Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	**)**	
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Accelerating Wireline Broadband	**)**	**WC Docket No. 17-84**
Deployment by Removing Barriers to	**)**	
Infrastructure Investment	**)**	
	)	

COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the Federal Communications Commission's Further Notice of Proposed Rulemaking proposing further measures to remove regulatory barriers to broadband infrastructure investment and speed the transition from legacy to next-generation networks and services.[1]

I. INTRODUCTION AND SUMMARY

In 2014, the Commission released its first order in its Technology Transitions docket, governing transitions from a network based on TDM circuit-switched voice services running on copper loops to an all-IP network using various forms of physical infrastructure. Recognizing that these transitions were already underway, the Commission stated that "[t]hese ongoing transitions have brought new and improved communications services to the marketplace," and touted technology transitions benefits such as reduced network costs, "increased efficiencies that can lead to improved and innovative product offerings and lower prices," catalyzing innovation,

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154 (Nov. 29, 2017) (*Report and Order and/or Declaratory Ruling and/or FNPRM*).

and powering economic growth.[2] The Commission further enunciated its goals in the Technology Transitions proceeding of "maintain[ing] and facilitat[ing] the momentum of technological advances that are already occurring."[3] In doing so, the Commission also emphasized its mission to ensure the endurance of four core statutory values – public safety, ubiquitous and affordable access, competition, and consumer protection.[4] It appeared that the Commission had charted a course of "embrac[ing] modernized communications networks,"[5] appropriately modulated by the ballast of core foundational principles.

Instead, the ballast became a mooring. In a later 2014 declaratory ruling, as well as successive orders in 2015 and 2016, in its Technology Transitions docket, the Commission adopted misguided regulations, such as those relating to additional notice of planned copper retirements, perpetuating and even exacerbating incumbent local exchange carrier (ILEC) competitive disparities already built into the Commission's copper retirement and network change rules.[6] Similar ills resulted from changes adopted by the Commission in 2015 and 2016 pertaining to Commission approval of service discontinuances pursuant to Section 214 of the Communications Act of 1934, as amended (Act).[7]

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[2] *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435, para. 2 (2014).

[3] *Id.*

[4] *See id.* at 1435, 1436, paras. 1, 4.

[5] *Id.* at 1436, para. 4.

[6] *See generally Technology Transitions et al.*, GN Docket No. 13-5 et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014); Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (2015); Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 (2016) (*2016 Technology Transitions Order*).

[7] 47 U.S.C. § 214.

Perhaps the beacon of misguided action was the Commission's adoption of the "adequate replacement test," which would burden ILECs with, among myriad other showings, potentially having to demonstrate the adequacy of alternative services from sources other than the carrier seeking discontinuance authority, despite carriers not being in a position to know or determine whether the detailed criteria adopted by the Commission are met by other carriers' service offerings. Moreover, such "streamlined treatment"[8] was a complete misnomer, as it requires so much information from carriers that otherwise would choose to pursue it that, instead, it is a significant deterrent. Measures such as the "adequate replacement test" and the "functional test" standard for determining whether a service was being discontinued, reduced or impaired pursuant to Section 214(a) of the Act drifted so far towards safeguarding core statutory values that they hamstrung ILECs with unnecessary regulatory obligations whose burdens far exceeded any conceivable competitive or consumer protection benefits. Not only did policies and regulations adopted by the Commission from 2014-2016 exacerbate ILEC competitive disparities, they also stifled ILEC investment in the networks and technologies the Commission had proclaimed it was seeking to encourage, and served as a disincentive to fiber deployment by incumbent wireline carriers, with the paradoxical result of impeding the migration to IP-enabled networks and services.[9] Furthermore, disproportionately affecting ILECs – the entities most likely to be adopting new technologies as they transition from legacy networks to next-generation services – likewise paradoxically contravened the marketplace reality that "[t]here has been an indisputable 'societal and technological shift' away from switched telephone service as a

[8] *See, e.g., 2016 Technology Transitions Order*, 31 FCC Rcd at 8305, para. 64.

