6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 63, and 68

[WC Docket No. 17-84; FCC 18-74]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, a Second Report and Order takes a number of actions to accelerate the deployment of next-generation networks and services through removing barriers to infrastructure investment. The Second Report and Order takes further action to revise the discontinuance process, network change notification processes, and the customer notice process. It also forbears from applying discontinuance requirements for services with no customers and no reasonable requests for service during the preceding 30 days.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for the amendments to 47 CFR 51.333(g)(1)(i), (g)(1)(iii), and (g)(2), 63.71(f), (h), (k) introductory text, (k)(1) and (3), and (l), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date.

The amendments to 47 CFR 63.19(a) introductory text published at 81 FR 62656, Sept. 12, 2016, are effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Michele Berlove, at (202) 418-1477, michele.berlove@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in WC Docket No. 17-84, FCC 18-74, adopted June 7, 2018 and released June 8, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at https://docs.fcc.gov/public/attachments/FCC-18-74A1.pdf.

Synopsis

I. INTRODUCTION

1. Removing regulatory barriers causing unnecessary costs or delay when carriers seek to transition from legacy networks and services to broadband networks and services is an important piece of our work to encourage deployment of next-generation networks and to close the digital divide. In this Report and Order, we continue to act on our commitment by further reforming regulatory processes that unnecessarily stand in the way of this important transition that benefits the American public.

2. The actions we take today focus on further streamlining our processes by which carriers discontinue outdated services, eliminating unnecessary and burdensome or redundant requirements, and helping ensure that our network change notification rules take into account the challenges carriers face in the wake of catastrophic and unforeseen events. Providing additional opportunities for streamlined treatment for discontinuance and grandfathering of legacy voice and lower-speed data services and forbearing from applying our discontinuance requirements to services no longer being used by any customers, with appropriate limitations to protect consumers and the public interest, will allow carriers to more quickly redirect resources to next-generation networks and for the public to receive the benefits of those new networks.

II. BACKGROUND

3. The Commission initiated this proceeding last spring by adopting a *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment* (*Wireline Infrastructure NPRM*) seeking comment on a number of potential regulatory reforms to our rules and procedures regarding pole attachments, copper retirement, and discontinuances of legacy services. The *NPRM* was published in the Federal Register on May 16, 2017 (82 FR 22453).

4. On November 16, 2017, the Commission adopted a *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking* (*Wireline Infrastructure Order*) enacting reforms to our pole attachment, network change disclosure, and discontinuance processes to better enable providers to invest in next-generation networks. The *Order* was published in the Federal Register on December 28, 2017 (82 FR 61453). At the same time, the Commission adopted the *Wireline*

Infrastructure FNPRM and sought comment on additional steps to streamline our network change and discontinuance processes, including with respect to discontinuing legacy voice services. At this time, in the interest of removing barriers to broadband infrastructure deployment as quickly as possible, we focus specifically on continuing to reform our discontinuance and network change notification rules. We are committed to and working toward addressing other important issues raised by the *Wireline Infrastructure FNPRM* and for which the Commission's Broadband Deployment Advisory Committee offered recommendations, including revisions to our pole attachment rules. We expect to address those issues in the near future.

III. REPORT AND ORDER

A. Further Streamlining the Section 214(a) Discontinuance Process

5. Today, we take additional steps to eliminate unnecessary regulatory burdens when carriers decide to replace legacy voice and lower-speed data services with improved technological alternatives. The reforms we adopt here, like those adopted late last year, reflect the reality of today's marketplace and the decreasing demand for legacy voice and lower-speed data services as customers move towards more advanced competing alternatives. As demand for legacy services declines, expediting the discontinuance process for such services will allow carriers to focus their resources on providing next-generation IP-based services. The revisions we make today to our rules implementing the section 214(a) discontinuance approval process decrease needless costs and delay in transitioning from legacy voice services and lower-speed data services to next-generation IP-based services so that customers can receive innovative services that meet their needs. As a matter of convenience, unless otherwise noted, in this Report and

Order, we use the terms "discontinue" or "discontinuance" as a shorthand for the statutory language "discontinue, reduce, or impair."

6. At the outset, we reiterate that section 214(a)'s discontinuance obligations apply to interstate voice and data telecommunications services, and to interconnected VoIP service to which the Commission has extended section 214(a)'s discontinuance requirements. Our rules governing the discontinuance process do not preempt state requirements regarding the discontinuance of intrastate services. They do not apply to any carrier's provision of information services, to data or other services offered on a private carriage basis, or to any other communications or non-communications lines of business in which a carrier is engaged that do not come within the purview of Title II of the Communications Act of 1934, as amended (the Act).

1. Expediting Applications that Grandfather, or Discontinue Previously-Grandfathered, Data Services at Speeds Below 25/3 Mbps

7. To encourage carriers to transition to next-generation technologies, and to reduce unnecessary regulatory burdens and costs that would otherwise be imposed on carriers as part of a technology transition, we revise our rules to provide streamlined treatment for lower-speed services in circumstances where the carrier already provides replacement data services at speeds of at least 25 Mbps/3 Mbps. Specifically, we streamline our discontinuance processes for applications seeking to (i) grandfather data services with download/upload speeds below 25 Mbps/3 Mbps, and (ii) subsequently discontinue on a permanent basis such data services once they have been grandfathered for at least 180 days. Previously, the Commission adopted streamlined comment and

automatic grant periods of 10 and 25 days, respectively, for applications to grandfather voice and data services below 1.544 Mbps. We now extend this same streamlined treatment to applications seeking to grandfather data services with speeds below 25 Mbps/3 Mbps, so long as the applying carrier provides fixed replacement data services at speeds of at least 25 Mbps/3 Mbps throughout the affected service area. We recognize that data services subject to section 214 discontinuance authority typically have symmetrical upload and download speeds. We nevertheless specify a non-symmetrical speed threshold here to provide maximum flexibility to carriers to the extent they now or in the future offer any non-symmetrical common carrier data service having download speeds less than 25 Mbps and upload speeds less than 3 Mbps that is subject to our discontinuance rules. The Commission also previously adopted streamlined comment and automatic grant periods of 10 and 31 days, respectively, for applications to permanently discontinue data services below 1.544 Mbps, provided the Commission has previously authorized such services to be grandfathered for at least the prior 180-day period. We now revise our rules to provide the same expedited 10-day comment and 31-day automatic grant periods to all previously-grandfathered data services with download/upload speeds below 25 Mbps/3 Mbps.

8. The record strongly supports extending this streamlined processing to these additional grandfathered and previously-grandfathered data services. Most importantly, these streamlining measures meet our objective of providing carriers with incentives to develop and deploy higher-speed data services at or above 25 Mbps/3 Mbps. Expediting the discontinuance process for additional data services provided that the carrier offers replacement data services at or above our specified speed threshold will

spur the ongoing technology transition to next-generation IP-based services and promote competition in the market for higher-speed replacement services.

9. We reject some commenters' suggestion that extending the streamlined treatment to this class of data services "does not strike the appropriate balance between providing carriers flexibility and ensuring that customers have access to adequate alternatives." Because carriers seeking to use this streamlined process must provide replacement data services at speeds of at least 25 Mbps/3 Mbps throughout the affected service area, concerns about adequate alternatives are misplaced. Moreover, as other commenters recognize, extending our expedited discontinuance process to cover additional grandfathered and previously-grandfathered data services below 25 Mbps/3 Mbps protects existing customers in the same manner as our expedited process for grandfathered and previously-grandfathered low-speed legacy voice and data services. Commenters also note that more flexible speed thresholds are justified by the fact that grandfathering has no impact on existing services. We have thus heeded concerns that we proceed with caution in extending relief to higher speed data services. Existing customers will be grandfathered and they will have sufficient time to raise concerns, if any, about the carrier's grandfathering plans if they are impacted. What's more, the grandfathering period provides customers a far longer actual notice period and opportunity to transition to alternative services than our existing, more general, streamlined processing rules. It also provides us with sufficient time to conduct a thorough examination as to whether the proposed discontinuance would adversely affect the present or future public convenience and necessity during the application review process.

10. Carriers, of course, remain free to seek approval to discontinue a data service below 25 Mbps/3 Mbps without first grandfathering such service. But if they choose to do so, they are not eligible for the further streamlined processing we adopt today for previously-grandfathered data services below this speed threshold. Our further streamlining actions reflect common-sense reforms that balance the needs of customers and carriers in fulfilling our section 214(a) discontinuance obligations.

11. The Commission proposed the 25 Mbps/3 Mbps threshold in the *Wireline Infrastructure FNPRM* to encourage and incentivize carriers seeking to discontinue lower-speed services to deploy and offer data services meeting our current benchmark for fixed advanced telecommunications capability under section 706 of the Act. A data service having download/upload speeds of 25 Mbps/3 Mbps "enables users to originate and receive high quality voice, data, graphics, and video telecommunications." If the discontinuing carrier offers replacement data services at speeds of at least 25 Mbps/3 Mbps, then the streamlined discontinuance process serves as an additional tool to close the digital divide by ensuring customers in the affected area have access to fixed services offering advanced telecommunications capability. We find that limiting the extension of expedited treatment for grandfathered and previously-grandfathered services to data services below 25 Mbps/3 Mbps strikes the appropriate balance at this time to provide regulatory relief to incentivize carriers to transition from the provision of legacy or lower-speed data services and allow them to free up resources to devote to higher-speed more advanced services. We thus decline at present to extend these same streamlining measures to certain higher-speed data services or "all data services regardless of speed." We proceed incrementally to focus regulatory relief where it is most needed first—on

lower-speed data services for which customer demand is rapidly declining.

