

Before the
Federal Communications Commission
Washington, D.C. 20554

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

DECLARATORY RULING, ORDER ON RECONSIDERATION, AND ORDER

Adopted: October 20, 2020

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By the Chief, Wireline Competition Bureau:

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I. INTRODUCTION

1. Next-generation networks hold the promise of new and improved service offerings for American consumers, and encouraging the deployment of these facilities as broadly as possible has long been a priority of the Commission.¹ The COVID-19 pandemic has served to underscore the importance of ensuring that people throughout the country can reap the benefits of these next-generation networks, which provide increased access to economic opportunity, healthcare, education, civic engagement, and connections with family and friends. Removing unnecessary regulatory barriers faced by carriers seeking to transition legacy networks and services to modern broadband infrastructure is therefore a key component of the Commission’s work to improve access to advanced communications services and to close the digital divide.

2. In this Declaratory Ruling, the Wireline Competition Bureau (Bureau) clarifies the scope of the Commission’s section 214 technology transition discontinuance rules applicable to carriers that are discontinuing legacy Time Division Multiplexed (TDM) voice services, including the alternative options test adopted by the Commission in June 2018.² Specifically, we clarify that any carrier seeking to

¹ See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Rulemaking, WC Docket No. 17-84, 32 FCC Rcd 11128 (2017) (*Wireline Infrastructure First Report and Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WC Docket No. 17-84, 33 FCC Rcd 5660 (2018) (*Wireline Infrastructure Second Report and Order*).

² See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5673, para. 30.

discontinue legacy voice service to a community or part of a community that is the last retail provider of such legacy TDM service to that community or part of the community is subject to the Commission's technology transition discontinuance rules, including the requirements to receive streamlined treatment of its discontinuance application.³

3. In the Order on Reconsideration, we deny a petition by Public Knowledge seeking reconsideration of the *Wireline Infrastructure Second Report and Order* and dismiss as moot its accompanying motion to have the Commission hold that *Order* in abeyance pending the outcome of an appeal.⁴ Finally, we issue an Order adopting a non-substantive ministerial update to our codified rules required by actions the Commission took in the 2017 *Wireline Infrastructure First Report and Order*, by revising and correcting a now-inaccurate cross-reference in our rules.

II. BACKGROUND

4. Section 214(a) of the Communications Act of 1934, as amended, requires that carriers seek Commission authorization before discontinuing, reducing, or impairing service to a community or part of a community.⁵ The Commission will grant such authorization only if it determines that “neither the present nor future public convenience and necessity will be adversely affected.”⁶ This requirement is “directed at preventing a loss or impairment of a service offering to a community or part of a community without adequate public interest safeguards.”⁷

5. The Commission's rules implementing section 214(a) provide that a carrier's application seeking Commission discontinuance authority will be automatically granted after sixty or thirty days, depending on whether the carrier is considered dominant or nondominant, respectively, unless the Commission notifies the applicant otherwise.⁸ This automatic grant feature has become known as streamlined processing. The Commission may remove an application from streamlined processing based on the contents of the application itself, responsive or oppositional comments, or other issues associated with the application that warrant further scrutiny prior to acting.⁹ The Commission will normally authorize the discontinuance, however, “unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience or necessity is otherwise adversely affected.”¹⁰

³ See 47 CFR §§ 63.60(i), 63.71(f), (h), (k), 63.602. For convenience, we refer to these rules collectively throughout this item as the “technology transition discontinuance rules.”

⁴ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Public Knowledge Petition for Reconsideration and Motion to Hold in Abeyance, WC Docket No. 17-84 (filed Aug. 8, 2018) (Petition & Motion).

⁵ 47 U.S.C. § 214(a). Unless otherwise noted, this item uses the term “discontinue” or “discontinuance” as a shorthand for the statutory language “discontinue, reduce, or impair.”

⁶ *Id.* Reference to “the Commission” with respect to administering its section 214 discontinuance rules throughout this item includes actions taken by the Bureau pursuant to its delegated authority to accept, process, and act on section 214 applications. See 47 CFR §§ 0.91(d), 0.291.

⁷ *In the Matter of W. Union Tel. Co. Petition for Order to Require the Bell Sys. to Continue to Provide Group/Supergroup Facilities*, 74 F.C.C. 2d 293, 295 (1979).

⁸ 47 CFR § 63.71(f)(1).

⁹ See *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11162-63, 11165-66, 11169, paras. 88-89, 97, 100, 109; *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5677, para. 37.

¹⁰ 47 CFR § 63.71(a)(5)(i)-(ii).