[9] *E.g., Report and Order* at 14-15, para. 31 ("The record shows that these [2015 copper retirement] rules have delayed certain incumbent LECs' plans to deploy fiber and, in some instances, to even consider foregoing fiber deployment altogether.").

fixture of American life. Consumers are increasingly able and willing to abandon their landlines in favor of communications technologies that do not rely on local telephone switches."[10]

ITTA -- whose members have been at the forefront of the TDM-to-IP transition, drawing on private capital, intercarrier compensation, public-private partnerships with federal and state regulators, and universal service support to deploy broadband networks and innovative IP-based services in the predominantly rural, high-cost areas they serve – salutes the Commission for righting the ship in the recent *Report and Order and Declaratory Ruling*. There, the Commission took numerous actions that actually will result in facilitating more rapid transition to IP-enabled networks. For instance, the Commission streamlined the copper retirement process, reducing the waiting period and eliminating superfluous notice requirements.[11] It also sensibly revised the general network change disclosure process by removing a rule that had prohibited ILECs from engaging in useful advanced coordination with entities affected by network changes.[12] Furthermore, it expedited the Section 214(a) discontinuance process by

[10] *2016 Technology Transitions Order*, 31 FCC Rcd at 8290, para. 17. The Commission finally recognized this reality in the *2016 Technology Transitions Order*, where it declared that ILECs are no longer dominant providers in the interstate switched access services marketplace. *Id.* at 8289-90, paras. 16-18 (interstate switched access "continues to plummet as subscribership to traditional voice phone service reaches new lows"). Statistics released by the Industry Analysis and Technology Division of the Commission's Wireline Competition Bureau clearly buttress these findings. From June 2013 through June 2016 (the most recent data reported upon), mobile voice subscriptions increased by 32 million (337.8 million total), interconnected VoIP subscriptions increased by 15 million (60.3 million total), and retail switched access lines decreased by 27.5 million (62.3 million total). FCC, Voice Telephone Services: Status as of June 30, 2016 at 2 (WCB 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf. Assuming these trends continue in their current trajectory, the next Voice Telephone Services report will reveal that interconnected VoIP subscriptions have overtaken retail switched access lines.

[11] *See Report and Order and Declaratory Ruling* at 14-33, Sec. III.B.2.

[12] *See id.* at 12-14, paras. 26-29.

reducing the comment and automatic-grant timeframes for various discontinuance applications, and reversing the "functional test."[13]

ITTA urges the Commission to stay the course as it evaluates the record in response to the *FNPRM*'s further streamlining proposals. Eliminating unnecessary or burdensome regulatory requirements enables ILECs to better devote scare resources towards promoting the evolution from legacy platforms to IP-enabled networks and services, and expediting unduly cumbersome processes concomitantly expedites the transition to next-generation services. It will also better balance the policy goals of facilitating technology transitions and safeguarding core statutory values.

Specifically, the Commission should further streamline the network change process by adopting proposals to calculate the effective date of short-term network changes from the date the ILEC files its notice rather than the date the Commission releases its public notice, and to eliminate the requirement that ILECs provide public notice of network changes affecting interoperability of customer premises equipment (CPE). It should also extend to all types of network changes the streamlined notice procedures applicable to *force majeure* and other unforeseen events adopted by the Commission for copper retirements.

With respect to the discontinuance process, as advocated by ITTA in its comments on the *Wireline Infrastructure Notice*,[14] the Commission should further streamline the Section 214(a) discontinuance process to a notice process. In the absence of doing so, the Commission should adopt its proposal to expedite the approval for applications to grandfather data services with

[13] *See id.* at 34-60, Secs. III.C., IV.

[14] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Wireline Infrastructure Notice*); ITTA Comments, WC Docket No. 17-84 (June 15, 2017) (ITTA Comments).

speeds less than 25/3 Mbps. It also should adopt the proposal that it forbear from Section 214(a) discontinuance requirements where there are no customers, or at least further streamline the discontinuance process for applications in such circumstances.

