measuring Broadband America program examines service offering from the largest broadband providers in the U.S. using data on broadband service delivered to the homes of thousands of volunteer broadband subscribers nationwide. It is not clear that the equipment utilized for the program would work for all network configurations. In addition, it may be difficult to identify the required number of volunteers to participate in this type of program in more sparsely populated rural areas, particularly those served by smaller carriers.

Moreover, the Measuring Broadband America program (which gathers data from providers that collectively account for more than 80 percent of all U.S. wireline broadband connections) was designed to gain insight into, and provide to the public an assessment of, the level of broadband service available on a national scale. Any performance metrics measured in connection with the Section 214 discontinuance process would need to be limited to the specific geographic area at issue in the application.

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<sup>43</sup> Moreover, the costs of conducting network performance testing, which could be significant depending on the size or type of provider, represent dollars that cannot be directed toward broadband investment and deployment of next generation networks and services.

Thus, should the Commission adopt any criteria relating to network performance or service quality, it makes sense to focus on applying the same set of data collection and certification requirements on all carriers for purposes of meeting those criteria, rather than adopting one specific testing methodology.

**V. THE COMMISSION SHOULD NOT FURTHER EXTEND INTERIM WHOLESALE ACCESS REQUIREMENTS FOR COMMERCIAL WHOLESALE PLATFORM SERVICES**

The Commission seeks comment in the *FNPRM* on whether the reasonably comparable wholesale access condition, as it applies to commercial wholesale platform services, should be extended beyond the completion of the special access proceeding.<sup>44</sup> According to one commenter, it would be inappropriate for the Commission to sunset the reasonably comparable access requirement for wholesale platform services upon the completion of the pending special access rulemaking because that rulemaking does not address the status of such arrangements.<sup>45</sup>

Even though commercial wholesale platform services are not special access services, there is no need for the Commission to extend the interim requirement for reasonably comparable access to such services beyond the completion of the special access proceeding. As the Commission observed in the *Technology Transitions Order*, the special access proceeding “will entail a comprehensive evaluation of competition” that will enable the Commission to determine whether it is necessary “to adopt a set of rules and/or policies that may have wide-ranging effects on telecommunications competition.”<sup>46</sup> As such, “the special access proceeding provides a more clearly foreseeable point at which to reevaluate [the] appropriate duration of the

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<sup>44</sup> See *FNPRM* at ¶ 244.

<sup>45</sup> See, e.g., Letter from Thomas Jones, Counsel to Granite Telecommunications, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al., at 1 (filed June 12, 2015).

<sup>46</sup> *Technology Transitions Order* at ¶ 152.

reasonably comparable wholesale access interim rule as to commercial wholesale platform services.”<sup>47</sup> Thus, there is no need at this time for the Commission to consider further extending this requirement, particularly since the special access proceeding will likely demonstrate that the Commission’s interim conditions relating to reasonably comparable wholesale access are unnecessary.

## **VI. CONCLUSION**

For the reasons provided above, ITTA respectfully requests that the Commission refrain from adopting the proposals relating to the Section 214 discontinuance process contained in the *FNPRM*.

Respectfully submitted,

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<sup>47</sup> *Id.*