6. In evaluating whether a planned discontinuance of service will adversely affect the public convenience or necessity, the Commission traditionally employs a five-factor balancing test.¹¹ In 2016, the Commission revised its streamlined discontinuance rules to create a process applicable specifically to technology transition discontinuance applications.¹² These applications seek to discontinue legacy TDM-based voice services in a community, replacing them instead with a voice service using a different, next-generation technology.¹³ In adopting a new process specifically for technology transition discontinuance applications, the Commission concluded that the existence, availability, and adequacy of alternatives has “heightened importance” in evaluating the impact on the public interest, as consumers in the affected community would typically need to transition to more modern voice service alternatives having different characteristics.¹⁴ As a result, carriers could get streamlined treatment of a technology transition discontinuance application only by complying with a set of requirements intended to focus heightened scrutiny on the replacement service to which end-user customers would have access.¹⁵

7. In furtherance of its commitment to encouraging a more rapid transition to next-generation voice technologies and services, the Commission further amended its technology transition discontinuance rules in 2018 to provide an additional, more streamlined option for carriers seeking to discontinue legacy voice services. This option encompassed “appropriate limitations to protect consumers and the public interest,” while enabling carriers to work more responsively to “redirect resources to next-generation networks,” ultimately benefitting the public.¹⁶ Via a new “alternative options test,” a carrier’s technology transition discontinuance application is eligible for streamlined processing when: (1) the discontinuing carrier offers a stand-alone, facilities-based interconnected Voice over Internet Protocol (VoIP)¹⁷ service throughout the affected service area, and (2) at least one stand-alone facilities-based voice service is available from an unaffiliated provider throughout the affected

¹¹ These five factors analyze: (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. *See Technology Transitions et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8304, para. 62 & n.167 (2016) (*2016 Technology Transitions Order*) (expounding that, while analysis of these five factors “generally provides the basis for reviewing discontinuance applications, our ‘public interest evaluation necessarily encompasses the broad aims of the Communications Act’”); *see also Western Union Division, Commercial Telegrapher’s Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff’d*, 388 U.S. 864 (1949).

¹² *See 2016 Technology Transitions Order*, 31 FCC Rcd at 8304-12, paras 63-87; 47 CFR § 63.60(i).

¹³ *2016 Technology Transitions Order*, 31 FCC Rcd at 8304-05, paras. 64-65; *see also Technology Transitions et al.*; Notice of Proposed Rulemaking and Declaratory Ruling, GN Docket No. 13-5 et al., 29 FCC Rcd 14968, 14968, para. 1 (2014) (describing the Commission’s focus “on the technological revolution involving the transition from networks based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to all-Internet Protocol (IP) multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure”).

¹⁴ *2016 Technology Transitions Order*, 31 FCC Rcd at 8304, para. 62.

¹⁵ *Id.* at 8304-05, paras. 64-65. In order to get streamlined treatment via the adequate replacement test, a technology transition discontinuance applicant must certify or demonstrate that one or more replacement services in the area offers all of the following: (1) substantially similar levels of network infrastructure and service quality as the applicant service; (2) 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 (3) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors.

¹⁶ *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5673-74, para. 32.

¹⁷ *See id.* at 5673, para. 30 n.93 (describing “stand-alone” service as when “a customer is not required to purchase a separate broadband service to access the voice service[.]” and specifically excluding over-the-top VoIP from “stand-alone” service for purposes of the alternative streamlined option).

service area.¹⁸ A carrier seeking streamlined treatment for a technology transition discontinuance application can choose to satisfy either the adequate replacement test or the alternative options test. All carriers, regardless of status as dominant or non-dominant, are eligible for the streamlined options for the discontinuance of legacy TDM-based voice service.¹⁹ In addition, neither the 2016 nor the 2018 technology transition discontinuance rules limited their applicability to incumbent LECs.²⁰

III. DECLARATORY RULING

8. In this Declaratory Ruling, we clarify the scope of the Commission's technology transition discontinuance rules.²¹ In doing so, we resolve an apparent controversy regarding the applicability of the technology transition discontinuance rules to competitive LECs that have sought authority to discontinue legacy TDM voice services since the current rules became effective in December 2018.²²

9. Since that time, Commission staff has received multiple discontinuance applications from competitive LECs, met with different carriers at their requests, and fielded numerous telephone calls regarding potential TDM voice service discontinuance plans.²³ Some competitive LECs take the view that the Commission's technology transition discontinuance rules do not apply to them when they seek to

¹⁸ *Id.* at 5673, para. 30.

¹⁹ *Id.* We note that seeking streamlined treatment for a technology transition discontinuance application is optional. If a discontinuing carrier cannot, or elects not to attempt to, satisfy the requirements associated with seeking one of the streamlined treatment alternatives, the carrier may always proceed with its discontinuance application on a non-streamlined basis, under the traditional five-factor test. See *2016 Technology Transitions Order*, 31 FCC Rcd at 8304-05, para. 64; *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5677, para. 36.

²⁰ An "incumbent" LEC is any local exchange carrier in a specific area that: "(A) on February 8, 1996, provided telephone exchange service in such area; and (B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i)." 47 U.S.C. § 251(h)(1). By contrast, a competitive LEC is a carrier that "intend[s] to compete directly with the incumbent LEC for its customers and its control of the local market." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, First Report and Order, 11 FCC Rcd 15499, 15528, para. 55 (1996) (subsequent history omitted).