12. Similarly, we decline requests to apply an expedited discontinuance process where the proposed replacement data services are below 25 Mbps/3 Mbps as long as the discontinuing carrier offers "another data service of at least the same . . . speed throughout the affected service area as the service being discontinued." Allowing carriers that do not commit to provide replacement data services having speeds of at least 25 Mbps/3 Mbps to qualify for this streamlined treatment would not encourage carriers to deploy and offer data services meeting at least our current benchmark speed threshold for fixed advanced telecommunications capability of 25 Mbps/3 Mbps. As the Commission has explained, data services having download/upload speeds of 25 Mbps/3 Mbps "enable[] users to originate and receive high quality voice, data, graphics, and video telecommunications"—capabilities that consumers demand. We recognize commenter concerns that a higher-speed data service may be more costly than a service providing speeds of less than 25 Mbps /3 Mbps. However, this is precisely the type of concern that can be addressed during the section 214 discontinuance public comment period. We also note that while the cost of the replacement service might be outweighed by other considerations, the Commission will consider whether the price for the replacement service is so high as to be unaffordable to most users.

13. In the *Wireline Infrastructure FNPRM*, the Commission proposed specifying that the replacement data service at or above 25 Mbps/3 Mbps that an applicant must provide to qualify for streamlined treatment must be of "equivalent quality." We decline to adopt the "equivalent quality" descriptive language in the condition to qualify for streamlined treatment. In proposing that the replacement data

service be of "equivalent quality," the Commission did not intend to impose new rigid or prescriptive requirements on replacement services at or above 25 Mbps/3 Mbps that a carrier must meet to obtain streamlined processing to grandfather these additional data services. We note that no commenter objects to Verizon's request that we eliminate this qualifier in extending streamlined processing to additional data services below 25 Mbps/3 Mbps. We do not intend to modify our existing precedent governing the requirements of a replacement service or how we analyze and evaluate a carrier's application under our traditional five-factor test. For example, Commission precedent does not require that a replacement service constitute a like-for-like alternative to the service being discontinued. In determining whether a discontinuance will harm the public interest, the Commission has traditionally utilized a five-factor balancing test to analyze a section 214(a) discontinuance application: (1) the financial impact on 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) increased charges for alternative services; and (5) the existence, availability, and adequacy of alternatives. We agree that including the "equivalent quality" descriptor in the condition requiring the carrier's availability of a replacement data service at or above 25 Mbps/3 Mbps would inject unintended uncertainty into this streamlined process and could lead to further confusion given the absence of a similar descriptor as a condition for grandfathering data services below 1.544 Mbps. We clarify that the adequacy of the alternative data service offered by the carrier will continue to be evaluated like any other replacement data service under our rules—according to our traditional five-factor test, and consistent with precedent.

14. Finally, Windstream and Ad Hoc urge us again to incorporate specific

prescribed safeguards in any further streamlining of data service applications to protect grandfathered business customers. The Commission rejected these same recommendations in its most recent wireline infrastructure item because they are inconsistent with the goal of streamlining processes and because businesses—like other consumers—benefit overall when carriers invest in deployment of next-generation services rather than outdated technologies. There is nothing in the current record that leads us to a different conclusion. We therefore decline to adopt these proposals here, as the Commission did just over six months ago.

2. Forbearing from Applying Discontinuance Approval Obligations for Services with No Customers

15. We forbear from applying the discontinuance approval obligations set forth in section 214(a) of the Act and section 63.60 through 63.602 of our rules to carriers choosing to discontinue services for which the carrier has had no customers and no reasonable requests for service for at least the immediately preceding 30 days. When we refer to services without customers in this subsection, we are referring to applications for services having both no existing customers and no reasonable request for the service for the preceding 30-day period. The Commission exercised its ancillary authority to extend discontinuance obligations to interconnected VoIP providers. We see no reason to treat interconnected VoIP services subject to our discontinuance authority prior to today differently than telecommunications services having no customers for the purpose of this forbearance relief. In so doing, we relieve carries of the burden of filing discontinuance applications and leave them free to focus their funding and attention on newer, more popular services rather than maintain a service for which there is no demand during the

pendency of a discontinuance application. This action does not impact the requirements associated with emergency discontinuances where a carrier's existing customers are without service for a period of time exceeding 30 days. The rules governing such occurrences are separately set forth in section 63.63 of our rules. Section 63.63's requirements will continue to govern such situations.

16. The Act requires us to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier or telecommunications service if and only if we determine that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. In making the public interest determination, we must also consider, pursuant to section 10(b) of the Act, "whether forbearance from enforcing the provision or regulation will promote competitive market conditions." As discussed below, we find that the criteria for forbearance are satisfied here.

17. *Section 10(a)(1).* We agree with commenters that "[w]hen a service has no customers, it necessarily follows that the section 214 discontinuance processes are not necessary to ensure just and reasonable and nondiscriminatory terms of service . . . for the simple reason that customers have demonstrated by their actions in the marketplace that they do not need or want the service." Thus, we find enforcement of the discontinuance requirements in this context could hardly be "necessary" when, in fact, there are "no

subscribers who pay charges or who are subject to 'practices' or other terms."

18. *Section 10(a)(2).* We find that enforcement of the discontinuance obligations in this context is not necessary to protect consumers. Section 214(a)'s discontinuance provision is meant to prevent communities from being deprived of critical links to the larger public communications infrastructure. When a service with no existing customers is eliminated, it follows that "no community or part of a community would be cut off from the public communications infrastructure." Moreover, although a key component of the section 214(a) discontinuance process is notifying all affected customers, we agree with AT&T that attempts at customer notice "would be futile in the context of services without existing customers."

19. CWA's assertion that it is only through Commission review and public comment during the discontinuance process that the Commission can determine whether a service has no customers is at odds with our experience with discontinuance applications for services identified as having no customers. To date, we have not received a single comment in opposition to any application to discontinue service with no customers. We previously took more incremental steps to streamline discontinuance obligations for certain services with no customers, and the record does not identify any harms that arose as a result. In the *Wireline Infrastructure FNPRM*, the Commission revised its rules so that applications to discontinue legacy voice and data services below 1.544 Mbps that have had no customers and no reasonable requests for service for at least 30 days would be automatically granted 15 days after acceptance for filing absent further action by Commission staff to remove the application from streamlined treatment. Moreover, there is no evidence in the current record that services without customers are

likely to be in demand sometime in the future. Therefore, we find that neither current nor future customers will be harmed by forbearing from applying discontinuance obligations for services with no customers.

20. *Section 10(a)(3) and 10(b).* We agree with commenters that forbearance from the discontinuance approval requirements for services with no customers will serve the public interest by "eliminating superfluous regulation that slows the transition to more modern services" with growing demand for services that customers want to purchase. We also find that forbearance in this instance will promote competitive market conditions by enabling carriers to redirect resources from services with no demand to more rapidly bringing next-generation services and networks to all customers or "other endeavors where the public interest is expressed through consumer demand." Freeing carriers to invest in services people want, instead of services nobody wants, promotes competition and benefits the public.

21. Our decision to forbear from the discontinuance requirements for services with no customers, obviates our need to consider further streamlining applications for discontinuance of services with no customers. For the same reason, it obviates the rationale for the Commission's previous decision to streamline applications for certain services with no customers. We therefore revise the present text of section 63.71(g) and remove section 63.71(k)(5), which created varying degrees of streamlining for discontinuance applications for services with no customers. We take this action to make clear to carriers that they need not file an application to discontinue a service for which they have had no customers and no reasonable requests for service during the 30-day period immediately preceding the discontinuance.

3. Eliminating 2016 Outreach Requirements

22. We also eliminate the uncodified education and outreach mandates adopted in the *2016 Technology Transitions Order* applicable to carriers discontinuing TDM voice services. These education and outreach requirements are not yet in effect because they have not been approved by the Office of Management and Budget (OMB). The OMB approval process is a transparent and public process. The record confirms that these requirements are unduly burdensome in light of current marketplace incentives and carriers' normal business practices of providing their customers with timely and necessary information regarding replacement voice services in a technology transition. These mandates include: (1) the development and dissemination of Commission-prescribed educational materials to all affected customers containing specific information about the replacement service; (2) the creation of an accessible telephone hotline, staffed 12 hours per day, to answer questions regarding the transition; and (3) designated staff, trained in disabilities access issues, to answer consumer questions about the technology transition. Moreover, existing regulatory requirements ensure that such information is available to consumers.

23. We agree with commenters that argue that service providers have strong marketplace incentives to communicate with, and educate, customers about replacement services related to their technology transitions. As the Commission found in the *Wireline Infrastructure Order*, intermodal competition encourages carriers to communicate with customers to retain them and stay competitive. This finding is not surprising, as even the *2016 Technology Transitions Order* acknowledged carriers "strong business incentives to answer customers' questions in a competent and timely manner." The record here further

substantiates this finding and belies the claims that marketplace competition or carriers' existing customer relationships may not ensure that carriers provide the information required by the rules. Indeed, one opponent of eliminating the outreach requirements specifically acknowledges that carriers have made "comprehensive, and multi-faceted" efforts to educate and inform consumers in a technology transitions situation even before the adoption of the 2016 requirements. Another opponent mistakenly credits the 2016 outreach mandates with helping achieve the "relatively smooth and seamless" technology transitions in its state. However, because the 2016 outreach requirements are not yet effective, the commenter's observations actually demonstrate that carriers engage in effective customer communications about their technology transitions without the need for mandatory prescriptive requirements. Opponents of eliminating the 2016 outreach requirements fail to offer any examples of "any actual harms for the requirements to redress."

