

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Greenlining Institute, Public Knowledge, )  
The Utility Reform Network, and National )  
Association of State Utility Advocates, Petitioners )  
 )  
v. )  
 )  
Federal Communications Commission, Respondent )

**PETITION FOR REVIEW**

**I. PETITION**

Pursuant to 42 U.S.C. § 402(a), 28 U.S.C. § 2342(1), 28 U.S.C. § 2112, 5 U.S.C. § 706, and Federal Rule of Appellate Procedure 15(a), the Greenlining Institute (“Greenlining”), Public Knowledge, The Utility Reform Network (“TURN”), and National Association of State Utility Advocates (“NASUCA”) (collectively, “the petitioners”), hereby petition the court for review of the Order of the Federal Communications Commission (“FCC” or “the Commission”) entered on November 29, 2017. *See 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 Declaratory Ruling*”). The petitioners file this petition pursuant to the Commission’s judicial lottery procedures, which require parties to submit Petitions for Review within ten days after issuance of the Order. 47 C.F.R. § 1.13; 28 U.S.C. § 2112. Petitioners are requesting the court to review parts of the *Report and Order* and the *Declaratory Ruling*. Because the Commission ordered that the Declaratory Ruling is effective upon release; *see 2017 Report and Order and Declaratory Ruling* ¶ 193; the ten day window to file petitions for review was triggered on November 29, 2017. *See* 47 C.F.R. § 1.103.

## II. RELIEF REQUESTED

The petitioners specifically request the court to review paragraphs 37 to 39 of the *Report and Order* and paragraphs 128 to 155 of the *Declaratory Ruling*. In the relevant paragraphs of the *Report and Order*, the Commission eliminated the *de facto retirement* rule, which required incumbent local exchange carriers to provide adequate notice to affected customers when they failed to maintain copper, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling. *See Technology Transitions et al*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9419 ¶ 80 (2015) (“*2015 Report and Order*”). The Commission now eliminated the copper and subloop portion of the *de facto retirement* rule. *See 2017 Report and Order and Declaratory Ruling*, ¶¶ 37-40. In the *Declaratory Ruling*, the Commission eliminated the “functional test” which required the Commission to examine the “totality of the circumstances” when evaluating whether an incumbent local exchange carrier’s network change constitutes a “discontinuance, reduction, or impairment of service” under section 214 of the Communications Act. *See 2015 Report and Order*, 30 FCC Rcd at 9471-9478 ¶¶ 181-201. The Commission now ruled that a carrier’s tariff is sufficient for determining what “service” a carrier offers for purposes of determining whether section 214 discontinuance review is required. *See 2017 Report and Order and Declaratory Ruling*, ¶¶ 128-155. The petitioners seek review of these Commission decisions on the ground that they are arbitrary, capricious, an abuse of discretion, or contrary to law pursuant to 5 U.S.C. § 706.

### III. JURISDICTION

The petitioners were active participants in the Commission's proceeding filing comments, reply comments, and *ex partes*. See Comments of The Greenlining Institute on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (filed June 15, 2017); Comments of The Greenlining Institute on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (filed July 17, 2017); Comments of Public Knowledge, WC Docket No. 17-84 (filed June 15, 2017); Reply Comments of Public Knowledge, WC Docket No. 17-84 (filed July 17, 2017); Comments of NASUCA et al, WC Docket No. 17-84 (filed June 15, 2017); Reply Comments of NASUCA et al, WC Docket No. 17-84 (filed July 17, 2017); Written Ex Parte of Public Knowledge et al, WC Docket No. 17-84 (filed Nov. 9, 2017). Greenlining specifically has standing to file a petition for review in this court. Greenlining is a nonprofit advocacy organization that represents members in California currently subscribed to copper lines provided by incumbent local exchange carriers. Public Knowledge, TURN, and NASUCA join Greenlining in this petition for review. The petitioners request the court hold unlawful and vacate the challenged Commission decisions.

December 8, 2017

Respectfully submitted,

s/ Harold Feld  
Senior Vice President  
Public Knowledge  
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Washington, DC 2036  
Counsel for Public Knowledge  
Counsel of Record<sup>1</sup>

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<sup>1</sup> Pursuant to Ninth Cir. R. 25-5(e), the filing attorney attests that all other parties on whose behalf this filing is submitted concur in the filing's content.

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*Admission to 9th Circuit Court of Appeals Pending*

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Institute  
*Admission to 9th Circuit Court of  
Appeals Pending*

**CERTIFICATE OF SERVICE**

I, Arian Attar, hereby certify that on the 8th day of December, 2017, I caused a true and correct electronic copy of the foregoing Petition for Review via email to the following:

Thomas M. Johnson, Jr.  
General Counsel  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
LitigationNotice@fcc.gov

s/ Arian Attar  
Arian Attar

9th Circuit Case Number(s)

**NOTE:** To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

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### CERTIFICATE OF SERVICE

#### When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

\*\*\*\*\*

### CERTIFICATE OF SERVICE

#### When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

12/08/2017

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Served via posting in the FCC's electronic filing system (ECFS) within the docket (17-84) at issue. All participating commenters as notated by the FCC's final order have been served via this ECFS.

see attached service list.

Signature (use "s/" format)

s/ Arian Attar

<b>Commenter Name</b>
AARP
ACT- The App Association, Southern DNA, TM Technologies, Alchemy Security, FMS, Inc., Cosmic Innovations, Dogtown Media, 1564B, Remine, NeuEon, Colorado Technology Consultants
Ad Hoc Telecom Users Committee
ADTRAN, Inc.
African American Mayors Association
Alarm Industry Communications Committee
Alliant Energy Corporation, WEC Energy Group, Inc., Xcel Energy Services Inc.
Ameren Corporation, American Electric Power Service Corporation, Duke Energy Corporation, Entergy Corporation, Oncor Electric Delviery Company, LLC, Southern Company, Tampa Electric Company
American Cable Association
American Public Power Association
Arctic Slope Regional Corporation
Association of American Railroads
AT&T Services, Inc.
Austin Martinetti
Betty Ann Kane, Chairman, DC Public Service Commission
BT Americas, Inc.
California Association of Competitive Telecommunications Companies (CALTEL)
California Public Utilities Commission
Catherine Kleiber
Carl Como Tutera
CenterPoint Energy Houston Electric, LLC, Virginia Electric and Power Company d/b/a Dominion Energy Virginia, Florida Power & Light Company
CenturyLink
Charter Communications, Inc.
Chuck Matzker
Cindy Russell
Cindy Sage, MA; Lennert Hardell, MD, PhD; David O. Carpenter, MD; (BioInitiative Working Group)

Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
City and County of San Francisco
City of Alexandria, Virginia; Arlington County, Virginia; Henrico County, Virginia
City of Baltimore, Maryland
City of Chicago
City of Eden Prairie, Minnesota
City of Mukilteo
City of New York
City of Norfolk, Virginia
City of Philadelphia
Cityscape Consultants
Coalition of Concerned Utilities
Colorado Communications and Utilities Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Takoma, Washington, King County, Washington, Jersey Access Group (JAG), Colorado Municipal League (CML)
Comcast Corporation
Communications Workers of America
Community Associations Institute
Competitive Carriers Association
CompTIA- The Computing Technology Industry Association
CCIA- Computer & Communications Industry Associations
Conterra Broadband Services, Southern Light, LLC, Uniti Group, Inc.
Corning Incorporated
County of Cumberland
CPS Energy
Crown Castle International Corp.
CTIA
Deloitte LLP
DuPage Mayors and Managers Conference
Edison Electric Institute
EMF Safety Network and Ecological Options Network
Environmental Health Trust



Eric Langley
ExteNet Systems, Inc.
Fiber Broadband Association
Florida Coalition of Local Governments
Frontier Communications
Google Fiber, Inc.
Harris Corporation
Helen Mickiewicz
Hongwei Dong
Illinois Electric Cooperative
INCOMPAS
Information Technology and Innovation Foundation
Intelliwave LLC
Irregulators
ITTA- The Voice of Mid-Size Communications Companies
Michigan Public Service Commission
JEA
Jennifer Brens
Jennifer Wood
Johnathon Mirin
Joey Lombardi, Maryland Office of People's Counsel
Karen Spencer
Leadership Conference on Civil and Human Rights
League of Arizona Cities and Towns, League of California Cities, League of Oregon Cities
League of Minnesota Cities
Level 3
Liberty Cablevision of Puerto Rico LLC
Lightower Fiber Networks
Loudoun County, Virginia
Lumos Networks Inc., Lumos Networks of West Virginia Inc., Lumos Networks LLCs
MACTA- The Minnesota Association of Community Telecommunications Administrators
Martin Blank, Henry Lai, Magda Havas, Joel Moskowitz, Elizabeth Kelley

Marty Feffer
Merry Callahan
Metropolitan Area Communications Commission
Michael H Hain, Nittany Media, Inc.
Minnesota Cities Coalition
Minnesota Telecom Alliance
Mobilitie, LLC
Montgomery County, Maryland
Multicultural Media, Telecom and Internet Council (MMTC), League of United Latina American Citizens (LULAC), Hispanic Technology and Telecommunications Partnership (HTTP), National Black Caucus of State Legislators (NBCSL), National Foundation for Women Legislators (NFWL), National Organization for Black Elected Legislative Women (NOBEL Woman), National Organization of Black County Officials (NOBCO), National Association of Black County Officials (NABCO)
National Associate of Regulatory Utility Commissioners
National Association of State Utility Consumer Advocates, Ohio Consumers Counsel, New Jersey Division of Rate Counsel, Maine Office of hte Public Advocate, Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, The Utility Reform Network
National League of Cities
National Rural Electric Cooperative Association
NATOA
NTCA- The Internet & Television Association
Next Century Cities
NTCA- The Rural Broadband Association
Office of the Illinois Attorney General- Lisa Madigan
Olemara Peters
ONE MEdia, LLC
Oregon Telecommunications Association
Pat Furey (City of Torrance)
PD Thomas
Pennsylvania Public Utility Commission
Power and Communication Contractors Association
Public Utilities Commission of Ohio
Puerto Rico Telephone Company, Inc., D/B/A Claro
Puget Sound Energy

Quintillion Networks, LLC, Quintillion Subsea Operations, LCC
Rebecca Carol Smith
R Street Institute
San Diego County
Smart Communities and Special Districts Coalition
Soula Culver
Southern Company Services, Inc.
Sprint
Steven D. Hughey, Michigan Public Service Commission
Sue Present
Tekify Fiber
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Communication Service for the Deaf, Inc. (CSD), Hearing Loss Association of America (HLAA), Cerebral Palsy and Deaf Organization (CPADO), Deaf Seniors of America (DSA), Association of Late-Deafened Adults (ALDA), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC), Gallaudet University, Trace Research & Development Center
Texas Public Utility Commission
The American Public Power Association
The Greenlining Institute
The National Organization of Black Elected Legislative Women
Thomas A Schatz (Citizens Against Government Waste)
T-Mobile USA, Inc.
US Chamber of Commerce
US Conference of Mayors
US Telepacific Corp. d/b/a TPx Communications
USTelecom Association
Utilities Technology Council
Various Oregon Electric Utilities
Verizon
Washington Independent Telecommunications Association
Washington State Cities Coalition
Wei Shen
Windstream
Wireless Infrastructure Association

Wireless Internet Service Providers Association
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WTA- Advocates for Rural Broadband
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Zayo Group, LLC
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