²¹ The Commission has authority to issue a declaratory ruling "terminating a controversy or removing an uncertainty." 5 U.S.C. § 554(e); see also 47 CFR § 1.2. Neither of the two clarifications adopted today requires the adoption of a substantive rule because they merely resolve uncertainty surrounding previous Commission orders and the underlying technology transitions discontinuance rules. The Administrative Procedure Act and the Commission's rules give us wide latitude to resolve such uncertainties via declaratory rulings. See 5 U.S.C. § 554(e) ("The Agency, with like effect as in the case of other orders and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty"); 47 CFR § 1.2 ("The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty"); 47 CFR § 0.91(b), (m); 47 CFR § 0.291 (delegating to the Bureau Chief "authority to perform all functions of the Bureau"). Accordingly, it is appropriate for us to issue this clarification at this time.

²² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Final rule; announcement of effective date, 83 FR 66147 (2018); *Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, WC Docket No. 13-5, Final rule; announcement of effective date, 83 Fed. Reg. 36467 (2018). Since the 2016 adequate replacement test became effective, there has been at least one applicant confused as to its applicability. See *Section 63.71 Application of OpenBand of Virginia, LLC*, WC Docket No. 19-190 (filed Jun. 26, 2019) (informal staff discussions with applicant).

²³ See, e.g., *Section 63.71 Application of Windstream Services, LLC*, WC Docket No. 20-28 (filed Jan. 27, 2020); *Section 63.71 Application of Network Telephone, LLC* (Windstream), WC Docket. No. 19-340 (filed Nov. 8, 2019); *Section 63.71 Application of Windstream Services, LLC*, WC Docket No. 19-321 (filed Oct. 16, 2019).

no longer offer the TDM voice service to communities they serve, whereas other competitive LECs assume those rules do apply. These differing views have become evident through both misfiled applications²⁴ and informal discussions between would-be applicants and Commission staff, where potential applicants relayed confusion as to whether they were required to file subject to the technology transition discontinuance rules. This confusion arises out of an ambiguity surrounding what the word “replacement” means in the definition of “technology transition,”²⁵ particularly when interpreted in the larger context of section 214(a) of the Act²⁶ and the history and purpose of the Commission’s section 214 rules applicable to technology transitions.²⁷ This confusion results in delays in submitting technology transition discontinuance filings and in the transition to next-generation services, and diverts Commission resources from other matters that could be avoided through a clarification.

10. Today, we clarify that whenever a planned discontinuance of a legacy TDM-based voice service will leave a community or part of a community without any further access to legacy TDM-based voice service—i.e., the discontinuing provider is the last retail provider of such service to the community or part of a community—that discontinuance necessarily results in “the replacement of a wireline TDM-based voice service with a service using a different technology or medium for transmission” and is subject to our technology transition discontinuance rules, including the rules governing streamlined treatment. This clarification ensures that customers of a discontinuing carrier, be it an incumbent or competitive LEC, are afforded the same protections intended by our streamlined technology transition discontinuance rules when a community or part of a community no longer has access to any legacy TDM voice service, including a requirement that the discontinuing carrier show that these consumers have access to sufficient alternative voice replacement service options.

11. Both the Commission’s adequate replacement test and the alternative options test address the adequacy of available replacement services for the TDM-based voice service being discontinued during a technology transition discontinuance analysis. If, however, TDM-based voice service remains available throughout the community, that community is not undergoing a “technology transition” requiring members of that community to necessarily transition to an alternative technology voice service as contemplated by the technology transition discontinuance rules.

12. We note that neither the Commission’s definition of a technology transition for purposes of its section 214 discontinuance rules²⁸ nor the specific rule provisions governing streamlined treatment for such discontinuance applications²⁹ limits their applicability to incumbent LECs. Indeed, the Commission’s streamlining rules specifically apply “to *any* domestic carrier,”³⁰ and the term “carrier” is used throughout that section (with the exception of one subsection, not relevant here, that specifically applies solely to competitive LECs).³¹

²⁴ See *Section 63.71 Application of OpenBand of Virginia, LLC*, WC Docket No. 19-190 (filed Jun. 26, 2019) (discontinuance application filed by competitive LEC in a greenfield service area where Verizon planned to begin offering its FiOS service); *Section 63.71 Application of Windstream Services, LLC*, WC Docket No. 20-219 (filed Jun. 29, 2020); *Supplement to Section 63.71 Application of Windstream Services, LLC*, WC Docket No. 20-219 (filed July 30, 2020) (confirming that incumbent LEC providers will continue to offer services via copper facilities in the service area affected by the discontinuance application).

²⁵ See 47 CFR § 63.60(i).

²⁶ See 47 U.S.C. § 214(a).

²⁷ See generally *Technology Transitions*, WC Docket No. 13-5; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84.

²⁸ 47 CFR § 63.60(h).

²⁹ *Id.* § 63.71(f)(2).

³⁰ See 47 CFR § 63.71 (“[a]ny domestic carrier that seeks to discontinue...”).

³¹ 47 CFR § 63.71(i) (specifically using the term “competitive local exchange carrier” instead of “any carrier”).