24. In the face of carriers' incentives to communicate with customers, one-size-fits-all regulatory intrusion is unnecessarily burdensome. We disagree with those commenters that claim that the 2016 requirements provide consumers with "the minimum amount of information" they need to transition from legacy to alternative services and provide carriers "with a flexible blueprint to follow." The record demonstrates that the 2016 outreach obligations translate to a long list of inflexible and burdensome mandates. We are therefore persuaded by those commenters that argue that the outreach requirements impose real, and in some cases, quite burdensome, costs on service providers.

25. Furthermore, our discontinuance obligations and accessibility and 911

rules also protect customers by requiring their carriers to provide timely and necessary information regarding replacement voice services when those carriers seek to cease offering legacy TDM voice service. The Commission extended section 255 accessibility requirements to interconnected VoIP services in 2007. For example, our rules require carriers seeking to discontinue a legacy voice service to provide substantially similar information about available replacement service alternatives in their application, including price, as the separate outreach requirement mandates. The Commission also puts discontinuance applications on public notice, thus triggering its discontinuance review process which gives affected customers the opportunity to comment or object to the application. Carriers also must ensure, through accessible call centers and customer support—akin to the 2016 telephone hotline accessibility requirement—that information about their voice services and accessibility features are accessible to individuals with disabilities at no additional cost. Carriers must also train customer service representatives to communicate with individuals with disabilities in order to comply with our accessibility rules. In developing training programs, carriers "are encouraged to consider topics on accessibility requirements, means of communicating with individuals with disabilities, commonly used adaptive technology, designing for accessibility, and solutions for accessibility and compatibility."

26. If customers facing a discontinuance of their legacy voice service do not believe that they have sufficient information about a replacement service from a carrier seeking Commission approval to discontinue a legacy voice service, then they can raise these issues in objections to the carrier's discontinuance application and seek to have the Commission remove the application from streamlined processing. Thus, the

discontinuance process provides an additional backstop that encourages carriers to communicate with their customers up-front. We agree with USTelecom that "there is no evidence in the record that existing applicable notice requirements are inadequate to notify consumers of service changes." Consequently, we find it unnecessary to continue to impose prescriptive outreach obligations when our rules already obligate carriers to ensure that customers are appropriately informed. We reject the argument that we should retain the education and outreach requirements because "public safety and public welfare are at stake" when carriers transition from legacy TDM voice to IP-based or other voice technologies. These objections are irrelevant here because they concern the circumstances in which transitions are permitted, rather than education and outreach requirements concerning those transitions. We note that the Act and our existing rules protect vulnerable consumers during technology transitions—for instance, voice service providers have independent consumer protection obligations addressing important accessibility and public safety issues, even when they use IP to deliver their voice services.

27. PK/CRS state that "the test to eliminate these rules is not simply whether they impose cost but whether the public understands what is going on, [and] maintains critical services." Our decision to eliminate these outreach rules meets that "test." The record reflects that carriers' ongoing customer relationship experience best positions them, not the Commission, to understand and implement effective customer education and communications strategies, and other rules ensure that carriers make available necessary information regarding replacement voice services when those carriers seek to cease offering legacy TDM voice service. We thus disagree with commenters that assert

that the education requirements remain necessary and that absent such requirements carriers are unlikely to provide the information customers need to understand the changes in their legacy voice services without these enforceable outreach requirements.

28. What's more, by eliminating these prescriptive and unnecessary requirements, we help accelerate the important and ongoing process of technology transitions to next-generation IP-based services and networks by significantly reducing additional costs and unnecessary regulatory burdens that would be imposed on carriers as part of this transition. Eliminating unnecessary costs and burdens having scant apparent countervailing benefits, frees up carrier resources to devote to a more rapid and efficient transition to next-generation networks and services. Apart from duplicating information already provided to customers through normal business practices or other Commission requirements, one carrier submits that this "exhaustive information" may so overwhelm its customers that they ignore it altogether. At the same time, we reiterate that we expect and encourage carriers to continue to collaborate with and educate their customers and state entities to ensure that customers are given sufficient time to accommodate the transition to new technologies, such that key functionalities are not lost during this period of change.

4. Streamlining Applications to Discontinue Legacy Voice Services

29. In the interest of further encouraging deployment of next-generation networks, we amend our rules to allow carriers to use either the "adequate replacement test" or a new "alternative options test" to qualify for streamlined treatment of applications to discontinue legacy voice services. Under the adequate replacement test,

applications seeking to discontinue a legacy TDM-based voice service as part of a transition to a newer technology, such as VoIP, wireless, or some other advanced service (technology transition discontinuance applications), are required to satisfy a three-pronged test in order to be entitled to streamlined treatment. Specifically, the adequate replacement test requires a technology transition discontinuance application to "certify[] or show[] that one or more replacement service(s) offers all of the following: (i) substantially similar levels of network infrastructure and service quality as the applicant service; (ii) compliance with existing federal and/or industry standards required to ensure that critical applications such as 911, network security, and applications for individuals with disabilities remain available; and (iii) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors." We clarify that we are not making any findings that the stand-alone interconnected VoIP service necessary for the discontinuing carrier to meet the first prong of the test and whatever alternative voice service(s) meets the second prong of the test are necessarily substitutes or in the same product market for all potential customers in the affected service area. Rather, we merely intend to ensure that under this streamlined test, the community has, at a minimum, at least one alternative voice service to the discontinuing carrier's replacement service, as distinguished from the adequate replacement test where only a single voice replacement service need be available to meet that test. We also further streamline applications to grandfather legacy voice services at or above speeds of 1.544 Mbps.

30. *New Streamlining Option.* Under the new alternative options test, if a discontinuing carrier shows in its application that (1) it provides a stand-alone

interconnected VoIP service throughout the affected service area, and (2) at least one other stand-alone facilities-based voice service is available from another provider throughout the affected service area, the discontinuance application will be entitled to 15-day comment and 31-day automatic grant processing periods unless the Commission notifies the applicant otherwise. For purposes of the option for streamlined treatment of applications to discontinue legacy voice services that we adopt today, "stand-alone" means that a customer is not required to purchase a separate broadband service to access the voice service. "Interconnected VoIP" is defined in section 9.3 of our rules. To be clear, while over-the-top VoIP can meet the definition of interconnected VoIP in section 9.3 of our rules, it does not satisfy the requirement of "stand-alone" for purposes of the alternative streamlined option we adopt today. The provider of the alternative stand-alone facilities-based voice service must be unaffiliated with the discontinuing carrier. These streamlined processing timeframes apply uniformly to all carriers meeting the alternative options test, regardless of whether the carrier is considered dominant or non-dominant with respect to the legacy voice service it is seeking to discontinue. Thus, for example, to the extent incumbent LECs offer enterprise voice services such as ISDN PRI over legacy TDM special access facilities for which they are still considered dominant and otherwise subject to the longer dominant carrier processing timeframes of 30/60 days, they now will be entitled to the 15/31 day processing periods under the option we adopt today.

31. Importantly, the alternative options test complements, rather than replaces, the adequate replacement test adopted in the *2016 Technology Transitions Order*. Pursuant to the adequate replacement test, an applicant can receive streamlined treatment

by demonstrating that a single adequate replacement service exists in the affected service area.

32. As the record, and our own data, clearly demonstrate, the number of switched access lines has "continued to plummet," while the "number of interconnected VoIP and mobile voice subscriptions have continued to climb." According to the most recent statistics released by the Commission's Industry Analysis and Technology Division of the Wireline Competition Bureau, there were 58 million traditional "switched access" lines in service, 63 million interconnected VoIP subscriptions, and 341 million mobile subscriptions in the United States as of December 2016. These figures represented a three-year compound annual growth rate of 10 percent for interconnected VoIP subscriptions and 3 percent for mobile voice subscriptions, while retail switched access lines declined at 12 percent per year over the same period. The record also shows strong support for further streamlining the section 214(a) discontinuance process for legacy voice services for carriers in the midst of a technology transition. By providing additional opportunities to streamline the discontinuance process for legacy voice services, with appropriate limitations to protect consumers and the public interest, we allow carriers to more quickly redirect resources to next-generation networks, and the public to receive the benefit of those new networks.

33. Some commenters urge us to eliminate the adequate replacement test in favor of a simpler approach to streamlined treatment of applications to discontinue legacy voice services. Others urge us to retain the adequate replacement test, expressing concerns about the potential impact on, for example, utilities and vulnerable populations.