II. THE COMMISSION SHOULD FURTHER STREAMLINE THE NETWORK CHANGE PROCESS

A. The Effective Date of Short-Term Network Changes Should be Tagged to the Date the ILEC Files Its Notice

The *FNPRM* seeks comment on a proposal that the Commission revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the ILEC files its notice or certification of the change with the Commission rather than from the date the Commission releases its public notice.[15] ITTA supports this proposal. ITTA agrees that tying the effective date to release of the Commission's public notice is unnecessary because ILECs are required to provide direct notice to interconnecting carriers.[16]

Tagging the effective date to the date of filing of the notice, rather than the Commission's release of a public notice, also provides more planning certainty to ILECs given that the time the Commission takes to issue public notices may vary. Moreover, whereas the Commission found with respect to copper retirement notices that calculating the waiting period from the date the Commission releases a public notice affords Commission staff critical review time,[17] the Commission did so precisely against the backdrop of retaining a distinction between copper

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[15] *See FNPRM* at 63, para. 163.

[16] *See id.* (citing AT&T Comments, WC Docket No. 17-84, at 34 (June 15, 2017) (AT&T Comments)); *see also* 47 CFR § 51.333(a)(1) (requiring ILEC to provide notice of the short-term change to each telephone exchange service provider that directly interconnects with the ILEC's network, at least five business days in advance of the ILEC filing notice with the Commission).

[17] *See Report and Order, Declaratory Ruling, and FNPRM* at 63, para. 164 (citing *id.* at 28, para. 65).

retirements and other types of network changes for notice purposes.[18] In fact, the Commission recognized "the unique circumstances posed by the need to accommodate copper retirements in contrast to other types of network changes,"[19] that "copper retirement network changes have a potentially greater impact on interoperability than other network changes,"[20] and "the fact that copper retirements are more complicated and impactful than many other types of network changes."[21]

B. Requirements for Notice of Network Changes Affecting Interoperability of CPE are Outdated and Should be Eliminated

Section 51.325(a)(3) of the Commission's rules requires that an ILEC provide public notice regarding any network change that would affect the manner in which CPE is attached to the interstate network.[22] The *FNPRM* seeks comment on a proposal to eliminate the requirement.[23] ITTA supports the proposal, as well as elimination of Section 68.110(b) of the Commission's rules.[24]

The *Wireline Infrastructure Notice* sought comment on eliminating or modifying Section 68.110(b), which requires that if changes to a wireline telecommunications provider's communications facilities, equipment, operations or procedures "can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such

[18] *See id.* at 16-17, Sec. III.B.2.a.

[19] *Id.* at 15, para. 31.

[20] *Id.* at 16, para. 34.

[21] *Id.* at para. 35; *see also id.* at 63, para. 164 (seeking comment on whether circumstances are different for short-term network change notices than for copper retirement notices).

[22] 47 CFR § 51.325(a)(3).

[23] *See FNPRM* at 63-64, paras. 165-66.

[24] 47 CFR § 68.110(b).

terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service."[25] However, the *Wireline Infrastructure Report and Order and Declaratory Ruling* did not address the issue. ITTA reiterates its support for eliminating Section 68.110(b), and incorporates its prior arguments by reference.[26]

ITTA also concurs with AT&T, the original proponent of eliminating Section 51.325(a)(3), and who also supports eliminating Section 68.110(b), that concerns in the existing rules about incompatibility are no longer relevant to today's CPE marketplace.[27] In fact, AT&T's rationale for calling for elimination of Section 51.325(a)(3) is strikingly congruent with ITTA's for seeking elimination of Section 68.110(b).[28] As ITTA asserted in its comments on the *Wireline Infrastructure Notice*, any resources devoted to complying with Section 68.110(b) would be put to much better use in service of broadband deployment and the transition to next-

[25] *Id.; see Wireline Infrastructure Notice*, 32 FCC Rcd at 3287, para. 70.