13. We therefore clarify that any facilities-based provider of legacy TDM-based voice service that seeks to discontinue that service in a community where no other legacy TDM-based voice service will be available to the affected community is executing a technology transition pursuant to our rules. As a result, the discontinuing facilities-based carrier, whether an incumbent LEC or a competitive LEC, is subject to the Commission's technology transition discontinuance rules if it seeks to obtain streamlined processing of its discontinuance application.³²

14. A common scenario in which the technology transition rules would apply to a competitive LEC is where a facilities-based competitive LEC became the first provider in a greenfield community and the incumbent LEC that would have otherwise served that community thus never deployed a TDM network there.³³ In such a case, the competitive LEC is effectively functioning as the incumbent LEC *vis-a-vis* its customers in that area—i.e., a first mover in the service area with ownership and control of the physical network. When that competitive LEC seeks to discontinue its TDM-based voice service, then, that community is necessarily experiencing a technology transition. To protect the customers in such situations, we require the competitive LEC to comply with our technology transition discontinuance rules to receive streamlined treatment of its application. This is the case whether the discontinuing carrier in this scenario is exiting the market entirely³⁴ or transitioning its own service to IP³⁵ or some other next-generation technology. Accordingly, a facilities-based competitive LEC seeking to discontinue TDM-based voice service is subject to our technology transition discontinuance rules if TDM-based voice service will no longer be available in the affected service area from any provider after the discontinuance. This clarification underscores our commitment to transitioning legacy voice services to new, next-generation technologies while safeguarding the public interest during this transition.

15. By contrast, where the community or part of a community affected by a planned discontinuance of a legacy TDM-based voice service will continue to have access to another TDM-based voice service if the Commission grants discontinuance authorization, that community or part of a community is not undergoing a technology transition, and the discontinuing provider is not subject to the technology transition discontinuance rules. For example, this scenario is most likely to occur where a non-facilities-based competitive LEC that either resells TDM-based voice services offered by an underlying facilities-based provider³⁶ such as an incumbent LEC,³⁷ or provisions that service via incumbent LEC unbundled network elements,³⁸ seeks to discontinue its provision of TDM-based voice service. Where the legacy TDM-based voice service will remain available from the underlying facilities-based carrier, the discontinuance by the non-facilities-based carrier will not result in the need to “replace” TDM service with a service using a different technology or medium for transmission as contemplated in

³² Cf. *Wireline Infrastructure Second Report and Order* 33 FCC Rcd at 5679, para. 42 (“The Commission has previously recognized Congress’ concern that ‘discontinuance by the only carrier serving a market . . . would leave the public without adequate communications service.’”).

³³ To the extent some other facilities-based provider had deployed TDM voice service in that community, the continued availability of TDM service from such provider would be a factor as to whether or not that community was undergoing a technology transition.

³⁴ In such a case, the competitive LEC must look to the existence of one or more third-party voice service providers in order to make the necessary public interest showing in any streamlined discontinuance application. See *2016 Technology Transitions Order*, 31 FCC Rcd at 8311, para. 84.

³⁵ See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5673, para. 30 (assuming at least one other alternative voice provider is also present); 47 CFR § 63.71(f)(2).

³⁶ See, e.g., 47 U.S.C. § 251(b)(1).

³⁷ *Id.*; see also *id.* §251(c)(4).

³⁸ See *id.* § 251(c)(3); 47 CFR § 51.319.

the definition of a technology transition, and the non-facilities-based carrier need not comply with the technology transition-specific discontinuance rules.³⁹

16. This clarification is necessary to avoid apparent confusion by, for example, some non-facilities-based competitive LECs about whether they must meet the requirements for streamlined processing of a technology transition discontinuance application when the underlying facilities-based incumbent LEC is retiring the copper loops over which the competitive LEC provides its legacy voice service, but the incumbent LEC continues to offer TDM voice over fiber.⁴⁰ This clarification will avoid unnecessary delay in processing the competitive LEC's discontinuance application that may result from a need to amend the application to remove any incorrect or confusing references to a "technology transition."⁴¹ Finally, it will prevent non-facilities-based competitive LECs from unnecessarily spending resources to comply with additional requirements associated with the heightened scrutiny surrounding the alternative replacement voice service necessary for technology transition discontinuance applications, including the special customer notice requirements associated with one of the two streamlined processing options of a technology transition discontinuance.⁴² This clarification is consistent with our mission to facilitate the transition to next-generation technologies and services, while ensuring the public interest of impacted communities is not adversely affected.

IV. ORDER ON RECONSIDERATION

17. In this Order, we deny Public Knowledge's Petition for Reconsideration of the *Wireline Infrastructure Second Report and Order*.⁴³ We also dismiss as moot Public Knowledge's companion Motion to Hold in Abeyance the same *Order* pending an appeal that has now been denied.⁴⁴

18. On June 7, 2018, the Commission adopted the *Second Report and Order*, in which, among other things, it established a new, alternative path for carriers to obtain streamlined treatment of applications to discontinue legacy TDM-based voice services as part of a technology transition.⁴⁵ Public Knowledge subsequently sought reconsideration of that *Order* and to have the Commission hold it in abeyance pending the outcome of an appeal of the *First Report and Order* in the same Commission

³⁹ We further clarify, however, that if the underlying facilities-based provider no longer offers retail TDM voice service to the community, a non-facilities-based provider discontinuing TDM voice service could be subject to the technology transition rules depending on the circumstances surrounding such discontinuance. Both the *Wireline Infrastructure Second Report and Order* and the *2016 Technology Transitions Order* place the focus of the inquiry on the adequacy of the replacement service when legacy TDM-based voice service is no longer available in the affected service area. See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5672-76, paras. 29-34; *2016 Technology Transitions Order*, 31 FCC Rcd at 8303-08, paras. 61-73.

