

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF PUBLIC KNOWLEDGE AND CENTER FOR RURAL STRATEGIES

Yosef Getachew
Sean Davis
Public Knowledge
1818 N St. NW, Suite 410
Washington, DC 20036
(202) 861-0020

Marty Newell
Chief Operating Officer
Center for Rural Strategies
46 E Main St
Whitesburg, Kentucky 41858
(606) 632-3243

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I. INTRODUCTION

Public Knowledge and Center for Rural Strategies submit comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Public Knowledge and Center for Rural Strategies continue to reiterate that the technology transitions process is an imperative piece of closing the digital divide, bringing modern communications infrastructure to all Americans, and holding telecommunications carriers accountable for the quality of service they provide to the public. Unfortunately, the Commission's continued attempts to rollback the protections put in place will only serve to widen the digital divide and downgrade rural America.

Ensuring that consumers have access to consistent, reliable communications service is one of the oldest and most crucial responsibilities of the FCC. Section 214 states when and how carriers can extend, change, and discontinue the services they offer with direct oversight by the FCC.² The Commission established rules under Section 214 specifically to protect consumers from adverse impacts associated with discontinuance and to ensure public interest values remained in place including universal service, competition, and public safety. The Commission's proposals to cut back or eliminate its Section 214 rules would result in an abdication of its longstanding responsibility to ensure consumers have access to adequate communications services.

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, WC Docket No. 17-84, FCC 17-154 (rel. Nov. 29, 2017) ("*2017 Report and Order and FNPRM*").

² See 47 U.S.C. § 214.

In November 2017, the Commission eliminated critical copper retirement and service discontinuance rules.³ The Commission now proposes to further cut back or completely eliminate additional service discontinuance rules, including forbearing from any Section 214(a) requirements when a carrier transitions from legacy to next generation services and removing the outreach and educational requirements in the Adequate Replacement Test.⁴ Once again, the Commission fails to articulate a substantive policy basis for abandoning these rules. In failing to do so, the Commission ignores the substantial record from prior proceedings that established copper as a critical communication network and the need for service discontinuance rules to ensure consumers do not see a downgrade in service. Further, the Commission presumes streamlining or eliminating these rules would accelerate broadband deployment but fails to conduct any independent cost-benefit analysis. Instead, the Commission relies on assertions from carriers.

Since the Commission implemented service discontinuance rules, carriers have successfully transitioned their networks with consumer protections remaining in place. Lastly, the Commission continues to explore ways to preempt state and local laws despite its limited authority to do so and without specifically targeting what types of laws it would preempt. The Commission's misguided efforts to continue eliminating service discontinuance rules would negatively impact the nation's most vulnerable communities and result in a downgrade in service for millions of rural Americans. Public Knowledge and Center for Rural Strategies support the

³ See *2017 Report and Order and FNRPM*, ¶¶ 22-156. Among the rules the Commission eliminated include advance notice to consumers of copper retirement, the *de facto* retirement rule, and the functional test. Public Knowledge joined other consumer advocate organizations to file a legal challenge in the Ninth Circuit to block the FCC's order. *Greenlining Institute et al v. FCC*, Petition for Review, Case No. 17-73283 (9th Cir. 2017).

⁴ *Id.*, ¶¶ 175-77.

transition to next-generation network technologies, but it should not come at the expense of rules that provide consumer education and protection.

II. THE COMMISSION FAILS TO ARTICULATE A SUBSTANTIVE POLICY BASIS FOR FURTHER ABANDONING SECTION 214 SAFEGUARDS

A. The Commission Must Consider The Substantial Record Presented in Prior Proceedings That Demonstrate The Importance of Section 214 Rules.