[26] *See* ITTA Comments at 14-16.

[27] *See* AT&T Comments at 36.

[28] *Compare id.* at 36-37 (citation omitted) ("[T]he rationale that the Commission relied on in originally adopting section 51.325(a)(3) in 1999 – concern that ILECs that also manufactured CPE might leverage their control of facilities to favor their affiliates' CPE – has become a relic of a shifting marketplace. . . . Nor do ILECs continue to possess the market power that would enable them to adversely affect the CPE marketplace . . .") *with* ITTA Comments at 15 ("Fast-forward more than four decades [since adoption of Section 68.110(b)], battles over facilitating a competitive market for CPE, and concerns over a monopoly provider hampering such competition via technical changes to the PSTN, are anachronistic.").

generation, IP-based networks.[29] The same reasoning supports elimination of Section 51.325(a)(3), which for all intents and purposes functions as a subset of Section 68.110(b).[30]

C. The Streamlined Notice Procedures for *Force Majeure* Events Should Apply to All Network Changes

In the *Wireline Infrastructure Report and Order*, the Commission adopted streamlined copper retirement notice procedures applicable to *force majeure* and other unforeseen events.[31] The *FNPRM* seeks comment on extending these procedures to all types of network changes.[32] ITTA urges the Commission to do so.

As the fulcrum of its consideration of this issue, the *FNPRM* seeks comment on whether the same benefits to be gained from the streamlined procedures adopted in the copper retirement context similarly apply to other types of network changes.[33] ITTA believes that they do. Hearkening to recent, real-world events, the Commission expressed in the *Wireline Infrastructure Report and Order* that "it is vital" that the Commission does everything it can "to facilitate rapid restoration of communications networks in the face of natural disasters and other unforeseen events. . . . [T]he top priority for service providers must be to restore their networks and service to consumers as quickly as possible rather than jump through regulatory hoops."[34] Thus, the Commission adopted the streamlined copper retirement notice procedures for *force*

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[29] *See* ITTA Comments at 16.

[30] *See FNPRM* at 63-64, paras. 165-66 (seeking comment on whether Sections 51.325(a)(3) and 68.110(b) impose similar burdens, there is any reason to treat the two rules differently, and eliminating Section 51.325(a)(3) will help speed ongoing technology transitions).

[31] *Wireline Infrastructure Report and Order, Declaratory Ruling, and FNPRM* at 30-33, Sec. III.B.2.d.

[32] *See id.* at 64, para. 167.

[33] *See id.*

[34] *Id.* at 30, para. 71.

majeure events for the direct and critical goal to provide ILECs "the flexibility to restore service as quickly as possible."[35]

Whether it's retiring copper or migrating traffic to another switch on an emergency basis, the underlying goal is exactly the same: to restore service as quickly as possible. In addition, in adopting the streamlined procedures for *force majeure* and other unforeseen events for copper retirements, the Commission included in these procedures certain safeguards, such as the ILEC fulfilling notice obligations "as soon as practicable," and ensuring the bona fides of the triggering event necessitating a change. These factors militate towards the Commission extending the streamlined notice procedures for *force majeure* and other unforeseen events to all types of network changes.

III. THE COMMISSION SHOULD FURTHER STREAMLINE THE DISCONTINUANCE PROCESS

A. The Commission Should Holistically Streamline the Section 214(a) Discontinuance Process for Technology Transitions

While the Commission adopted various measures in the *Wireline Infrastructure Report and Order* to eliminate unnecessary regulatory encumbrances associated with the Section 214(a) discontinuance process,[36] it seeks comment in the *FNPRM* on what further steps it can take to streamline the Section 214(a) discontinuance process for legacy voice services.[37] In doing so, it takes cognizance of the proposals advanced by several commenters, including ITTA, in comments on the *Wireline Infrastructure Notice*.[38] ITTA again urges the Commission to adopt ITTA's further streamlining proposals.