⁴⁰ See *Application of Broadview Networks, Inc.* (a Windstream Company), WC Docket No. 19-373 (filed Nov. 25, 2019).

⁴¹ See, e.g., 47 CFR § 63.602 (a)(2) (requiring a statement identifying certain applications as related to a technology transition).

⁴² See *id.* 63.71 (a)(6) (detailing customer notice requirements under the adequate replacement test, including providing "[a] statement that any service offered in place of the service being discontinued, reduced, or impaired may not provide line power," "[a] description of any security responsibilities the customer will have regarding the replacement service," and "[a] list of the steps the customer may take to ensure safe use of the replacement service").

⁴³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Public Knowledge Petition for Reconsideration and Motion to Hold in Abeyance, WC Docket No. 17-84 (filed Aug. 8, 2018) (Petition or Motion).

⁴⁴ *Id.* at 13.

⁴⁵ *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5673, para 30.

proceeding.⁴⁶ The Bureau sought comment on Public Knowledge's Petition on September 19, 2018.⁴⁷ No commenters other than Public Knowledge filed in support of the Petition.⁴⁸ Three commenters filed oppositions to the Petition, generally arguing that it "offers no basis for the Commission to reverse any of its decisions."⁴⁹ We agree, and we deny the Petition. Moreover, we deny the Motion as moot for the additional independent reason that the pending appeal upon which it was based has been denied.

A. The Petition Rehashes Issues Already Addressed

19. In support of its Petition, Public Knowledge raises several arguments that the Commission previously addressed in the *Second Report and Order*.⁵⁰ Specifically, the Petition argues that: (1) "the Commission's changes to its rules . . . pose a threat to the ability of federal agencies to complete their missions;" (2) the "alternative options" test adopted in the *Second Report and Order* is deficient in various ways; and (3) the Commission improperly relied on "market-based incentives [as] sufficient to ensure that customers will retain access to adequate service."⁵¹ We deny the Petition because all of Public Knowledge's arguments were fully considered, and rejected, by the Commission in the underlying proceeding.⁵²

20. First, Public Knowledge argues in its Petition that a filing by the National Telecommunications and Information Administration (NTIA), submitted after the *Second Report and Order* was adopted, raises concerns that federal agencies "are likely to be negatively impacted by the fact that the Order's discontinuance process does not require carriers to prove that replacement services will provide service substantially similar those being discontinued."⁵³ We disagree with Public Knowledge's characterization of the NTIA letter, and with the assertion that government agencies will be negatively affected by the changes adopted in the *Second Report and Order*.

21. As an initial matter, the Commission fully considered, and rejected, arguments that government agencies would be negatively impacted by the rules adopted in the *Second Report and Order*. In that *Order*, the Commission found unpersuasive "concerns that large enterprise or government customers will be adversely affected by further streamlined processing of legacy voice discontinuance

⁴⁶ See Motion at 13 (basing abeyance request on pending appeal of *Wireline Infrastructure First Report and Order*).

⁴⁷ 83 FR 47325 (Sept. 19, 2018). While the Public Notice seeking comment on the Petition did not also seek comment on the Motion, certain filers responded to the Motion. See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Verizon's Opposition to Public Knowledge's Petition for Reconsideration and Motion to Hold in Abeyance, WC Docket No. 17-84, at 11-13 (filed Oct. 4, 2018) (Verizon Opposition).

⁴⁸ We received three oppositions to the Petition. See Verizon Opposition; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Opposition of CenturyLink, WC Docket No. 17-84 (filed Oct. 4, 2018) (CenturyLink Opposition); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, USTelecom Opposition to Public Knowledge Petition for Waiver and Motion to Hold in Abeyance, WC Docket No. 17-84 (filed Oct. 4, 2018) (USTelecom Opposition). Public Knowledge filed reply comments in support of its petition. See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Public Knowledge Response to Opposition to Public Knowledge's Petition for Reconsideration and Motion to Hold in Abeyance, WC Docket No. 17-84 (filed Oct. 15, 2018) (Public Knowledge Reply).

⁴⁹ Verizon Opposition at 1; see also CenturyLink Opposition at 3; USTelecom Opposition at 1.

⁵⁰ See USTelecom Opposition at 5 ("Many of the complaints in the Petition have already been considered by the Commission.").

⁵¹ See Petition at iv, 2-3.

⁵² See 47 CFR § 1.429(1)(3).

⁵³ Petition at 3.

applications that do not meet the adequate replacement test.”⁵⁴ The Commission found in the *Second Report and Order* that “carriers are accustomed to working with . . . government users . . . to avoid service disruptions” and noted the Commission’s expectation that under the new streamlined discontinuance processing rules “carriers will ‘continue to collaborate with their [enterprise or 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.’”⁵⁵ The Commission went on to note that “as with all discontinuance applications, [federal agency] customers are able to file comments in opposition to a discontinuance application and seek to have the Commission remove the application from streamlined processing.”⁵⁶ The NTIA letter referenced by the Petition raises no new concerns about these findings.