34. We find the better course is to retain the adequate replacement test and give applicants the choice of seeking streamlined treatment under either the adequate replacement test or the alternative options test. This action is consistent with the Commission's requests for comment on ways to further streamline the discontinuance process for legacy voice services. Applicants seeking streamlined treatment under the adequate replacement test must engage in testing and other regulatory compliance obligations to demonstrate the existence of at least one adequate replacement service. In addition, the streamlined treatment afforded such carriers depends on whether they are treated as dominant or non-dominant with respect to the legacy voice service they are seeking to discontinue. By contrast, applicants seeking streamlined treatment under the alternative options test must themselves offer stand-alone interconnected VoIP, and at least one other stand-alone facilities-based voice service must be available from another unaffiliated provider throughout the affected service area. Where only one potential replacement service exists, a carrier must meet the more rigorous demands of the adequate replacement test in order to receive streamlined treatment of its discontinuance application. But where there is more than one facilities-based alternative, at least one of which is a stand-alone interconnected VoIP offering provided by the discontinuing carrier, we expect customers will benefit from competition between facilities-based providers. For example, where the alternative voice option is another facilities-based VoIP service offered by a competing wireline provider, consumers will benefit from both choice and competition between the two providers. The stand-alone interconnected VoIP service option required to meet the alternative options test embodies managed service quality and underlying network infrastructure, and disabilities access and 911 access

requirements, key components of the Commission's 2016 streamlining action. The managed nature of the stand-alone interconnected VoIP service option embodies the concept articulated in the *2016 Technology Transitions Order* that "consumers expect and deserve a replacement that will provide comparable network quality and service performance." Because state commissions will continue to receive notices of planned discontinuances, they will also remain in a position "to bring to our attention the effects of discontinuances upon customers who may be unable themselves to inform us that they lack substitute service." In such instances, we have the ability to delay grant of discontinuance authorization if we believe customers would otherwise face an unreasonable degree of hardship. The two parts of the alternative options test thus address commenters' concerns about potentially inadequate mobile wireless replacement services for customers requiring service quality guarantees and their concerns that vulnerable populations will be unable to use specialized equipment for people with disabilities, such as TTYs or analog captioned telephone devices or will be left without access to 911. As a result, under either test, customers will be assured a smooth transition to a voice replacement service that provides capabilities comparable to legacy TDM-based voice services and, often, numerous additional advanced capabilities. This action is also consistent with the Commission's finding in the Competitive Carrier proceeding that "simplifying applications for discontinuance of service, when service alternatives are likely to exist, is consistent with congressional intent." At least one commenter has asked that we include a requirement that the services that meet the alternative options test are interoperable with third-party devices and services such as alarm monitoring services. We are unconvinced of the necessity for such a requirement.

As the Commission previously found, "there is significant intermodal competition in the provision of alarm monitoring services, including provision of such services over media other than copper." Moreover, the marketplace has already recognized the value of such interoperability, and carriers have largely designed their networks and services accordingly.

35. We recognize that some commenters have advocated for an even simpler approach to qualifying for streamlined treatment of legacy voice discontinuance applications. Most notably, there is some support in the record for AT&T's recommendation that a discontinuing carrier only be required to show that any "fixed or mobile voice service, including interconnected VoIP" be available to qualify for streamlined treatment. We do not think this approach strikes the right balance between facilitating the technology transition and our statutory obligation to ensure that "neither the present nor future public convenience and necessity will be adversely affected" by discontinuance of legacy voice services. AT&T's approach would allow further streamlined processing for discontinuance applications where only one replacement voice service is available, and where the replacement service could be any voice service, including over-the-top VoIP or mobile wireless. Consequently, it fails to ensure the availability of a voice replacement service in the community as a condition to obtaining streamlined treatment that sufficiently addresses commenters' concerns raised in this proceeding about the characteristics of the replacement voice service, and it does not carry the added benefit of ensuring the availability of multiple alternatives to affected customers, whether present or future.

36. We also disagree with AT&T's assertion that our requirement that carriers

must offer stand-alone interconnected VoIP service in order to qualify for the alternative options test "warrants further notice and comment." In the *Wireline Infrastructure NPRM*, the Commission sought comment on the "types of fiber, IP-based, or wireless services [that] would constitute acceptable alternatives, and under what circumstances" when seeking comment on ways to further streamline the discontinuance process. Second, the requirements we adopt for the alternative options test do not preclude a carrier that cannot meet those requirements from seeking to discontinue its legacy voice service. Instead, the carrier has two other options for seeking discontinuance: (1) seek streamlined treatment pursuant to the adequate replacement test; or (2) proceed with its application on a non-streamlined basis. Given these other options, we find that AT&T's argument that the availability of multiple voice alternatives is unnecessary because consumer demand demonstrates that wireless voice constitutes an adequate replacement for legacy voice service is misplaced. It also fails to recognize the needs of enterprise customers.

37. We also reject certain commenters' requests that we make a generalized finding that discontinuing a legacy voice service in favor of any type of voice replacement service would not adversely affect the public convenience and necessity, effectively amounting to blanket discontinuance authority for legacy voice services. Likewise, to be clear, the alternative options test we adopt today makes no such generalized finding about the services meeting the two-part test, thereby eliminating any concern regarding such a potential finding. While a carrier may use the alternative options test to receive streamlined treatment of its discontinuance application, customers that have concerns about a particular carrier's stand-alone interconnected VoIP

replacement service may still file comments or objections to that carrier's discontinuance application, and the Commission will evaluate those comments or objections to determine whether to remove the application at issue from streamlined processing for further evaluation under the traditional five-factor test. We determine whether approving a discontinuance application is in the public interest based on several factors, not just the adequacy of the replacement service. We decline to ignore the other factors, as commenters' request would require, and reach a blanket public interest determination based on a single factor.

38. Finally, we are unpersuaded by commenter concerns that large enterprise or government customers will be adversely affected by further streamlined processing of legacy voice discontinuance applications that do not meet the adequate replacement test. By our actions today, like all our streamlining actions, we do not intend to disturb existing contractual obligations between carriers and their customers. Large enterprise and government customers generally enter into negotiated contracts for the provision of telecommunications services given their unique requirements. And as the Commission has found, carriers are accustomed to working with customers, such as government users, to avoid service disruptions. We have no reason to depart from the expectation that carriers will "continue to collaborate with their [enterprise or government] customers, especially utilities and public safety and other government customers, to ensure that they are given sufficient time to accommodate the transition to [next-generation services] such that key functionalities are not lost during this period of change." The record confirms such collaborations routinely occur. Moreover, as with all discontinuance applications, customers are able to file comments in opposition to a discontinuance application and

seek to have the Commission remove the application from streamlined processing.

39. *Streamlining Additional Grandfathering Applications*. We also further streamline our discontinuance processes for applications seeking to grandfather legacy voice services. As discussed above, last fall the Commission adopted streamlined comment and automatic grant periods of 10 and 25 days, respectively, for applications seeking to grandfather legacy voice services at speeds below 1.544 Mbps. We now extend this same streamlined processing to applications seeking to grandfather *any* legacy voice service, including enterprise voice services such as T1 CAS and Integrated Service Digital Network (ISDN) used for voice. The record supports this action.

40. As the Commission found in the *Wireline Infrastructure Order*, compliance with our section 214(a) discontinuance rules imposes costs on carriers and diverts carriers' resources away from investment in deploying next-generation networks and services. Moreover, as existing customers will be entitled to maintain their legacy voice services, they will not be harmed by grandfathering applications. When a carrier chooses to grandfather a legacy voice service to its existing customers, it effectively chooses to notify those customers twice of its ultimate intent to discontinue their service—once when the carrier provides notice of its grandfathering application and once when it provides notice of its application to permanently discontinue the service. Each application must separately comply with our section 214(a) discontinuance rules. Once that carrier seeks to permanently discontinue the grandfathered legacy voice service, streamlined processing is only available if that carrier meets either the alternative options test we adopt today or the adequate replacement test adopted in 2016.

41. *Other Issues—Forbearance.* We reject certain commenters' proposal that

we forbear from applying section 214(a)'s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services. The criteria necessary to satisfy a grant of forbearance are not met at this time.

42. Commenters seeking forbearance assume the ubiquitous availability of next-generation advanced services. However, this assumption does not bear out in many rural areas of this country, thus implicating our statutory obligation to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." The Commission has previously recognized Congress' concern that "discontinuance by the only carrier serving a market . . . would leave the public without adequate communications service." We thus find that forbearance would not "promote competitive market conditions" because it would eliminate our ability to ensure the existence of any alternatives. We reject NTCA's argument that we should look only to whether a discontinuance will result in the cessation of voice service for the same reasons we reject forbearance. Moreover, if we forbear from our section 214(a) discontinuance requirements, we will be unable to ensure that there is adequate notice of a planned discontinuance, regardless of the availability of multiple alternatives. And should we forbear from requiring that discontinuing carriers file applications and related certifications before discontinuing service, we would lose the opportunity to ensure the accuracy of carriers' own determinations regarding, among

other things, the reliability and affordability of the replacement services and the availability of those services to all affected customers. Thus, on this record, enforcement of our section 214(a) discontinuance requirements is "necessary for the protection of consumers" and forbearance would not be consistent with the public interest, making forbearance from those requirements inappropriate at this time. Indeed, because the service at issue is basic telephone service, we must be given the opportunity to scrutinize whether the planned discontinuance would result in an unreasonable degree of consumer hardship, including considering "the availability of reasonable substitutes, and whether customers have had a reasonable opportunity to migrate."

43. *Other Issues—Notice Only.* For the same reason that we decline to forbear from section 214(a), we reject commenters' proposal that we require no more than a notice to the Commission that affected customers have been "properly notified" about the transition or about the alternative services available in the affected service area. Requiring a simple notice to the Commission rather than an application seeking Commission authorization of the planned discontinuance would abrogate our responsibility under section 214(a) to ensure that the discontinuance will not adversely affect the present or future public convenience or necessity.