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[35] *Id.* at 31, para. 71.

[36] *See generally id.* at 33-49, paras. 80-127.

[37] *See id.* at 65, para. 171.

[38] *See id.* at n.525 (citing ITTA Comments at 17-20).

Specifically, for discontinuances associated with technology transitions, ITTA supports the idea that the Commission should require carriers to file only a notice of discontinuance accompanied by proof that fiber, IP-based, or wireless alternatives are available to the affected community, in lieu of a full application for approval.[39] Thus, ITTA agrees that it would be appropriate for the Commission to conclude that Section 214(a) discontinuances will not affect the present or future public convenience and necessity, provided that fiber, IP-based, or wireless services are available to the affected community.[40] Furthermore, the availability of alternative services either offered by third parties or by the discontinuing carrier should suffice.[41]

In 2018, the adequacy of alternative services as acceptable substitutes for legacy services should no longer be in question. In May 2017, for the first time, it was reported that "cord-cutters" outnumber consumers relying on wireline services.[42] In addition, there are IP-based alternatives for virtually every legacy service, usually offering advanced features and functionalities beyond the legacy service's capabilities. And the exponentially greater capacity

[39] *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3295, para. 96.

[40] *See id.* at para. 95.

[41] *See id.*

[42] Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016 at 1 (2017), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf ("The second 6 months of 2016 was the first time that a majority of American homes has only wireless telephones. Preliminary results from the July-December 2016 National Health Interview Survey . . . indicate that 50.8% of American homes did not have a landline telephone but did have at least one wireless telephone . . . .").

of fiber as compared to copper-based, legacy technologies is manifest. At most, there may be minimal customer disruptions associated with a discontinuance.[43]

1. Implementation of Streamlining

As for implementation of this streamlining, the following provisions of Sections 63.71 and 63.602 of the Commission's rules[44] should apply:

- The notification requirements of Section 63.71(a)(1)-(4) and (6)-(7);[45]
- The notification requirements of Section 63.71(c)(1)-(3);[46]
- Section 63.71(e), with the words "applications" and "application" being replaced respectively by "notifications" and "notification";
- Section 63.71(f), which, as it applies to technology transition-related discontinuances, should be amended by striking all text except for the last sentence and, in the last sentence, replacing "an application" with "a notice of discontinuance," and deleting all text after "section". In addition, it should be

[43] While discontinuing carriers obviously have every incentive to avoid any customer disruptions, the Commission should tolerate minimal disruptions as the natural by-product of widespread and ultimately beneficial technology transitions.

[44] 47 CFR §§ 63.71, 63.602 (2017). Though not all of the rules adopted in the *2016 Technology Transitions Order* have become effective, this discussion is keyed to the rule provisions as they appear in the October 1, 2017 edition of the CFR.

[45] Pursuant to a streamlined process where the carrier is filing with the Commission a *notice* of discontinuance, Section 63.71(a)(5) would no longer be necessary. The surviving provisions of Section 63.71(a) should be deemed satisfied if the carrier complies with Section 63.71(b).

[46] Because these processes would apply to non-dominant and dominant carriers alike, Section 63.71(c)(4) would be superfluous. In addition, to prevent the exception from swallowing the rule, Section 63.71(c)(5) should not apply. Section 63.71(c)(1) should be amended to read for technology transition-related discontinuances: "(1) Caption – 'Section 63.71 Notice of Discontinuance'".

amended to provide that the discontinuance may not occur until the 31st day after release of the public notice;[47]

- The first sentence of Section 63.71(h), replacing "An application" with "A notice of discontinuance";[48]
- A certification by an officer or other authorized representative of the filer attesting to the availability of fiber, IP-based, and/or wireless alternatives to the affected company, and otherwise attesting to the truth and accuracy of the notice of discontinuance.[49]

Limiting the process to these requirements will ensure that the process is truly streamlined,[50] while adequately protecting customers by providing them the information they need and adequate time to make any adjustments necessary in light of the impending discontinuance.