22. Moreover, several commenters point out that the Petition misconstrues NTIA’s filing, which, “[c]ontrary to Public Knowledge’s assertions, . . . generally supports the Commission’s approach” in the *Second Report and Order*.⁵⁷ In particular, NTIA’s letter endorses the Commission’s discussion of federal agencies in the *Second Report and Order*, noting that the Commission retains flexibility to address issues related to national security and public safety raised by legacy voice service discontinuances on a case-by-case basis.⁵⁸ As Verizon notes, “NTIA agreed [with the Commission’s finding that] the federal government ‘generally is well-positioned to protect its interests through large-scale service contracts with carriers.’”⁵⁹ While the NTIA letter cited in the Petition notes that some federal agencies in remote or less populated areas may not enjoy the level of competition for communications services that exists in other areas of the country, NTIA goes on to state that it is “encouraged” by the Commission’s discussion of federal agencies’ interests regarding service discontinuances in the *Second Report and Order*.⁶⁰ The letter likewise expresses confidence that the Commission’s procedures for processing service discontinuances will be sufficient to safeguard the interests of federal agencies in maintaining mission critical communications infrastructure.⁶¹ And although NTIA suggests that the Commission “should hold in abeyance any copper retirement if a federal user credibly alleges that the carrier’s proposed retirement

⁵⁴ See *Wireline Infrastructure Second Report and Order*, 33 FCC Red at 5677-78, para. 38.

⁵⁵ *Id.* at 5678, para. 38.

⁵⁶ *Id.*

⁵⁷ See Verizon Opposition at 2; see also CenturyLink Opposition at 2-3; USTelecom Opposition at 2-3. For example, NTIA “support[s] the Commission’s decision to extend . . . streamlined processing rules . . . for legacy voice and data services operating at speeds less than 1.544 Mbps to carrier applications to discontinue data services at speeds below 25/3 Mbps.” NTIA July 18, 2018 Letter at 1. NTIA observes that “if carriers’ conduct impairs . . . critical national security and public safety functions, the Commission retains ‘flexibility to address [agencies’] circumstances on a case-by-case basis.’” *Id.* at 3. More generally, NTIA recognizes the *Second Report and Order*’s discussion of federal agencies “as a commitment to sanction conduct impinging on” critical agency functions, expressing confidence “that the Commission will continue to recognize and address the specific needs of federal government users during the IP transition.” *Id.* at 3.

⁵⁸ *Id.*

⁵⁹ See Verizon Opposition at 4; NTIA July 18, 2018 Letter at 2.

⁶⁰ See NTIA July 18, 2018 Letter at 2-3; CenturyLink Opposition at 3.

⁶¹ See NTIA July 18, 2018 Letter at 2-3. In its reply comments in support of its petition, Public Knowledge seems to suggest that despite its “amicable tone” we should nonetheless read the NTIA letter as constituting an implied opposition to the alternative options test adopted in the *Second Report and Order*. See Public Knowledge Reply at 1-3. We decline, however, to read into NTIA’s letter arguments that do not appear in its text. See Verizon Opposition at 4 (noting that “NTIA’s letter does not even mention, much less criticize, the alternative options test”).

date does not give the user ‘sufficient time to accommodate the transition to new network facilities,’”⁶² nowhere does NTIA argue that the framework adopted in the *Second Report and Order* “is likely” to adversely impact federal agencies, nor does NTIA argue that “any replacement test without quantifiable performance standards has inherent shortcomings,” as claimed in the Petition.⁶³

23. We also disagree with arguments in the Petition that the Commission’s alternative options test and consumer comment period for discontinuances are arbitrary, inconsistent with the public interest, or unsupported by the record underlying the *Second Report and Order*.⁶⁴ The Commission already considered, and rejected, these arguments in the underlying *Order*. As the Commission found in that *Order*, the record “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.”⁶⁵ The Commission observed that “the number of switched access lines has continued to plummet” since the adequate replacement test was adopted, “while the number of interconnected VoIP and mobile voice subscriptions have continued to climb,” and concluded that “providing additional opportunities to streamline the discontinuance process for legacy voice services, with appropriate limitations to protect consumers and the public interest, [will] allow carriers to more quickly redirect resources to next-generation networks, and the public to receive the benefit of those new networks.”⁶⁶ Based on these findings, the Commission adopted the alternative options test for carriers seeking streamlined treatment of applications to discontinue legacy voice services, while retaining the preexisting adequate replacement test as an option for carriers.

