

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

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

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

June 15, 2017

TABLE OF CONTENTS

Page

BACKGROUND	1
DISCUSSION	2
I. Notice of Proposed Rulemaking	2
II. Notice of Inquiry	7
III. Request for Comment.....	9
CONCLUSION	13

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BACKGROUND

On April 20, 2017, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment to solicit comments on issues affecting the deployment of broadband services. In particular, the FCC seeks comment on proposed rules pertaining to copper retirement and service discontinuance. Additionally, the FCC seeks input with regard to matters pertaining to state preemption as it relates to promoting broadband deployment as well as its “functional test” standard for defining what constitutes a service. Initial comments are due by June 15, 2017, and reply comments are due by July 17, 2017.

The Public Utilities Commission of Ohio (Ohio Commission) recognizes the keen importance of broadband deployment in unserved and underserved areas and it takes very seriously its regulatory role to facilitate this deployment. The Ohio Commission

encourages the FCC to take a measured approach that recognizes and preserves the important role that Ohio and other states have historically had in this endeavor. Accordingly, the Ohio Commission appreciates this opportunity to present these comments for the FCC's studied consideration.

DISCUSSION

I. Notice of Proposed Rulemaking

The FCC invites comment on eliminating the requirement that incumbent local exchange carriers (ILEC) provide direct notice of planned copper retirements to the states.¹ In the *2015 Technology Transitions Order* (2015 Order), the FCC concluded that “states should be fully informed of copper retirements occurring within their respective borders so that they can plan for necessary consumer outreach and education.”² This conclusion is supported by the 2015 Advisory Recommendation of the Intergovernmental Advisory Committee (IAC) to the Federal Communications Commission.³ The Ohio Commission agrees with this conclusion and it further agrees with the IAC May 12, 2015 Recommendation that emphasizes the need for local community awareness about the

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 2017 WL 1426086 at 20, ¶ 64 (2017) (*Accelerating Wireline Broadband Deployment*).

² *Technology Transition, et al.*, Report and Order, Order of Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd. 9372, 9411, ¶ 70 (2015) (*2015 Technology Transitions Order*).

³ Intergovernmental Advisory Committee to the Federal Communications Commission Advisory Recommendations No: 2015-5, GN Docket No. 13-5, *et al.*, at 4 (dated May 12, 2015) (IAC Recommendations)

technology transition and the related and essential role of state governments in educating their citizens.⁴

In its 2015 Order, the FCC implemented additional planned ILEC copper retirement processes that included requiring direct public notice to retail customers, state public utility commissions, and other entities.⁵ It further expanded the public notice to retail customers, concluding that doing so was consistent with both the public interest, including its core value of consumer protection, and the notice of changes requirement found in 47 USC 251(c)(5).⁶ The Ohio Commission agrees that this expanded requirement promotes the public interest and correlates with the FCC's core value of consumer protection because it fully informs customers affected by a copper retirement of the involuntary modifications to their service. The FCC has previously expressed, and the Ohio Commission concurs, that consumers benefit when they are informed about planned network changes that may affect their service.⁷

In 2014, AT&T initiated transition trials (AT&T Wire Center Trials) from its legacy network to its advanced communications network.⁸ The main focus of the AT&T Wire Center Trials was the importance in persuading customers to voluntarily migrate to IP services. Consumer education provided critical information to assist customers in

⁴ IAC Recommendation at 3-4.

⁵ 47 CFR § 51.332(b).

⁶ *2015 Technology Transitions Order* at ¶ 39.

⁷ *Id.* at ¶ 43.

⁸ *Technology Transitions*, WC Docket No. 05-25, GN Docket No. 13-5; *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353 (Final Report-Jan. 19, 2017).

those voluntary migrations to IP services by providing transparency regarding changes to the services purchased by a carrier's customers. In the view of the Ohio Commission, then, repeal or modification of 47 CFR 51.332 (hereinafter Section 51.332) would not be in the public interest and would, in fact, impede consumer protection.

The Ohio Commission strongly believes that state commissions are well-equipped and positioned to promote consumer protection and education. The FCC has previously recognized the traditional and important nature of contributions by state regulators in promoting customer understanding and it has encouraged carriers retiring copper to partner with state commissions during the retirement process as a means of minimizing consumer disruption.⁹ The vital role of states in protecting and educating consumers has been recognized by the Ohio General Assembly in recent telephone transition legislation included in House Bill 64 (HB 64).¹⁰

Effective June 2015, HB 64 allows ILECs to withdraw basic local exchange service as well as be relieved of their carrier of last resort (COLR) obligations. With no obligation to serve as the COLR or provide basic local exchange service, an ILEC could withdraw service from an area. To ensure that no customers are left without service, the General Assembly has proposed a "failsafe" provision that would prevent an ILEC from withdrawing from an area unless and until there is a provider of reasonable and comparatively-priced voice service. Further, the uncodified portion of the bill establishes a collaborative process among Ohio regulators and industry stakeholders to address

⁹ 2015 *Technology Transitions Order* at ¶ 64.