2. Elimination of the Adequate Replacement Test

As part and parcel of this streamlined notice of discontinuance process, the Commission would also eliminate the adequate replacement test. Maintaining the adequate replacement test, which heaped on extensive additional requirements under the cloak of "streamlined treatment,"

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[47] A 31-day notice period for customers is consistent with the period currently applicable in Section 63.71(f). It is also sufficient in other contexts where customers are encountering service changes. *See, e.g.*, 47 CFR § 64.1120(e)(3) (minimum 30-day period for carrier change notification to customers).

[48] For the reasons discussed below, the second sentence of Section 63.71(h), pertaining to the adequate replacement test, should be eliminated.

[49] Such a certification should suffice as proof that fiber, IP-based, or wireless alternatives are available to the affected community. *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3295, para. 96 (asking what proof would suffice to support a notice of discontinuance). ITTA notes that even the moribund adequate replacement test is adequately supported by such a certification. *See* 47 CFR § 63.602(a)(4), (b).

[50] *See Report and Order, Declaratory Ruling, and FNPRM* at 66, para. 172 (seeking comment on whether proposals for further streamlining of Section 214(a) discontinuance process will help speed the ongoing technology transitions to next-generation IP-based services and networks).

would subvert the implementation of *actual* streamlining. Moreover, there was no record evidence that the process in place prior to the Commission's adoption of the adequate replacement test was not working. Adopting such criteria turned 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. Simply put, the burden of conducting a time-consuming evaluation of the criteria far outweighs any purported public interest benefit.[51]

3. Holistic Streamlining of the Discontinuance Process Complies with the Act

The streamlined notice of discontinuance process also complies with the Act. Section 214(a) provides that "nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided." By their very nature, the technology transition-related discontinuances at issue ensure adequate alternatives are available to customers. Thus, the process does not require an actual authorization by the Commission, insofar as the customer will have available to it a "replacement . . . which will not impair the adequacy or quality of service provided" to him/her.[52]

[51] *See id.*

[52] If, nevertheless, the Commission decides that an actual instrument of authorization is warranted, the public notice of filing that it releases can be couched as an authorization.

B. In the Absence of Holistic Streamlining of the Section 214(a) Discontinuance Process, the Commission Should Adopt Further Reforms to the Process

1. The Commission Should Further Streamline the Approval Process for Applications to Grandfather Data Services

In the *FNPRM*, the Commission proposes to streamline the approval process for applications seeking to grandfather data services with speeds of less than 25/3 Mbps, so long as the applicant provides data services of equivalent quality at speeds of at least 25/3 Mbps or higher throughout the affected service area.[53] The Commission further proposes a uniform reduced public comments period of 10 days and an auto-grant period of 25 days. ITTA supports these proposals, with one slight modification.

In the *Wireline Infrastructure Report and Order*, the Commission streamlined the approval process for applications to grandfather legacy services below 1.544 Mbps for existing customers, adopting a uniform reduced public comment period of 10 days and an automatic grant period of 25 days.[54] It did so in light of its conclusion that "streamlined processing of these applications will remove unnecessary regulatory delay for carriers seeking to discontinue legacy services with no harmful impact to existing customers."[55] The Commission based its conclusion on the record in response to the *Wireline Infrastructure Notice* having demonstrated that "longer processing timelines for grandfathering applications are unnecessary to protect consumers from potential harm stemming from discontinuances," and that its current discontinuance rules may unnecessarily impede the deployment of network upgrades.[56] The Commission also found that

[53] *See id.* at 61, para. 156.

[54] *See id.* at 34-35, para. 84.

[55] *Id.* at 35, para. 84.