24. The Petition argues that the absence of specific performance metrics in the alternative options test indicates that the Commission has “abdicated its statutory duty to promote the public interest.”⁶⁷ We disagree. As Verizon notes in its opposition, the Petition “ignores the Commission’s explanation for why the . . . compliance obligations that it found necessary for the . . . adequate replacement test are not necessary under the alternative options test,” which, unlike the adequate replacement test, requires the existence of at least *two* alternative services.⁶⁸ The alternative options test complements, rather than replaces, the adequate replacement test, both of which ensure that the public interest is protected when carriers seek to discontinue legacy voice services that are part of a technology transition. As the Commission explained in the *Second Report and Order*, “[w]here 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 . . . we expect customers will benefit from competition between

⁶² Copper retirements are subject to the Commission’s section 251 network change disclosure rules rather than the section 214 discontinuance rules. See 47 CFR § 51.325 *et seq.* Those rules contain objection procedures that allow for a limited extension of the proposed copper retirement effective date. 47 CFR § 51.333(c).

⁶³ See Petition at 3-4.

⁶⁴ See *id.* at 6. We also dismiss petitioner’s arguments that we must reconsider the *Second Report and Order* because of perceived deficiencies regarding the Commission’s broadband maps. Petitioner offers no support for its speculation that these maps “would presumably guide [the Commission’s] analysis regarding whether another stand-alone facilities-based service is available.” *Id.* at 4. Indeed, nothing in the *Second Report and Order* suggests that the Commission’s broadband maps would provide the basis for this determination, and the burden falls on the provider seeking discontinuance to demonstrate the existence of alternative service options. See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5673, para. 30; see also Verizon Opposition at 5.

⁶⁵ See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5674, para. 32.

⁶⁶ See *id.* at 5673-74, para. 32 (internal quotations omitted).

⁶⁷ See Petition at 8.

⁶⁸ Verizon Opposition at 6; CenturyLink Opposition at 3-4 (arguing that, in this regard, the alternative options test is “more stringent than the adequate replacement test”).

facilities-based providers.”⁶⁹ The Commission went on to explain that “[t]he 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.”⁷⁰ For these reasons, the Commission explained, “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.”⁷¹

25. We also disagree with arguments in the Petition that we should reconsider the 10-day consumer comment period adopted in the *Second Report and Order* and “reinstate the 180-day notice period for customers of discontinued services.”⁷² There has never been a 180-day customer notice period for discontinuance applications. As Verizon notes, Petitioner’s arguments regarding customer notification seem to conflate copper retirement with service discontinuance.⁷³ The *Second Report and Order* provided for a streamlined 10-day comment period for applications to grandfather legacy voice services,⁷⁴ which had previously been subject to the default of 15 days for non-dominant providers and 30 days for dominant providers.⁷⁵ It did not, however, shorten the comment period applicable to non-grandfathering technology transition discontinuance applications. Such applications are still subject to the default comment period. And, while the *First Report and Order* revised the Commission’s copper retirement rules to “eliminate the requirement of direct notice to retail customers” and reduced the copper retirement waiting period from 180 to 90 days, these changes did not affect the requirement or timing within which consumers receive notice of service discontinuance applications under section 214.⁷⁶

26. Finally, we dismiss the Petition’s argument that the Commission “must reconsider its belief that market-based incentives are sufficient to ensure that carriers provide adequate replacement services to consumers in the event of a service discontinuance.”⁷⁷ The Commission has previously

⁶⁹ See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675, para. 34.

⁷⁰ *Id.* For this reason, we also disagree with Petitioner’s argument that there are “instances of specific harm that the Commission appeared to purposefully overlook during its 2018 rulemaking,” citing “critical functions like medical device support, fire alarms, and connecting credit card readers for small businesses” and the effects of natural disasters like hurricanes and wildfires. See Petition at 10-13. As we explained in the *Second Report and Order*, “[t]he two parts of the alternative options test . . . 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.” *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675-76, para. 34.

⁷¹ *Id.*

⁷² Petition at 11.

⁷³ See Verizon Opposition at 8-10; see also Petition at 9-11.

⁷⁴ See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5662-63, para. 7; see also 47 CFR § 63.71(k)(1). The Commission had previously adopted streamlined comment and automatic grant periods for applications to grandfather or to discontinue previously grandfathered low-speed legacy voice and data services. *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11161-62, para. 84-86. In the *Second Report and Order*, the Commission extended this streamlined treatment to all legacy voice services. *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5678, para. 39. The Commission explained in the *Second Report and Order*, “as existing customers will be entitled to maintain their legacy voice services, they will not be harmed by grandfathering applications.” *Id.* at 5678, para.40.

⁷⁵ See 47 CFR § 63.71(a)(5).

⁷⁶ See *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11147, 11153, paras. 45, 61.

⁷⁷ Petition at 11.

considered and rejected petitioner's claims in this regard.⁷⁸ Nevertheless, judgments concerning the nature and impact of market incentives as they relate to public policy are well within the Commission's discretion.⁷⁹ The rules adopted in the *Second Report and Order* were based on an extensive record, and in the absence of any new data or facts, we reject Petitioner's request to reconsider those rules based solely on the fact that it disagrees with the Commission's assessment of competition in the market for telecommunications services.⁸⁰

B. The Motion to Hold in Abeyance Is Moot

27. We dismiss as moot Public Knowledge's accompanying Motion to hold the *Second Report and Order* "in abeyance until pending litigation is resolved."⁸¹ The Motion refers to a challenge in the United States Court of Appeals for the Ninth Circuit of the Commission's 2017 *Wireline Infrastructure First Report and Order*, which was then pending but has since been dismissed for lack of standing.⁸² We note that some commenters argue that Public Knowledge's Motion was an improper motion for a stay, or is procedurally defective in other ways.⁸³ We need not reach determination of these issues, however, as we instead merely dismiss this accompaniment to the Public Knowledge Petition as moot.