B. Network Change Disclosure Reforms

44. Today, recognizing significant changes in the marketplace and technology over the past several years, we take additional actions to further reduce unnecessary and redundant regulatory burdens and delay on incumbent LECs when making network changes while continuing to ensure that interconnecting carriers have adequate information and time to accommodate such changes. We also eliminate unnecessary

notice requirements pertaining to the connection of customer premises equipment (CPE) to the public switched telephone network (PSTN). And we take action to ensure that carriers can expeditiously return their communications networks to working order in the face of events beyond their control. Finally, we retain the way in which the Commission calculates the waiting period for short-term network change notices.

1. Eliminating Section 51.325(a)(3)

45. We eliminate the provision in section 51.325 of our rules requiring incumbent LECs to provide public notice of network changes that "will affect the manner in which customer premises equipment is attached to the interstate network." As the record demonstrates, incumbent LECs' engagement and collaboration with CPE manufacturers today renders this separate notice requirement unnecessary.

46. When the Commission adopted section 51.325(a)(3), it was concerned that an incumbent LEC controlling the underlying transmission facilities that also had affiliates engaged in the manufacture of CPE might give those affiliates a competitive advantage. This is no longer the case. The record confirms that incumbent LECs no longer have the same control of the PSTN, nor do they enjoy the market power they did two decades ago with respect to the manufacture of CPE.

47. We find that CPE manufacturers, including those engaged in providing essential communications equipment and assistive technologies, will have the same access to information when changes to a provider's network or operations have the potential to render certain devices incompatible to ensure their ability to develop new compatible equipment. Incumbent LECs remain subject to sections 201 (interconnection) and 202 (non-discrimination) of the Act, and the Commission has held that the

obligations imposed by these statutory provisions apply in the context of CPE. Moreover, CPE manufacturers have never been entitled to direct notice of network changes of any type, even those that might affect the compatibility of CPE. To the extent any manufacturers actively monitor carrier network change notice webpages or Commission announcements of network change notices, they will have the same access to these notices as they have always had. Significantly, no CPE manufacturer opposes the elimination of section 51.325(a)(3). Indeed, the only CPE manufacturer that submitted comments on this issue supports its elimination.

48. The role played by the Administrative Council for Terminal Attachments (ACTA) in overseeing the adoption of specific technical criteria for terminal equipment further justifies elimination of section 51.325(a)(3). The Commission established ACTA, a non-governmental entity whose membership fairly and impartially represents all segments of the telecommunications industry, for the express purpose of privatizing the standards development and terminal equipment approval processes for the connection of CPE to the PSTN and certain private-line services. Through ACTA, incumbent LECs and other service providers work collaboratively with CPE manufacturers, independent testing labs, and other interested industry segments, to openly share the information necessary to ensure CPE compliance and compatibility with the incumbent LEC and other service providers' networks. Equipment manufacturers must also ensure that their products are registered in the ACTA database. ACTA must publish public notice of submitted technical criteria, and interested parties may appeal any aspect of those submissions to the Commission.

49. We similarly find that manufacturers will have the opportunity to develop

modified or upgraded CPE ahead of network changes in the absence of section 51.325(a)(3), and thus that consumers will not be harmed. Incumbent LECs facing increasing competition from a variety of sources must engage their customers and keep them fully informed if they hope to retain their business. Because incumbent LECs no longer have a significant presence in the market for the manufacture of CPE, and they wish to remain competitive in today's ever-changing marketplace, they lack a significant incentive to hide changes to their networks that may impair the compatibility of CPE used by their customers. And as the Commission found in eliminating the requirement that incumbent LECs provide direct notice to retail customers of planned copper retirements, incumbent LECs already must engage their retail customers as a normal business practice in order to install the equipment necessary to accommodate fiber lines, at which time they also address CPE compatibility issues.

50. Unlike section 51.325(a)'s other delineated types of network changes that were adopted to protect interoperability and interconnection with other carriers' networks and facilities, the Commission adopted section 51.325(a)(3) specifically to protect competitive CPE manufacturers. That rationale no longer justifies the rule. Some commenters misunderstand the history of section 51.325(a)(3) and erroneously assert that the Commission's intention in promulgating section 51.325(a)(3) was "to maintain interoperability and uninterrupted, high quality service to the public." While that was the Commission's articulated intention when it adopted section 51.325 in 1996, it was not until three years later that the Commission added subsection (a)(3). When the Commission first adopted its part 51 network change disclosure rules in 1996, it did not include section 51.325(a)(3) related to CPE. At that time, a different section of the

Commission's rules already required incumbent LECs, and other facilities-based carriers, to publicly disclose, inter alia, network information that would affect CPE compatibility. When the Commission subsequently relieved non-incumbent LEC facilities-based carriers of section 64.702(d)(2) obligations three years later, rather than retain CPE notice obligations just for incumbent LECs in part 64 of its rules, the Commission rolled the requirement into the part 51 network change disclosure rules by adding section 51.325(a)(3). When adding that new provision, the Commission was clear that "[t]he primary purpose of network information disclosure in this context is not to protect intercarrier interconnection, but rather to give competitive manufacturers of CPE adequate advance notice when a carrier intends to alter its network in a way that may affect the manner in which CPE is attached to the network."

51. Finally, our rules separately require that incumbent LECs and other service providers and equipment manufacturers ensure the accessibility and usability of their services and equipment by people with disabilities, which of necessity requires collaboration between these two groups, as well as with individuals with disabilities and disability-related organizations. In this regard, we expect that incumbent LECs and other service providers will communicate with state centers that distribute specialized customer premises equipment (SCPE) or peripheral devices commonly used by people with disabilities (such as TTYs and analog captioned telephones), as well as with state telecommunications relay service programs, to alert these entities when there is an expectation that legacy devices routinely used by people with disabilities may no longer work after network changes are in place. When accessibility and usability are not achievable or readily achievable, as applicable, incumbent LEC service providers have an

independent obligation to ensure their services are compatible with assistive technologies, so any network change that would impact service accessibility would necessarily need to also ensure CPE compatibility.

2. Eliminating Section 68.110(b) Notice to Customers

52. We also eliminate the requirement that carriers give notice to customers of changes to their facilities, equipment, operations, or procedures "[i]f such changes can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications . . . to allow the customer to maintain uninterrupted service." Part 68 applies to all wireline providers, not just incumbent LECs. We find that changes to the communications marketplace generally and to the market for terminal equipment specifically render this over 42 year old notice requirement unworkable and unnecessary. Indeed, consumers have available to them a vast range of CPE devices and, in many cases, have the option of using converter boxes to the extent they choose to keep their analog CPE after their service has been migrated to IP. The terms "terminal equipment" and "customer premises equipment (CPE)" are used interchangeably.

53. The rule made some sense when it was adopted in 1975 as part of the Commission's decision to require carriers to allow third party-manufactured terminal equipment to be directly connected to the network as long as the equipment met specific technical standards set forth by the Commission to prevent network harm. As part of that regime, the Commission required telephone company customers to notify their provider before connecting any third-party terminal equipment to the network to ensure that the equipment had been registered with the Commission under its new part 68 rules. At the

same time, the Commission adopted the reciprocal section 68.110(b) requirement for telephone companies to notify those customers if the telephone company was making any changes to its operations that might affect the compatibility of the customer's third-party equipment. This notice requirement imposed no obligation on the carrier to refrain from or delay making its network change to accommodate its customer, nor was there any obligation on the part of the telephone company to ensure that other compatible CPE was available.

54. Attachment of third-party equipment is now the norm. Customers are no longer required to notify their carriers of the CPE they connect to their providers' networks unless their carrier has specifically required that they do so. In 1985, the Commission relaxed the customer requirement to notify the telephone company upon the development of a robust CPE registration database, but the corresponding notice to customers went unaddressed. When the Commission revised the part 68 rules in 2001, it again did not address section 68.110(b). Moreover, given the current universe of registered CPE that customers could potentially connect to their provider's network, as commenters explain, carriers cannot reasonably know which of their subscribers use which, if any, of that equipment. There are tens of thousands of approved pieces of terminal equipment listed in the ACTA database. Indeed, the database was not established for the purpose of enabling carriers to identify the CPE used by particular customers. Rather, it was intended to allow consumers and providers to identify the supplier of a particular piece of equipment. As a result, the only way a carrier could be certain of complying with section 68.110(b) was if it notified each and every one of its customers whenever <u>any</u> service or network change was about to occur, an unduly

burdensome and impractical requirement.

55. What's more, there are other safeguards in place to reduce the likelihood that manufacturers and customers will be left unaware of carriers' changes to their facilities, equipment, operations, or procedures that can be reasonably expected to render any terminal equipment incompatible with the carrier's facilities. Most significantly, ACTA's privatized, open, and balanced collaborative process among CPE manufacturers, service providers, testing laboratories, and other interested stakeholders ensures the adoption of technical criteria for compatible CPE that accommodates service providers' network evolutions, thus avoiding customer service interruptions.

56. Also, the types of network or operational changes that could impact customers' CPE will still result in notice to customers. Specifically, our rules require customer notice of service discontinuances, and the Commission has found that carriers must as a business necessity communicate with customers regarding copper retirements. Further, carriers have strong incentives to keep their customers informed of technology transitions, including changes in their networks, that might affect CPE compatibility if they hope to retain their customers in today's competitive marketplace. And as discussed earlier, other regulatory requirements are designed to ensure that covered services are accessible to and usable by individuals with disabilities, or compatible with SCPE and peripheral devices commonly used by individuals with disabilities, such as TTYs and analog captioned telephones. And manufacturers of specialized equipment designed to ensure accessibility can refer to technical standards made available through ACTA to also ensure that their equipment is compatible with the network in accordance with part 68.

Regardless, mandated notice requirements do not affect whether customers will have to replace their devices.

57. We are unpersuaded by commenter concerns that, if we eliminate this rule, large enterprise customers will be "required to redesign their networks on the fly and after the fact" or that "the reliability and security of utility applications" will be undermined. As the Commission has already found, such customers generally enter into contracts with their telecommunications carriers in which they can specify the amount of notice the carrier must provide about changes to its network. As the Commission noted in the *Wireline Infrastructure Order*, it would be absurd to suggest that carriers "would risk public safety or fail to work cooperatively and diligently to accommodate critical needs of their public-safety related customers absent a mandatory Commission notice obligation." We do not intend for our network change disclosure and section 214(a) discontinuance rules to disturb contractual obligations. And incumbent LECs are now free, as all other telecommunications carriers always were, to engage their enterprise customers in advance of providing public notice of potential network changes that might affect terminal equipment compatibility.

3. Extending Streamlined Notice Procedures for Force Majeure Events to All Network Changes

58. Today, we extend to all types of network changes the streamlined notice procedures the Commission recently adopted for copper retirements when force majeure events occur. Throughout this section, we use the phrase *"*force majeure*"* to refer generally to the full range of unforeseen events outside incumbent LECs' control, e.g., natural disasters, terrorist attacks, governmental mandates or unintentional third-party

damage, that may give rise to unplanned network changes. The record overwhelmingly supports this action. The same considerations that led the Commission to adopt force majeure copper retirement procedures apply equally to all network changes. Facilitating rapid restoration of communications networks in the face of natural disasters and other unforeseen events warrants swift removal of unnecessary regulatory barriers that inhibit incumbent LECs from restoring service as quickly as possible when networks are damaged or destroyed by events beyond the LECs' control.

59. We find no reason in the record to further impede carriers' efforts to restore service necessitating network changes other than copper retirements in the face of force majeure events. While CWA posits that these streamlined procedures may reduce Commission oversight "over network changes after immediate recovery efforts," the streamlined procedures we adopt today merely eliminate the advance notice and waiting period requirements in exigent circumstances. Incumbent LECs availing themselves of this limited relief must still comply with section 51.325(a)'s public notice requirement as soon as practicable. Moreover, we agree that the safeguards included within the force majeure notice rule ensure that only genuine force majeure events necessitating a network change will justify streamlined procedures. Finally, should the network changes occurring from a force majeure event result in a discontinuance of service to customers in the affected area, section 63.63 dictates that the carrier remains subject to our discontinuance rules.

4. Retaining Current Calculation of Waiting Period for Short Term Network Changes

60. We retain the current rule that calculates the waiting period for short-term

network change notices from the date the Commission issues its public notice after an incumbent LEC files its network change notification, and we decline to calculate the waiting period from the date of filing. We agree with commenters that urge us to retain this rule to ensure sufficient and complete public notice of short-term network changes, given the already short 10-day waiting period. Commencing the waiting period at the same time as an incumbent LEC files its network change notification, as proposed by AT&T and supported by others, fails to provide Commission staff an opportunity to first review the notice for compliance with our rules or for unintentional errors, potentially "depriving notice recipients of information they need to accommodate the network change."

61. We reject ITTA's assertion that because the Commission retained a distinction between copper retirement notice rules and other types of network change notice rules, this difference alone constitutes a basis for deviating from how we calculate the commencement of the waiting period for each. The record demonstrates that the reasons we declined to revise the calculation of the waiting period for copper retirement notices similarly warrant retaining the long-standing way in which we calculate the waiting period for short-term network change notices as well. Reducing the already-short waiting period further limits the notice to interconnecting carriers, affecting their ability to accommodate the planned network change or to object, if necessary, to the timing of the planned network change. Staff has as much need to "routinely contact filers to clarify or correct information contained in filings or to add required information that is missing" for short-term network change notices as for copper retirements.

62. Finally, we decline to adopt a requirement that the Commission release a

public notice within a specified period of time after an incumbent LEC files a short-term network change notice. In the *Wireline Infrastructure Order*, the Commission found that commenters had not identified "any specific instance in which a planned copper retirement had to be delayed due to the timing of our release of the relevant public notice." Similarly, commenters here do not identify any instance in which a carrier has had to delay planned network changes because of the Commission's failure to timely release a public notice after a LEC has filed its short-term network change notice. We therefore decline to adopt a rule to solve a non-existent problem.

C. Non-Substantive Changes to the Code of Federal Regulations

63. We also make certain non-substantive updates and corrections to our codified rules required by the actions we take today and actions taken in the *Wireline Infrastructure Order* and the *2016 Technology Transitions Order*. Section 553(b)(3)(B) of the Administrative Procedures Act permits agencies to issue rule changes without notice and comment upon a finding of good cause that notice and associated procedures are "impracticable, unnecessary, or contrary to the public interest." We find that notice and comment is unnecessary for rule changes that reflect prior Commission decisions that inadvertently were not reflected in the Code of Federal Regulations (CFR). Similarly, we find notice and comment is not necessary for rule amendments to ensure consistency in terminology and cross references across various rules or to correct inadvertent failures to make conforming changes when prior rule amendments occurred.

64. In light of our elimination today of section 68.110(b) of our rules, we redesignate that current rule's paragraph (c) as paragraph (b). In turn, we must adjust any cross-references to section 68.110(c) elsewhere in our rules to reflect its redesignation as

68.110(b). We thus make the necessary changes to such cross-reference in section 68.105(d)(4). Similarly, in eliminating section 51.325(a)(3) today, we redesignate paragraph (a)(4) of that section as paragraph (a)(3). We thus adjust the cross-references to section 51.325(a)(4) that appear in section 51.333(b)(2) and (f).

65. Additionally, in the *Wireline Infrastructure Order*, the Commission eliminated section 51.332 of our rules, pertaining to the copper retirement process. A cross-reference to that rule appears in section 63.71(i). Rules governing the copper retirement process now appear in section 51.333. We now revise section 63.71(i) to cross-reference section 51.333 rather than section 51.332.

66. We also make an administrative change to correct an inaccurate cross-reference in section 63.71(k)(1), adopted in the *Wireline Infrastructure Order*, changing its reference to paragraph (k)(4) of that section to paragraph (k)(2). We find good cause for correcting this cross-reference without prior notice and comment because the inaccurate cross-reference will likely confuse and mislead applicants seeking to discontinue, reduce, or impair a legacy data service if not corrected promptly.

67. To shorten the number of unnecessary subsections in our rules, we also revise section 63.71(a) by combining paragraphs (a)(6) and (a)(7) into one consolidated new paragraph (a)(6). We also update any cross-references to paragraphs (a)(6) and (a)(7) in section 63.71(a) to reflect this consolidation. We similarly update any cross-references to section 63.60(h) in section 63.71 to reflect the redesignation of paragraph (h) in section 63.60 as paragraph (i). This administrative change makes no substantive changes to the language or underlying requirements of the rule.

68. Finally, we correct an inadvertent error in the ordering clause of the *2016*

Technology Transitions Order specifying which revised rules adopted in that order require approval by the Office of Management and Budget (OMB) before they can become effective. In that ordering clause, the Commission indicated that the revision to section 63.19(a) required such approval. However, the revision in that rule, to change a cross-reference from section 63.601 to the then newly-adopted section 63.602, did not impact that section's reporting or recordkeeping requirements. It therefore does not fall within the purview of the Paperwork Reduction Act and does not require OMB approval.

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

69. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (*Wireline Infrastructure NPRM*) and into the Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (*Wireline Infrastructure Order* or *Wireline Infrastructure FNPRM*) for the wireline infrastructure proceeding. The Commission sought written public comment on the proposals in the *Wireline Infrastructure NPRM* and in the *Wireline Infrastructure FNPRM*, including comment on the IRFAs. The Commission received no comments on the IRFAs. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

70. In the *Wireline Infrastructure NPRM*, the Commission continued its efforts to close the digital divide by removing barriers to broadband infrastructure investment. To this end, the Commission proposed numerous regulatory reforms to existing rules and procedures regarding copper retirement, and discontinuances of legacy

services. In so doing, the Commission sought to better enable broadband providers to build, maintain, and upgrade their networks, leading to more affordable and available Internet access and other broadband services for consumers and businesses alike. On November 16, 2017, the Commission adopted the *Wireline Infrastructure Order*, which adopted reforms to speed the replacement of copper with fiber and Internet Protocol (IP) technologies. In the accompanying *Further Notice of Proposed Rulemaking*, the Commission sought comment on additional steps to streamline the network change disclosure and discontinuance processes, including the process for transitioning legacy services to new advanced IP services.