[56] *Id.* at para. 86. *See also id.* at 36, para. 88: "because existing customers will be grandfathered under this section of our rules, they are unlikely to be harmed by these new processes."

the reduced comment period would still afford concerned consumers sufficient time to comment because carriers would still be obligated to directly notify its customers of its plans to grandfather a service at, or before, the time it files its grandfathering application with the Commission.[57]

Though the Commission in the *Wireline Infrastructure Report and Order* ultimately found that limiting its streamlined treatment to legacy voice and data services below 1.544 Mbps struck the appropriate balance to provide relief to carriers wishing to transition away from providing legacy services for which there is decreasing demand while at the same time ensuring that potential consumers of these services have readily available alternatives,[58] this is a distinction without a difference. These "common-sense reforms"[59] make equal sense when applied to applications seeking to grandfather data services with speeds of less than 25/3 Mbps. The proposal is girded by the same safeguards underlying the Commission's action in the *Wireline Infrastructure Report and Order* with respect to legacy services below 1.544 Mbps – namely, that there will be no harmful impact to existing customers, who nevertheless would still possess sufficient time to comment; that potential customers would have readily available alternatives; and that the current discontinuance rules may unnecessarily impede deployment of network upgrades, in contravention of the policy of facilitating the transition to IP-based networks.[60]

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[57] *See id.*

[58] *See id.* at 38, para. 92.

[59] *Id.* at 36, para. 87.

[60] *See id.* at 61, para. 158 (seeking comment on whether streamlining the approval process for applications seeking to grandfather data services with speeds less than 25/3 Mbps will help speed the ongoing technology transition to next-generation IP-based services and networks).

In fact, in its comments on the *Wireline Infrastructure Notice*, ITTA advocated that the Commission streamline the approval process for applications seeking to grandfather services with speeds of less than 25/3 Mbps.[61] For the reasons discussed above, if the Commission declines to holistically streamline the Section 214(a) discontinuance process for technology transitions,[62] ITTA urges the Commission to expand the scope of grandfathered services subject to streamlined processing to those with speeds of less than 25/3 Mbps. However, rather than requiring that the applying carrier provide data services at speeds of at least 25/3 Mbps throughout the affected service area, the Commission should only require that the replacement data services be of equivalent quality at speeds higher than the services the applicant seeks to grandfather. In this regard, potential customers still will benefit by enjoying access to readily available alternatives that exceed the grandfathered offerings.

2. The Commission Should Forbear from, or at Least Further Streamline, Section 214(a) Discontinuance Processes for Services with No Existing Customers

The *FNPRM* seeks comment on proposals by CenturyLink and AT&T that the Commission forbear from applying the Section 214(a) discontinuance requirements when carriers seek to discontinue, reduce, or impair services with no existing customers.[63] As a threshold matter, as discussed above,[64] ITTA does not believe that a forbearance analysis is necessary in order for the Commission to adopt a notice of discontinuance process for technology transition-related discontinuances.

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[61] *See* ITTA Comments at 22-23.

[62] *See supra* Sec. III.A.

[63] *See FNPRM* at 64-65, para. 168.

[64] *See supra* Sec. III.A.

Nevertheless, ITTA believes that services with no existing customers present a prototypical case for forbearance from Section 214(a) processes under Section 10(a) of the Act.[65] As the *FNPRM* suggests, "because the services in question lack customers, applying the section 214(a) discontinuance requirement here is not necessary to ensure just charges or protect consumers."[66] In addition, forbearance from Section 214(a) processes under these circumstances is consistent with the public interest, because allowing carriers to expeditiously cease applying resources towards supporting services where there is literally no consumer demand enables them to instead devote such resources towards next-generation IP-based networks and other endeavors where the public interest is expressed through consumer demand.[67] So long as there have been no customers and no customer requests for the subject services within the preceding 30 days,[68] carriers should be free to discontinue them and then notify the Commission they have done so.

In the absence of the Commission deeming a notice process adequate under these circumstances either under ITTA's proposal above or via forbearance, the Commission should further streamline the discontinuance process for services with no existing customers.[69] In the *Wireline Infrastructure Report and Order*, the Commission adopted streamlined processing rules for applications to discontinue legacy voice and data services below 1.544 Mbps for which the carrier has had no customers and no request for service for at least 30 days prior to filing the application. Such applications will be automatically granted 15 days after the Commission

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[65] 47 U.S.C. § 160(a).

[66] *FNPRM* at 65, para. 168; *see* 47 U.S.C. § 160(a)(1),(2).

[67] *See* 47 U.S.C. § 160(a)(3); *FNPRM* at 65, para. 168.

[68] *See Wireline Infrastructure Report and Order, Declaratory Ruling, and FNPRM* at 42-43, Sec. III.C.3. (expediting applications to discontinue certain legacy services where there were no customers or requests for service for at least 30 days).

[69] *See id.* at 65, para. 169.

places them on public notice unless the Commission has removed the application from streamlined processing.[70] Citing ITTA's comments on the *Wireline Infrastructure Notice*, the Commission asserted that there was no evidence in the record to suggest that services with no customers and no demand for 30 days are likely to be in demand sometime in the future.[71] Moreover, the Commission concluded that "[w]hen there are no customers of a service, and no prospective customers have requested a service for 30 days, there is little or no public interest for the section 214 discontinuance process to protect."[72]

The Commission acknowledged that, as with other Section 214(a) streamlining reforms it adopted in the *Wireline Infrastructure Report and Order*, it was "proceed[ing] incrementally" by limiting the reforms to legacy voice and data services below 1.544 Mbps.[73] ITTA adds in kind that, as with the Commission's further streamlining of the approval process for applications to grandfather data services,[74] there is no reason to limit the reforms to services with speeds below 1.544 Mbps. The same policy considerations govern regardless of the technical characteristics of the service for which discontinuance is sought due to lack of customers and customer service requests: there simply is no consumer demand for the service. In the *Wireline Infrastructure Report and Order*, the Commission succinctly elucidated the approach that should apply here: "We better meet our public interest obligations when needless regulatory delay is eliminated so

[70] *See id.* at 42, para. 108.

[71] *See id.* at 42-43, para. 109 (citing ITTA Comments at 24)).

[72] *Id.* at 42, para. 109 (citing, *inter alia*, ITTA Comments at 23-24).

[73] *See id.* at 43, para. 110.

[74] *See supra* Sec. III.B.1.

as to facilitate discontinuance of services that are no longer demanded, freeing up carrier resources for other, more highly demanded services."[75]

Finally, noting that under its current rules, there is no deadline for filing comments in response to a discontinuance application where there are no existing customers, the Commission seeks comment on whether it should establish such a comment period.[76] Again in the absence of the Commission deeming a notice process adequate under these circumstances either under ITTA's proposal above or via forbearance, the Commission should establish a seven-day comment period. Moreover, the seven-day period should apply regardless of whether the application is filed by a dominant or non-dominant carrier.[77] As the Commission made clear in the *Wireline Infrastructure Report and Order* with respect to grandfathered services, current competitive dynamics render it unnecessary to maintain a distinction between dominant and non-dominant carriers in the context of grandfathered services.[78] This is even more the case where, as here, there are no competitive dynamics at play because there are no customers over whom to compete. In any event, the Commission should evaluate with utmost scrutiny and dispatch any comments filed on a discontinuance application where there are no customers, because where there is no customer demand, the bona fides of any opposition to a discontinuance application must be considered highly suspect from the starting gate.

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[75] *Id.* at para. 109.

[76] *See id.* at 65, para. 170.

[77] *See id.* (seeking comment on whether the Commission should apply a uniform period of public comment to applications from dominant and non-dominant carriers).

[78] *See id.* at 37, 40, paras. 91, 101.

IV. CONCLUSION

The Commission should continue on the course it charted in the *Wireline Infrastructure Report and Order and Declaratory Ruling*. The public interest is better met when needless regulatory delay is eliminated, freeing up carrier resources for services that will offer greater functions, capacity, and capabilities well into the future. The Commission will facilitate these public interest benefits by adopting the further reforms to its network change and Section 214(a) discontinuance processes described above.

Respectfully submitted,

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