¹⁰ 2015 Am. Sub. H.B. 64.

issues germane to the network transition. In particular, the collaborative process is charged with ensuring that “public education concerning the transition is thorough.”¹¹ To help advance this agenda, the collaborative established the Consumer Education Subgroup that consists of industry stakeholders, consumer advocates and Ohio commission staff tasked with evaluating and promoting effective customer communication and understanding regarding technology transition issues. HB 64 both promotes state efforts to transition to advanced communications networks to facilitate broadband deployment while protecting and educating their citizens at the same time.

The Ohio Commission supports retaining the requirement to provide copper retirement notification to the states. This will allow states to address issues raised by planned copper retirements while allowing states to both adequately educate and protect consumers throughout the retirement process.

The Ohio Commission strongly advocates that the FCC maintain notice to residential consumers as well. Residential consumers include senior citizens, people with disabilities and people with health issues that require monitoring by a medical device or a medical assistance device. Lack of sufficient notice to these consumers could result in compatibility issues with medical or other devices critical to disabled or senior citizen consumer groups. Notice allows these vulnerable populations to arrange for device upgrades or make other alternative arrangements. To require less, may place these consumers at great risk.

¹¹

2015 Am. Sub. H.B. 64 at § 749.10(A)(5).

Additionally, as the technology transition continues and ILECs move to retire their legacy copper networks, the network upgrades occasioned by these retirements may cause issues that could interrupt vital public services. As the FCC points out in its 2015 Order, retail customers not only include residential consumers but also non-residential end users such as utilities and critical infrastructure industries.¹² These end users include emergency services, energy, finance, healthcare and government.¹³ It is vitally important that such end users be timely informed of any copper retirement that could affect them as an interruption of their services could result in larger negative national security, public safety and welfare impacts.¹⁴ These entities typically require longer time frames beyond ninety days to plan and prepare for the impact of network changes to their services and to determine whether seeking an alternative is necessary.¹⁵ The FCC recognized this in its *Second Local Competition Order* where it determined that the public notice period should be twelve months, with certain exceptions, as it found it to be unreasonable to expect other carriers or providers to immediately react to a network change that an ILEC may

¹² 2015 *Technology Transitions Order* at ¶ 45.

¹³ United States Dept. of Homeland Security, Critical Infrastructure Sectors available at <https://www.dhs.gov/critical-infrastructure-sectors>

¹⁴ See Utilities Technology Council, *IP Transitions Issue Brief* (Nov. 2016) at 2 available at http://utc.org/wp-content/uploads/2016/11/UTC_Issue_Brief_IP_TransitionNOV-2016.pdf. In this issue brief, the Utilities Technology Council (UTC) states that with regard to electric, gas and water utilities, *more* advance notice should be provided by telecommunications carriers prior to a copper replacement or prior to a discontinuance of service that is a part of an IP transition. UTC argues that such notice should be provided due to the complexity of the transition involving other utilities; the risk that replacement services may not be of the same quality; and, the costs to the utilities associated with such a transition. In the UTC's view, the safety, reliability and security of other essential utilities should not be threatened by the IP transition.

¹⁵ 2015 *Technology Transitions Order* at ¶ 45.

have spent months or more planning and implementing.¹⁶ Because a repeal of Section 51.332, in favor of the prior short-term network change notification rule, poses significant risks to many entities vital to our critical infrastructure, such a course of action should not be implemented.

The Ohio Commission appreciates the opportunity to share its thoughts and concerns with the FCC regarding the FCC's proposal to repeal Section 51.332. As pointed out, states are in the best position to assist in consumer education and ensure consumer protection with regard to copper retirements. Informed consumers benefit from a transparent process and are better able to plan and react to it.

II. Notice of Inquiry

In its Notice of Inquiry, the FCC seeks comment on its proposal to enact rules that preempt state and local laws that inhibit broadband deployment.¹⁷ While the Ohio Commission applauds the FCC's timely attention to accelerating wireline broadband deployment, it should not do so in a manner that ignores the important role that states have traditionally played and must continue to occupy in this effort. A policy of collaboration and partnership with the states must effectively and efficiently achieve this important objective. Blanket preemption may prevent states from enacting laws intended

¹⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al.*, CC Docket 96-98, *et al.* (Second Report and Order and Memorandum Opinion and Order ¶ 175) (1996).