71. Pursuant to the objectives set forth in the *Wireline Infrastructure NPRM*, this Second Report and Order (Order) adopts changes to Commission rules regarding section 214 discontinuance procedures, network change disclosures, and part 68 notice requirements. The Order adopts changes to the current section 214(a) discontinuance process to further streamline the review and approval process by: (1) extending the previously-adopted streamlined comment and automatic grant periods for applications seeking to grandfather or discontinue previously-grandfathered data services to certain higher-speed data services, (2) forbearing from section 214(a)'s discontinuance requirements for services with no customers, (3) eliminating the uncodified education and outreach mandates adopted in the *2016 Technology Transitions Order*, (4) adopting an alternative to the "adequate replacement test" adopted in the *2016 Technology Transitions Order* for where the discontinuing carrier offers a stand-alone interconnected VoIP service throughout the affected service area and at least one other stand-alone facilities-based voice service is available throughout the affected service area, and (5)

extending the streamlined comment and automatic grant periods of 10 and 25 days to applications seeking to grandfather all legacy voice services. The Order also adopts changes to the Commission's part 51 network change notification rules and part 68 rules pertaining to connecting terminal equipment to the public switched telephone network (PSTN) that eliminate unnecessary notice requirements pertaining to the connection of customer premises equipment to the PSTN, and reduce regulatory burdens and delay on incumbent LECs when making network changes while continuing to ensure that interconnecting carriers have adequate information and time to accommodate such changes. Finally, the Order revises its network change disclosure rules to extend to all types of network changes the streamlined notice procedures the Commission recently adopted for copper retirements when force majeure and other unforeseen events occur. These additional steps will further the Commission's goal of eliminating unnecessary regulatory burdens, decrease needless costs and delay in transitioning from legacy services to next-generation IP-based services, and better reflect the reality of today's marketplace and the decreasing demand for legacy services as customers move towards more advanced competing alternatives.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

72. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFAs in either the *Wireline Infrastructure NPRM* or the *Wireline Infrastructure FNPRM*.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

73. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

74. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the Order. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

75. The changes to our section 214 discontinuance, network change notification, and part 68 customer notification rules will affect obligations on incumbent LECs and, in some cases, competitive LECs. Other entities that choose to object to network change notifications for copper retirement or section 214 discontinuance

applications may be economically impacted by the rules in the Order.

76. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.

77. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date.

78. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7." Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts). Of this number there were 37,132 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. There were 2,114 county governments with populations less than 50,000. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000. There were 12,184 independent school districts with enrollment populations less than 50,000. The U.S. Census Bureau data did not provide a population breakout for special district governments. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of

less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

79. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

80. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 79 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for

2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

81. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 79 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

82. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 79 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission

concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

83. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 79 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

84. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This

category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 79 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

85. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including

cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

86. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

87. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small

operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under *the* definition in the Communications Act.

88. *All Other Telecommunications.* "All Other Telecommunications" is defined as follows: "This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of

$32.5 million or less. For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

89. *Section 214(a) Discontinuance Process*. The Order streamlines the discontinuance process for applications seeking to grandfather certain data services with speeds at or above 1.544 Mbps in both directions and to subsequently permanently discontinue such services once they have been grandfathered for at least 180 days. Specifically, the Order extends the previously-adopted streamlined comment and automatic grant period of 10 and 25 days, respectively, for applications to grandfather voice and data services below 1.544 Mbps, to applications to grandfather data services at or above speeds of 1.544 Mbps and with download/upload speeds below 25 Mbps/3 Mbps, provided the applying carrier offers data services at speeds of at least 25 Mbps/3 Mbps throughout the affected service area. The Order also extends previously-adopted streamlined comment and automatic grant periods of 10 and 31 days, respectively, for applications to permanently discontinue data services below 1.544 Mbps provided such services have been grandfathered for at least 180 days, to previously-grandfathered data services at or above speeds of 1.544 Mbps and with download/upload speeds below 25 Mbps/3 Mbps. The Order finds that these changes will incentivize carriers to provide higher-speed data services at or above the 25 Mbps/3 Mbps mark, without sacrificing the customer protections under the previous rules. The Order also forbears from section

214(a) discontinuance requirements for all services with no customers and no reasonable requests for service for at least 30 days. Carriers thus will not be required to file applications to discontinue such services. The Order finds enforcement of the section 214(a) discontinuance requirements is unnecessary to protect consumers when the service in question has no customers. It also finds that forbearance in such situations is consistent with the public interest. The Order also eliminates the uncodified education and outreach mandates adopted in the *2016 Technology Transitions Order* applicable to carriers discontinuing TDM voice services. These requirements have not yet been in effect because they have not been approved by OMB. The Order finds these mandates unnecessary, as customers already receive or can easily obtain from their carriers the information encompassed by these requirements. The Order further streamlines applications to discontinue legacy voice services by adopting an alternative to the "adequate replacement test" where (1) the discontinuing carrier offers a stand-alone interconnected VoIP service throughout the affected service area, and (2) there is at least one other stand-alone facilities-based voice service available throughout the affected service area. These applications will be treated in the same manner as other discontinuance applications. Customers will have 15 days from filing of the application to submit comments in response to the application, and the application will be automatically granted on the 31st day after filing unless the Commission notifies otherwise. Through this alternative to the "adequate replacement test," the Commission incents carriers to deploy broadband facilities and ensures that customers in the affected service area have multiple voice alternatives. Additionally, the Order extends the streamlined comment and automatic grant periods of 10 and 25 days to applications

seeking to grandfather any legacy voice services.

90. *Network Change Notification and Part 68 Notification Requirement Reforms*. The Order adopts changes to the Commission's part 51 network change notification rules to eliminate unnecessary notice requirements pertaining to the connection of customer premises equipment to the public switched telephone network, and to reduce regulatory burdens and delay on incumbent LECs when making network changes while continuing to ensure that interconnecting carriers have adequate information and time to accommodate such changes. The Order eliminates the section 51.325(a)(3) requirement that incumbent LECs provide public notice of network changes that will affect CPE connection to the interstate network. Section 51.325(a)(3) is no longer necessary to ensure that CPE manufacturers receive sufficient notice of incumbent LECs' planned network changes that may affect CPE compatibility because incumbent LECs' engagement and collaboration with CPE manufacturers today renders this separate notice requirement superfluous. Section 51.325(a)(3) was specifically adopted to protect competitive CPE manufacturers, and this rationale no longer justifies the rule. The Order also eliminates the section 68.110(b) requirement that carriers give notice to customers when changes to their facilities, equipment operations, or procedures can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider. As with section 51.325(a)(3), changes to the marketplace render the purpose of this requirement obsolete. The Order revises section 51.333(g) to allow all types of network changes to be subject to streamlined notice procedures recently adopted for copper retirements when force majeure and other unforeseen events occur. This streamlined procedure eliminates the advance notice and

waiting period requirements for incumbent LECs during exigent circumstances. Incumbent LECs will still be required to comply with section 51.325(a)'s public notice requirement, as well as standard discontinuance rules in the event such changes result in a discontinuance of services to customers in the affected area.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

91. In this Order, the Commission modifies its section 214 discontinuance and network change disclosure rules to improve the efficiency of these processes, as well as to increase broadband deployment. It also eliminates unnecessary and burdensome section 214 discontinuance, network change disclosure, and part 68 notification regulations that inhibit carriers from implementing the transition to next-generation networks and IP-based broadband services. Finally, it forbears from section 214 discontinuance requirements in limited circumstances, thus further reducing the burden on carriers seeking to discontinue services for which they have no customers and have had no reasonable request for customers for the preceding 30 days. Overall, we expect the actions in this document will reduce burdens on the affected carriers, including any small entities.

92. *Section 214(a) Discontinuance Process*. The Order streamlines applications to grandfather data services with download/upload speeds below 25 Mbps/3 Mbps, provided the applying carrier offers data services at download/upload speeds of at least 25 Mbps/3 Mbps throughout the affected service area by extending the previously streamlined public comment period of 10 days and automatic grant period of 25 days for all carriers seeking to grandfather these data services. For applications seeking

authorization to discontinue services with download/upload speeds below 25 Mbps/3 Mbps that have previously been grandfathered for a period of 180 days, the Order extends the streamlined public comment period of 10 days and the auto-grant period of 31 days to all such applications. The Order finds that these changes do not sacrifice the customer protections under the previous rules. For applications to discontinue any service with no customers and no reasonable requests for service for at least 30 days, the Order finds that forbearance from section 214(a)'s discontinuance requirements is appropriate. The Commission finds enforcement of those requirements is not necessary to protect consumers, is consistent with the public interest, and will enable carriers to cease devoting resources to services no longer having any customer interest. The Order also eliminates the uncodified education and outreach requirements adopted in the *2016 Technology Transitions Order*, finding that these mandates are unnecessary as customers already receive or can easily obtain from their carriers the information encompassed by these requirements. The Order further streamlines applications to discontinue legacy voice services by adopting an alternative to the "adequate replacement test" where (1) the discontinuing carrier offers a stand-alone interconnected VoIP service throughout the affected service area, and (2) there is at least one other stand-alone facilities-based voice service available throughout the affected service area. These applications will be treated in the same manner as other discontinuance applications. Customers will have 15 days from filing of the application to submit comments in response to the application, and the application will be automatically granted on the 31st day after filing unless the Commission notifies otherwise. Through this alternative to the adequate replacement test, the Commission incents carriers to deploy broadband facilities and ensures that

customers in the affected service area have competitive voice alternatives. Additionally, the Order extends the streamlined comment and automatic grant periods of 10 and 25 days to applications seeking to grandfather any legacy voice services.

93. *Network Change Notifications and Part 68 Notification Requirements*. The Order adopts network change notification rule revisions that eliminate the requirement that incumbent LECs provide public notice of network changes that "will affect the manner in which customer premises equipment is attached to the interstate network" and eliminates the requirement that carriers give notice to customers of changes to their facilities, equipment, operations, or procedures "[i]f such changes can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications… to allow the customer to maintain uninterrupted service" because the Order finds these rules are unnecessary. The Order also finds that extending the streamlined notice procedures recently adopted for copper retirements when force majeure and other unforeseen events occur to all types of network changes reduces regulatory burdens and delay on incumbent LECs when making network changes. However, the Order further determines that these rules continue to ensure that interconnecting carriers have adequate information and time to accommodate such changes.

Report to Congress:

94. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the

Order and FRFA (or summaries thereof) will also be published in the Federal Register.

V. PROCEDURAL MATTERS

95. *Congressional Review Act*. The Commission will send a copy of this Report and Order, including a copy of the Final Regulatory Flexibility Analysis, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this Final Regulatory Flexibility Analysis will be sent to the Chief Counsel for Advocacy of the Small Business Administration (SBA), and will be published in the Federal Register.

96. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in section IV above.

97. *Paperwork Reduction Act*. The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

98. In this document, we have assessed the effects of reforming our network change notification and section 214(a) discontinuance rules, and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

VI. ORDERING CLAUSES

99. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 10, 201, 202, 214, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-54, 160, 201, 202, 214, 251, and 303(r), this Second Report and Order IS ADOPTED.

100. IT IS FURTHER ORDERED that parts 51, 63, and 68 of the Commission's rules ARE AMENDED as set forth in Appendix A, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of OMB approval of the rules, and on the effective date announced therein.

101. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective 30 days after publication in the Federal Register, except for 47 CFR 51.333 (g)(1)(i), (g)(1)(iii), and (g)(2), 63.71(f), (h), (k) introductory text, (k)(1) and (3), and (l), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date.

102. IT IS FURTHER ORDERED that section 63.19(a), as revised in the *2016 Technology Transitions Order*, shall be effective 30 days after publication of this Report and Order in the Federal Register.

103. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

104. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 63

Cable television, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Labeling, Reporting and recordkeeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,
Federal Register Liaison Officer
Office of the Secretary.

Final Rules

For the reasons set forth above, Parts 51, 63, and 68 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 51 – INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: 47 U.S.C. 151-55, 201-05, 207-09, 218, 220, 225-27, 251-54, 256, 271, 303(r), 332, 1302.

§ 51.325 [Amended]

2. Amend § 51.325 by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

3. Amend § 51.333 by revising paragraphs (b)(2), (f), (g)(1)(i), (g)(1)(iii), and (g)(2), to read as follows:

§ 51.333 Notice of network changes: Short term notice, objections thereto and objections to copper retirement notices.

* * * * *

(b) * * *

(2) *Copper retirement notice.* Notices of copper retirement, as defined in § 51.325(a)(3), shall be deemed final on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section, except that notices of copper retirement involving copper facilities not being used to provision services to any customers shall be deemed final on the 15th day after the release of the Commission's public notice of the filing. Incumbent LEC copper retirement notices shall be subject to the

short-term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days' notice of such a change except where the copper facilities are not being used to provision services to any customers.

* * * * *

(f) *Resolution of objections to copper retirement notices.* An objection to a notice that an incumbent LEC intends to retire copper, as defined in § 51.325(a)(3) shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper facilities at issue.

(g) *Limited exemption from advance notice and timing requirements*—(1) *Force majeure events*. (i) Notwithstanding the requirements of this section, if in response to a force majeure event, an incumbent LEC invokes its disaster recovery plan, the incumbent LEC will be exempted during the period when the plan is invoked (up to a maximum 180 days) from all advanced notice and waiting period requirements under this section associated with network changes that result from or are necessitated as a direct result of the force majeure event.

* * * * *

(iii) If an incumbent LEC requires relief from the notice requirements under this section longer than 180 days after it invokes the disaster recovery plan, the incumbent LEC must request such authority from the Commission. Any such request must be accompanied by a status report describing the incumbent LEC's

progress and providing an estimate of when the incumbent LEC expects to be able to resume compliance with the notice requirements under this section.

* * * * *

(2) *Other events outside an incumbent LEC's control*. (i) Notwithstanding the requirements of this section, if in response to circumstances outside of its control other than a force majeure event addressed in paragraph (g)(1) of this section, an incumbent LEC cannot comply with the timing requirement set forth in paragraphs (b)(1) or (2) of this section, hereinafter referred to as the waiting period, the incumbent LEC must give notice of the network change as soon as practicable and will be entitled to a reduced waiting period commensurate with the circumstances at issue.

(ii) A short term network change or copper retirement notice subject to paragraph (g)(2) of this section must include a brief explanation of the circumstances necessitating the reduced waiting period and how the incumbent LEC intends to minimize the impact of the reduced waiting period on directly interconnected telephone exchange service providers.

(iii) For purposes of this section, circumstances outside of the incumbent LEC's control include federal, state, or local municipal mandates and unintentional damage to the incumbent LEC's network facilities not caused by the incumbent LEC.

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 is revised to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

5. Amend § 63.71 by revising paragraphs (a)(6), (f) through (h), (i) introductory text, (k) introductory text, and (k)(1) and (3), removing paragraphs (a)(7) and (k)(5), and adding new paragraph (1) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(a) * * *

(6) For applications to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), except for applications meeting the requirements of paragraph (f)(2)(ii) of this section, in order to be eligible for automatic grant under paragraph (f) of this section:

(i) A statement that any service offered in place of the service being discontinued, reduced, or impaired may not provide line power;

(ii) The information required by § 12.5(d)(1) of this chapter;

(iii) A description of any security responsibilities the customer will have regarding the replacement service; and

(iv) A list of the steps the customer may take to ensure safe use of the replacement service.

* * * * *

(f)(1) The application to discontinue, reduce, or impair service, if filed by a domestic, non-dominant carrier, or any carrier meeting the requirements of paragraph (f)(2)(ii) of this section, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. The application to discontinue, reduce, or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

(2) An application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), may be automatically granted only if:

(i) The applicant provides affected customers with the notice required under paragraph (a)(6) of this section, and the application contains the showing or certification described in § 63.602(b); or

(ii) The applicant:

(A) Offers a stand-alone interconnected VoIP service, as defined in § 9.3 of this chapter, throughout the affected service area, and

(B) At least one other alternative stand-alone facilities-based wireline or wireless voice service is available from another unaffiliated provider throughout the affected service area.

(iii) For purposes of this paragraph (f)(2), "stand-alone" means that a customer is not required to purchase a separate broadband service to access the voice service.

(g) Notwithstanding any other provision of this section, a carrier is not required to file an application to discontinue, reduce, or impair a service for which the requesting carrier has had no customers or reasonable requests for service during the 30-day period immediately preceding the discontinuance.

(h) An application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), except for an application meeting the requirements of paragraphs (f)(2)(ii) and (k) of this section, shall contain the information required by § 63.602. The certification or showing described in § 63.602(b) is only required if the applicant seeks eligibility for automatic grant under paragraph (f)(2)(i) of this section.

(i) An application to discontinue, reduce, or impair a service filed by a competitive local exchange carrier in response to a copper retirement notice filed pursuant to § 51.333 of this chapter shall be automatically granted on the effective date of the copper retirement; provided that:

* * * * *

(k) Notwithstanding paragraphs (a)(5), (a)(6), and (f) of this section, the following requirements apply to applications for legacy voice services or data services operating at speeds lower than 1.544 Mbps:

(1) Where any carrier, dominant or non-dominant, seeks to:

(i) Grandfather any legacy voice service;

(ii) Grandfather any data service operating at speeds lower than 1.544 Mbps; or

(iii) Discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (k)(2) of this section, the notice shall state:

> The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's

name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

* * * * *

(3) An application filed by any carrier seeking to grandfather any legacy voice service or to grandfather any data service operating at speeds lower than 1.544 Mbps for existing customers shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

* * * * *

(l) Notwithstanding paragraphs (a)(5), (a)(6), and (f) of this section, the following requirements apply to applications for data services operating at or above 1.544 Mbps in both directions but below 25 Mbps download, and 3 Mbps upload, provided that the carrier offers alternative fixed data services in the affected service area at speeds of at least 25 Mbps download and 3 Mbps upload:

(1) Where any carrier, dominant or non-dominant, seeks to:

(i) Grandfather such data service; or

(ii) Discontinue, reduce, or impair such data service that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (l)(2) of this section, the notice to all affected customers shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(2) For applications to discontinue, reduce, or impair such data service that has been grandfathered for a period of no less than 180 days, in order to be eligible for automatic grant under paragraph (l)(4) of this section, an applicant must include in its application a statement confirming that it received Commission authority to grandfather the service at issue at least 180 days prior to filing the current application.

(3) An application seeking to grandfather such a data service shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

(4) An application seeking to discontinue, reduce, or impair such a data service that has been grandfathered under this section for 180 days or more preceding the filing of the application, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.

PART 68 – CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

6. The authority citation for part 68 is revised to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 610.

7. Amend § 68.105 by revising paragraph (d)(4) to read as follows:

§68.105 Minimum point of entry (MPOE) and demarcation point.

* * * * *

(d) * * *

(4) The provider of wireline telecommunications services shall make available information on the location of the demarcation point within ten business days of a request from the premises owner. If the provider of wireline telecommunications services does not provide the information within that time, the premises owner may presume the demarcation point to be at the MPOE. Notwithstanding the provisions of § 68.110(b),

provider of wireline telecommunications services must make this information freely available to the requesting premises owner.

* * * * *

§ 68.110 [Amended]

8. Amend § 68.110 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

[FR Doc. 2018-14570 Filed: 7/6/2018 8:45 am; Publication Date: 7/9/2018]