The Commission's Section 214 rules were established on a full and comprehensive record from prior proceedings that established their necessity.⁵ The contents of those records, which explain why the Commission adopted service discontinuance rules, must be considered as the Commission now attempts to streamline or outright eliminate more of these rules. The Commission did not adopt service discontinuance rules in response to speculation, but rather, it adopted rules to directly address problems arising as carriers transition their copper networks without a clear regulatory framework in place.⁶ For example, after Superstorm Sandy hit Fire Island, NY Verizon replaced its destroyed copper network with VoiceLink. Consumers found VoiceLink to be incompatible with a range of third party services they expected to work and could not even reliably complete 911 calls.⁷ The lessons from Fire Island played a key role in the Commission adopting service discontinuance rules requiring carriers to first seek permission to transition their network and the agency to authorize the discontinuance after ensuring it was in

⁵ See *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications et al*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014) (“*2014 NPRM and Declaratory Ruling*”); *Technology Transitions et al*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (“*2015 Report and Order*”); *Technology Transitions et al*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 (2016) (“*2016 Second Report and Order*”).

⁶ See *2014 NPRM and Declaratory Ruling*, 29 FCC Rcd at 14970 ¶ 4.

⁷ See Public Knowledge, *The Phone Network Transition: Lessons from Fire Island* (Mar. 7, 2014) (Lessons from Fire Island), <https://www.publicknowledge.org/documents/the-phone-network-transition-lessons-from-fire-island>.

the public interest, convenience, and necessity.⁸ Similarly, the consumer outreach and education rules found within the Adequate Replacement Test were established because the Commission found that a discontinuance of a critical service consumers rely on creates a great need for consumer education.⁹ The Commission then sought comment on how best to work with state commissions and Tribal governments to establish a set of criteria that should go into an education and outreach plan.¹⁰ After hearing from a variety of stakeholders, the FCC adopted carefully tailored rules that help consumers, particularly those most vulnerable, understand what to expect when their legacy voice service is discontinued.¹¹ The Commission must address the substantial evidence found in the record of these proceedings that explains the necessity of Section 214 rules prior to making any attempt to eliminate them.

B. The Commission Offers No Substantive Policy Basis For Its Proposal To Completely Abdicate Its Section 214 Responsibilities For Carriers Upgrading To Next-Generation Networks.

The Commission offers no substantive policy basis for its proposal to completely abdicate its Section 214 responsibilities for carriers upgrading to next-generation networks. In fact, the Commission’s proposal to forbear from any Section 214 requirements goes against the principles for why these rules are necessary. The FCC has a Congressional mandate under Section 214 to oversee service discontinuance, which requires carriers to obtain a certificate from

⁸ See *2015 Report and Order*, 31 FCC Rcd at 9429 ¶ 103 (“explaining that Section 214 rules “were designed to protect retail customers from the adverse impacts associated with discontinuances of service, and they ensure that service to communities will not be discontinued without advance notice to affected customers, opportunity to comment, and Commission authorization.”).

⁹ See *id.* at 9491 ¶ 233.

¹⁰ See *id.*

¹¹ *2016 Second Report and Order*, 31 FCC Rcd at 8348-52 ¶¶ 178-192.

the Commission that “neither the present nor future public necessity will be adversely affected thereby.”¹²

Rather than offer any rationale, the Commission instead relies on unsupported assertions from Verizon, CenturyLink, and WTA that carriers upgrading to next-generation networks should no longer fall under the Commission’s Section 214 jurisdiction.¹³ Verizon in particular contends that “freeing providers from Section 214(a) in this market will promote competition among those providers on the merits of their next-generation services.”¹⁴ However, Verizon fails to understand that just because a service is considered next-generation, does not mean it is better in all respects. As demonstrated by its own use of VoiceLink in Fire Island, a new network technology may not have all the capabilities and protections consumers are accustomed to from their legacy service. In that regard, without the agency’s Section 214 rules, there is no way to ensure next-generation networks are a true step forward for everyone and do not abandon certain features consumers expect such as network reliability, interoperability with key applications, and access to 911 services.¹⁵ As the FCC has previously stated, “[u]ness the Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives.”¹⁶

¹² 47 U.S.C. § 214(a).

¹³ *2017 Report and Order and FNPRM*, ¶¶ 174-175.

¹⁴ *Id.* ¶ 175, n.532.

¹⁵ *See 2016 Second Report and Order*, 31 FCC Rcd at 8313-56 ¶¶ 88-195.

¹⁶ *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881, 6892 ¶ 29 (2003).

C. The Commission Offers No Substantive Policy Basis For Eliminating The Consumer Outreach and Education Requirements Found in The Adequate Replacement Test.