¹⁷ Accelerating Wireline Broadband Deployment at 31, ¶ 100.

to address unique issues or to protect their citizenry. The Ohio Commission believes that states have an important voice that must continue to be heard.

As noted above, the Ohio General Assembly passed legislation intended to facilitate the transition from legacy copper networks to advanced communications networks. The efforts undertaken in Ohio provide a good framework to support that transition, which promotes the FCC objective of accelerating broadband deployment. At the same time, Ohio, through legislation and regulation, has pursued an approach that seeks to balance this important goal with the public interest objective of ensuring that all customers are protected and retain access to, at least, emergency services.¹⁸ In the view of the Ohio Commission, the most effective rollout and oversight of this technology transition is a grass roots one in which states are left to consider competing goals and objectives in the best interests of their citizens.

Similarly, the Ohio Commission has undertaken an initiative where broadband deployment intersects the electric industry. Recently, the Ohio Commission hosted its first in a series of meetings of electric utilities and utility stakeholders to review the latest in technological and regulatory innovation that could serve to enhance the consumer electricity experience. Named “PowerForward,” this initiative is intended to chart a path forward for grid modernization projects in Ohio. The success of PowerForward, however, is dependent on regulators and multiple industries working together to transition to advanced technologies in a manner supported by the electric grid and in a

¹⁸ See, e.g., 2015 Am. Sub. H.B. 64; *In the Matter of the Commission's Review of Chapter 4901:1-6 of the Ohio Administrative Code Regarding Telephone Company Procedures and Standards*, 14-1554-TP-ORD (Finding and Order) (Nov. 30, 2016).

way beneficial to consumers. Accordingly, the Ohio Commission encourages the FCC to continue to recognize the role of states in pursuing similar objectives in the area of broadband deployment given its wide-ranging impacts on multiple stakeholders and industries.

The Ohio Commission wishes to respectfully remind the FCC that while a uniform federal policy promoting broadband deployment may be desirable to many, such an approach cannot be achieved through the preemption of duly-enacted state laws that promote legitimate state interests under traditional state authority.¹⁹ The Ohio Commission encourages the FCC to be mindful that any consideration of blanket preemption runs the risk of encroaching upon the well-established authority of states to protect and act on behalf of their citizens' interests. As the FCC considers how best to promote and accelerate wireline deployment, the authority of states to promote legitimate state interests for the public good of their citizenry must be nurtured – not eviscerated.²⁰

III. Request for Comment

The FCC seeks comments on whether it should revisit its November 2014 Declaratory Ruling and subsequent 2015 Order on Reconsideration, which established a “functional test” and expanded what constitutes a “service” for purposes of 47 USC

¹⁹ *Berman v. Parker*, 348 U.S. 26, 32 (1954).

²⁰ *Id.* at 32.

214(a) (hereinafter Section 214(a)) discontinuance review.²¹ The Ohio Commission encourages the FCC to maintain the “functional test” that will continue to “look beyond the terms of a carrier’s tariff” while taking into account the “totality of the circumstances” from the perspective of a community or part of a community when evaluating a request to discontinue, reduce or impair service under Section 214(a).²²

As mentioned above, Ohio HB 64 established a collaborative process to address issues related to the transition from traditional legacy networks to advanced communications networks. As part of this process, the collaborative was charged with looking at the issues of universal connectivity, public safety, reliability and consumer protection in the context of this transition.²³ To this end, the collaborative invited numerous stakeholders to discuss how this transition would impact them and their respective communities and industries. From these individuals, the collaborative heard the many ways that consumers use and rely on their telephone service beyond the service description set forth in the tariff. For example, for many consumers, using their telephone service means being able to use a medical alert device or connecting with a home security system.²⁴ Others rely on their service for medical monitoring.²⁵ This input establishes clearly to the Ohio

²¹ *Accelerating Wireline Broadband Deployment* at 37, ¶ 115.

²² *Id.* at ¶ 117.

²³ 2015 Am. Sub. H.B. 64

²⁴ See Ohio Collaborative Website, OCC Presentation May 19, 2016, available at <http://www.puco.ohio.gov/puco/index.cfm/be-informed/consumer-topics/telephone-network-transition/reliability-and-consumer-protection-occ-presentation-may-19-2016/>.