V. ORDER

28. In this Order, we make two ministerial updates to our codified rules required by actions taken in the 2017 *Wireline Infrastructure First Report and Order*. We revise a now-inaccurate cross-reference to the definition of copper retirement in section 63.60(i) of our rules, changing it from now-repealed section 51.332(a) to section 51.325(a)(3), and an inaccurate cross-reference to the definition of "technology transition" in section 63.602(a)(2), changing it from section 63.60(h) to section 63.60(i). We find that there is good cause for adopting this amendment here because an inaccurate cross-reference may confuse applicants seeking to determine whether a copper retirement, as defined by our rules, is excluded from consideration as a "technology transition" in accordance with section 63.60(i).⁸⁴ The inaccurate cross-references occurred inadvertently as a result of a series of overlapping changes to these rules over a three year period when previous rules had not yet become effective at the time the new rules were adopted.⁸⁵

⁷⁸ See Verizon Opposition at 10-11; see also *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675-76, para. 34 (discussing the role of competition in ensuring availability of adequate replacement services under the alternative options test); *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11162-63, paras. 86-88 (noting that "competitive forces have made substitute services readily available to the majority of consumers" and disagreeing with arguments by commenters, including Public Knowledge, that reduced comment and auto-grant periods will prevent the Commission from fulfilling its statutory obligation to ensure that discontinuances do not harm the public interest).

⁷⁹ See USTelecom Opposition at 8-9.

⁸⁰ See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5672-78, para. 29-38; USTelecom Opposition at 8-9.

⁸¹ Petition at 13.

⁸² See *Greenlining Institute et al. v. FCC*, No. 17-73283 (9th Cir., Jan. 23, 2020).

⁸³ See Verizon Opposition at 11; USTelecom Opposition at 9-10.

⁸⁴ See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5689, para. 66; see also *2016 Technology Transitions Order*, 31 FCC Rcd at 8304, para. 63, 8363, Appx. A; *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11145-46, para. 41, 11199-200, Appx. A (amending section 51.325 and eliminating section 51.332); *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5692, Appx. A.

⁸⁵ See *2016 Technology Transitions Order*, 31 FCC Rcd at 8304, para. 63, 8363, Appx. A; *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11145-46, para. 41, 11199-200, Appx. A (amending section 51.325 and eliminating section 51.332); *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5692, Appx. A.

29. Section 553 of the Administrative Procedure Act permits us to amend our rules without undergoing notice and comment where we find good cause that doing so is “impracticable, unnecessary, or contrary to the public interest.”⁸⁶ We have previously determined that 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.”⁸⁷ Consistent with our previous decisions, in this instance we find that notice and comment is unnecessary for adopting ministerial revisions to section 63.60(i) and section 63.602(a)(2) to ensure that the cross-references to the definitions of copper retirement and technology transition are consistent with the recent amendments to our rules.

VI. PROCEDURAL MATTERS

30. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

31. *Contact Person.* For further information about this proceeding, please contact Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1477.

VII. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that, pursuant to sections 1-4 and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 214, this Declaratory Ruling, Order on Reconsideration, and Order IS ADOPTED.

33. IT IS FURTHER ORDERED that part 63 of the Commission’s rules IS AMENDED as set forth in Appendix A.

34. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Public Knowledge IS DENIED.

35. IT IS FURTHER ORDERED that this Declaratory Ruling SHALL BE EFFECTIVE upon release.

36. IT IS FURTHER ORDERED that this Order on Reconsideration and Order SHALL BE effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

⁸⁶ 5 U.S.C. § 553(b)(3)(B).

⁸⁷ *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5688, para. 63; *see also Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3169, para. 224 (2016).

APPENDIX A

Final Rules

For the reasons set forth above, Part 63 of Title 47 of the Code of Federal Regulations are amended as follows:

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

1. The authority for part 63 continues 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.

2. Amend section 63.60 by revising paragraph (i) to read as follows:

§ 63.60 Definitions.

* * * * *

(i) The term “technology transition” means any change in service that would result in the replacement of a wireline TDM-based voice service with a service using a different technology or medium for transmission to the end user, whether Internet Protocol (IP), wireless, or another type; except that retirement of copper, as defined in §51.325(a)(3) of this chapter, that does not result in a discontinuance, reduction, or impairment of service requiring Commission authorization pursuant to this part shall not constitute a “technology transition” for purposes of this part.

3. Amend section 63.602 by revising paragraph (a)(2) to read as follows:

§ 63.602 Additional contents of applications to discontinue, reduce, or impair an existing retail service as part of a technology transition.

(a) * * *

(2) A statement identifying the application as involving a technology transition, as defined in §63.60(i) of this part;

* * * * *