The Commission offers no substantive policy basis for eliminating the consumer outreach and education requirements found in the Adequate Replacement Test. As detailed above, the consumer and outreach education requirements were established after the Commission found that a discontinuance of a critical service consumers rely on creates a great need for consumer education. Further, the FCC adopted carefully tailored rules after seeking comment from multiple stakeholders and working with state and tribal government officials.

Rather than address the record, the FCC relies on assertions from ITTA to ask if these rules are burdensome.¹⁷ ITTA contends that consumer education and outreach rules are burdensome because preexisting discontinuance notice rules already provide affected customers with adequate information.¹⁸ However, the test to eliminate these rules is not simply whether they impose a cost but whether the public understands what is going on, maintains critical services, and do not get ripped off when carriers transition their networks. The consumer education and outreach rules in the Adequate Replacement Test were designed to ensure the nation's most vulnerable communities receive the information they need to understand how they would be impacted by the discontinuance. For example, the rules require carriers who use a language other than English in their regular course of business to provide outreach and education materials to affected customers in both English and the non-English language.¹⁹ Further, the rules require carriers to provide an accessible hotline recognizing "some individuals with disabilities cannot afford internet access or may lack a reliable means of internet access in that

¹⁷ *2017 Report and Order and FNPRM*, ¶ 177.

¹⁸ *See id.*

¹⁹ *See 2016 Second Report and Order*, 31 FCC Rcd at 8350 ¶ 181.

area.”²⁰ Additional protections for vulnerable consumers make these rules important and unique from preexisting discontinuance notice rules. ITTA also asserts that consumer and education outreach rules are unnecessary because carriers have incentives to communicate with customers.²¹ However, the record from prior proceedings revealed several instances of incumbents involuntarily migrating their customers from copper networks without adequate notice or consent, resulting in customer confusion.²² Simply put, without enforceable rules, carriers are unlikely to provide the robust education and outreach that consumers need to understand their change in service.

D. The Commission Fails To Conduct Any Independent Cost-Benefit Analysis To Justify Further Eliminating Section 214 Rules.

The Commission continues to tout its reliance on economics and cost-benefit analysis to make decisions²³ but has failed to conduct any type of independent cost-benefit analysis throughout this proceeding.²⁴ In the *FNPRM*, the Commission continues to show no interest in conducting its own analysis and instead relies on select groups to make self-interested, unsupported assertions that even more Section 214 rules are burdensome, and notes no effort to explain the cost and benefits. This approach represents little more than an invitation for incumbents to provide support the Commission lacks to justify its own presumptive conclusions.

²⁰ *Id.* at 8351-52 ¶ 184.

²¹ *2017 Report and Order and FNPRM*, ¶ 177.

²² *See 2015 Report and Order*, 31 FCC Rcd at 9395-36 ¶ 39.

²³ *See* FCC, Chairman Pai Speech on Economic Analysis in Communications Policy (April 5, 2017), available at <https://www.fcc.gov/news-events/events/2017/04/chairman-pai-speech-economic-analysis-communications-policy>; FCC, Establishment of the Office of Economics and Analytics (Jan. 9, 2018), https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0109/DOC-348636A1.pdf.

²⁴ *See 2017 Report and Order and FNPRM*, Dissenting Statement of Commissioner Mignon L. Clyburn (The Commission “conducts no formal cost-benefit analysis, something that the majority has said should be required for rules, and especially those rules with significant impact. Here, the item claims to have a significant impact, but where is the supportive cost-benefit analysis?”).

If the Commission chooses to pursue its own independent analysis, the Communications Act mandates it consider non-economic public interest values such as universal service,²⁵ consumer protection,²⁶ network reliability, and public safety as they pertain to communications networks.²⁷ Applying these principles to the current service discontinuance framework would show that the current rules are working as commenters have already pointed out. As the Communications Workers of America notes, the current rules have facilitated private sector investment and public adoption of advanced broadband infrastructure with the five largest incumbent carriers investing \$46.7 billion in 2016 alone.²⁸ Since the rules went into effect, carriers have successfully transitioned their networks,²⁹ and the Commission must take this into account in its proposal to eliminate more service discontinuance rules.

III. THE COMMISSION MUST PROVIDE TARGETED EXAMPLES OF STATE LAWS IT SEEKS TO PREEMPT AND NARROWLY CONSTRUE ITS PREEMPTION AUTHORITY

A. The Commission Must Provide Targeted Examples Of State Laws It Seeks To Preempt.

The Commission seeks comment on preempting state and local laws to accelerate infrastructure restoration after natural disasters.³⁰ However, the agency fails to provide any examples or further context of what types of state and local laws it is seeking to preempt. It is

²⁵ 47 U.S.C. § 151.

²⁶ 47 U.S.C. § 214.

²⁷ See 47 U.S.C. § 256; see also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915 ¶ 111 (2005) (The Commission emphasized that it would “not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era.”).

²⁸ See Comments of Communications Workers of America, WC Docket No. 17-84, at 2 (filed June 15, 2017).

²⁹ See Comments of Verizon, WC Docket No. 17-84, at 3, 17 (stating that it has filed to retire copper in 3.8 million locations across 8 states).

³⁰ *2017 Report and Order and FNPRM*, ¶ 179.

important to note that states and localities have no desire to serve as barriers to network restoration after natural disasters and often work with carriers to get infrastructure back up as fast as possible. Instead of providing targeted examples, the Commission relies on commenters to do so.

B. The Commission’s Authority Under Section 253 To Preempt State Laws Must Be Narrowly Tailored

Whatever laws the Commission targets to preempt, Section 253 must be narrowly construed. First, it is critical to understand that this proceeding relies on legal authority only available to the extent that broadband internet access remains classified as a Title II telecommunications service. Section 253 is clear: the Commission may only act to preempt a state or local law that “prohibit[s] or [has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”³¹ The Commission cannot declare broadband to no longer be a telecommunications service as it did in its recent *Restoring Internet Freedom Order*,³² and yet continue to exercise Title II authority to preempt state laws.

Second, the Commission only has authority to regulate interstate communications services,³³ and the Commission has consistently found that broadband is an interstate service.³⁴ Section 253(a) notes that the authority only allows the Commission to act to preempt laws which “prohibit or have the effect of prohibiting” the deployment of telecommunications service.³⁵ The plain language makes clear that the Commission can only target state laws, which serve as a

³¹ 47 U.S.C. § 253(a).

³² See generally *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, FCC 17-166 (rel. Jan. 4, 2018).

³³ See, e.g., *Internet Over Cable Declaratory Ruling*, Declaratory Ruling and Notice of Proposed Rulemaking, GN Docket No. 00-185 ¶ 59 (2002).

³⁴ 47 U.S.C. 152. The DC Circuit recently issued an opinion that hinges in large part on the Commission’s lack of authority over interstate elements of communication. See *Global Tel*Link v. FCC*, 2017 U.S. App. Lexis 10428 (D.C. Cir. June 13, 2017).

³⁵ 47 USC 253(a).

complete barrier to the provision of service. State and local laws which merely inconvenience a provider, or which impose conditions or requirements which change the business case for deployment, do not necessarily rise to this level. Further, the Commission must respect the broad authority preserved for state and local governments by Sections 253(b) and (c). Both sections preserve clear authority for states and localities to act on a competitively neutral basis to implement policies governing telecommunications service.

IV. CONCLUSION

With the proposals outlined in the *FNRPM*, the Commission continues its march to further deregulate rules that were put in place on a bipartisan framework from years of prior proceedings with well-developed records. In doing so, the Commission threatens the nation's most vulnerable populations who still rely on copper networks for service. The digital divide is real, and while streamlined broadband deployment may help in some ways to close that gap, the communities most in need will only be hurt, not helped, by the proposals offered here.

For these, and all the forgoing reasons, Public Knowledge and Center for Rural Strategies strongly oppose further streamlining of Section 214 rules and urges the Commission to take a more thoughtful, reasoned and deliberate approach as it seeks ways to accelerate broadband deployment.

Respectfully Submitted,

/s/ Yosef Getachew
Public Knowledge
1818 N St. NW, Suite 410
Washington, D.C. 20036
(202) 861-0020

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