²⁵ See Ohio Collaborative Website, April 7, 2016 collaborative minutes available at <http://www.puco.ohio.gov/puco/index.cfm/be-informed/consumer-topics/telephone-network-transition/telephone-network-transition-april-7-2016-meeting-minutes/>.

Commission that the “service” consumers receive from their local telephone company goes far beyond the service parameters set forth in the tariff. The service they receive includes the ability to use a variety of ancillary services upon which many consumers regularly rely in their daily lives. The Ohio Commission submits that the FCC must consider how customers are using the service they receive to fully ascertain whether a network change will negatively impact or impair such critical daily services within the meaning of Section 214(a).

Traditionally, tariffs have set forth the terms and conditions of service under which a telephone company provides service to a customer. Consequently, for most customers, the tariff takes the place that a contract would fill. In fact, in its 2015 Order, the FCC said that the purpose of a tariff is to “provide ‘schedules showing all charges for itself and its connecting carriers...and showing the classifications, practices, and regulations affecting such charges.’”²⁶ In Ohio, as the industry has moved from a heavily regulated environment to a market-driven environment, the reliance on tariffs has waned. Many, if not most, services have been detariffed. In fact, basic local exchange service is essentially the only residential service that remains tariffed in Ohio.

In the absence of a tariff, the FCC Request for Comment indicates that a customer service agreement would function in its place for purposes of determining what comprises a service under Section 214(a).²⁷ Not all customers receive written service

²⁶ See Ohio Collaborative Website, April 7, 2016 collaborative minutes available at <http://www.puco.ohio.gov/puco/index.cfm/be-informed/consumer-topics/telephone-network-transition/telephone-network-transition-april-7-2016-meeting-minutes/>.

²⁷ *Accelerating Wireline Broadband Deployment* at 37, ¶ 116.

agreements, however. Through the normal course of its business, the Ohio Commission has become aware that many non-tariffed services are offered on a month-to-month basis without a written customer service agreement. In these instances, the best description of the service is likely to be found in the providers marketing materials or on its website. What in such cases is dispositive in determining what comprises a customer's "service"?

The FCC cites the filed-rate doctrine's prohibition against carriers "extend[ing] to any person any privileges" with respect to tariffed services not set forth in a specific tariff.²⁸ It then concludes that under the doctrine, "no person or community can enforce or rely on any aspect of a tariffed service that is not described in the tariff."²⁹ The filed-rate doctrine places limitations on utilities; it limits what a company may charge and provide to a consumer, but it does not limit how a consumer uses or relies on the service received nor does it limit the FCC in considering such reliance as a part of a Section 214(a) request for discontinuance.

While tariffs and, in their absence, customer service agreements may be helpful in defining the service a customer receives, the Ohio Commission does not believe them to be dispositive. The FCC agreed, in its 2015 Order, when it affirmatively stated that it has never used tariffs to exclusively define the scope of service.³⁰ As technology has advanced and customers have come to rely upon the service they receive from their

²⁸ *Accelerating Wireline Broadband Deployment* at 37, ¶ 117.

²⁹ *Id.*

³⁰ *Technology Transitions*, WC Docket No. 05-25, GN Docket No. 13-5 (Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking at ¶ 189) (2015) 30 FCC Rcd. 9372.

telephone company not just for a voice connection, but for a variety of other sometimes critically important ancillary functions and services, the Ohio Commission urges the FCC to retain the functional test. In the Ohio Commission's view, this approach best protects the public convenience and necessity of communities when a carrier wishes to discontinue, reduce or impair service pursuant to Section 214(a).

CONCLUSION

The Ohio Commission agrees that the acceleration of wireline broadband deployment is an important industry issue that must be addressed. Ensuring broadband access for all is critical in today's increasingly connected world and the Ohio Commission appreciates the FCC's efforts in this regard. As the FCC pursues this laudable objective, however, the Ohio Commission encourages it to take an inclusive approach that involves the states through partnership. The Ohio Commission further encourages the FCC to ensure that both customers and states remain aware of network changes that will affect them and their state. Finally, the Ohio Commission believes that with the diversity of ancillary services and uses associated with telecommunications services today, "service" must be defined more broadly than simply what is set forth in a tariff or customer service agreement and it urges the FCC to retain this approach to defining service for purposes of Section 214(a).

Again, the Ohio Commission appreciates the opportunity to comment in this proceeding and to provide its thoughts on these issues for the FCC's studied consideration.

Respectfully submitted,

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Summary: Comments submitted by Assistant Attorney General William Wright to the Federal Communications Commission, WC Docket No. 17-84, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, on behalf of the Public Utilities Commission of Ohio electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio