FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 63

[GN Docket No. 13–5, RM–11358; WC Docket No. 05–25, RM–10593; FCC 15–97]

Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission initiated this rulemaking in January 2015 to help guide and accelerate the technological revolutions that are underway involving the transitions from networks based on TDM circuit-switched voice services running on copper loops to all-IP multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. This rulemaking and order on reconsideration is only one of a series of Commission actions to protect core values and ensure the success of these technology transitions. In this item, we take steps to ensure that competition continues to thrive and to protect consumers during transitions. These steps will help to ensure that the technology transitions continue to succeed.

DATES: Effective November 18, 2015, except for 47 CFR 51.325(a)(4) and (e), 51.332, and 51.333(b) and (c), 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.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Wireline Competition Bureau, Competition Policy Division, (202) 418–1477, or send an email to *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order on Reconsideration in GN Docket No. 13–5, RM–11358, and WC Docket No. 05–25, RM–10593, FCC 15–97, adopted August 6, 2015 and released August 7, 2015. 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 *http://www.fcc.gov.*

Synopsis

I. Introduction

1. Communications networks are rapidly transitioning away from the historic provision of time-division multiplexed (TDM) services running on copper to new, all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. Our actions today further the technology transitions underway in our Nation's fixed communications networks that offer the prospect of innovative and improved services to consumers and businesses alike. The core goals of the January 2014 *Technology Transitions Order* frame our approach here. In the *Technology Transitions Order,* we emphasized the importance of speeding market-driven technological transitions and innovations while preserving the core statutory values as codified by Congress: Competition, consumer protection, universal service, and public safety. Furthering these core values will accelerate customer adoption of technology transitions. Today, we take the next step in advancing longstanding competition and consumer protection policies on a technologically-neutral basis in order to ensure that the deployment of innovative and improved communications services can continue without delay.

2. Industry is investing aggressively in modern telecommunications networks and services. Overall, according to data supplied by USTelecom and AT&T, capital expenditures by broadband providers topped $75 billion in 2013 and continue to increase. AT&T recently announced that by the year 2020, 75 percent of its network will be controlled by software. To do this, AT&T is undergoing a massive effort to train about 130,000 of its employees on software-defined networking architecture and protocols. AT&T has also expanded its wireline IP broadband network to 57 million customer locations, as well as extended fiber to 725,000 business locations. Moreover, Verizon passes more than 19.8 million premises with its all-fiber network—the largest such network in the country—and it projects that soon about 70 percent of the premises in its landline territory will have access to all-fiber facilities. Verizon too has announced an SDN-based strategy ''to introduce new operational efficiencies and allow for the enablement of rapid and flexible service delivery to Verizon's customers.'' And CenturyLink has announced the launch of 1 Gbps broadband service to 16 cities. According to recent reports, CenturyLink's national fiber network upgrade has expanded availability of CenturyLink's gigabit broadband services to nearly 490,000 business locations. These are just a few of many examples in which industry is investing heavily to bring the benefits of new networks and services to customers of all sizes.

3. We recognize that the success of the technology transitions is dependent, among other things, on clear and certain direction from the Commission that preserves the historic values that Congress has incorporated in the Communications Act of 1934, as amended (the Act). In the November 2014 *Notice of Proposed Rulemaking (NPRM),* 80 FR 450, we sought comment on limited oversight that would encourage transitions that could otherwise be delayed if a portion of consumers were left behind or competition were allowed to diminish—recognizing that the transitions that are underway are organic processes without a single starting or stopping point. Building on that NPRM, in this item we support the transitions by adopting limited and targeted regulation to preserve competition and to protect consumers, especially those in vulnerable populations who have not yet voluntarily migrated from plain old telephone service (POTS) and other legacy services. In taking these steps, we seek to avoid the need for future regulation and dispute resolution that could cause delays down the road. Carriers involved in the historic transitions have made clear their intention to protect consumers and preserve a competitive marketplace going forward, and the pro-transition rules we adopt today are consistent with those mutually shared goals.

4. Building on our proposals in the *NPRM,* we adopt clear ''rules of the road'' to ensure that all consumers will enjoy the benefits of two distinct but related kinds of technology transitions: (1) Changes in network *facilities,* and in particular, retirement of copper facilities; and (2) changes that involve the discontinuance, impairment, or reduction of legacy *services,* irrespective of the network facility used to deliver those services. We summarize each of the actions that we take today below.

5. *Informing and Protecting Consumers as Networks and Services Change.* We take the following actions to ensure that consumers are able to make informed choices and that new retail services meet consumers' fundamental needs:

• *Copper Retirement:* We believe that the best balance is struck when consumers are informed, technological progress is fully incented, and current networks are maintained while they are in use. To that end, we reaffirm our decision not to create an approval requirement for retirement of legacy facilities so long as the change of technology does not discontinue, reduce, or impair the services provided—ensuring that incumbent local exchange carriers (LECs) can continue to transition to an all-fiber environment. However, because our current network change rules do not take account of the needs of consumers for accurate information about the consequences of retirements of copper facilities, we provide simply that incumbent carriers (*i.e.,* incumbent LECs) must provide notice of planned copper retirements to retail customers when such retirements remove copper to the customers' premises, along with particular consumer protection measures. We define ''copper retirement'' so that incumbent LECs know when these responsibilities are triggered. The definition that we adopt will prevent copper facilities from being ''*de facto* retired'' without adequate notice to affected persons.

• *Service Discontinuance:* Congress has mandated, per Section 214 of the Act, that carriers must obtain our approval before they discontinue, reduce, or impair service to a community or part of a community. This discontinuance process allows the Commission to satisfy its obligation under the Act to protect the public interest and to minimize harm to consumers. For convenience, in certain circumstances this item uses ''discontinue'' (or ''discontinuance,'' etc.) as a shorthand that encompasses the statutory terms ''discontinue, reduce, or impair,'' unless the context indicates otherwise.

6. *Safeguarding the Public Interest by Preserving the Benefits of Competition.* Incumbent carriers compete with competitive carriers (*i.e.,* competitive LECs) to provide communications services to businesses, schools, healthcare facilities, government entities, and other organizations of all shapes and sizes. The competitive carriers often rely on a combination of their own facilities and the purchase of last-mile facilities and services from the incumbent carriers, such as unbundled network elements and special access services to provide business services. The organizations these carriers serve benefit from this competition in their purchase of communications services, which helps them serve their customers better and more efficiently. Within the subset of non-residential multi-location expenditures by companies with at least 250 employees, GeoResults estimated that in the third quarter of 2014 competitive LECs accounted for 32% of expenditures and non-LECs accounted for only 5% of expenditures. Through today's action, we are adopting policies to ensure competition thrives as our networks continue to transition. Specifically, we implement revisions to our copper retirement rules and our service discontinuance rules to ensure that: (i) Competitive carriers are adequately informed about technology changes that impact them; (ii) the interests of end users impacted by upstream changes in service by providers of wholesale inputs are adequately recognized as important to our service discontinuance process; and (iii) competitive carriers do not lose the access that they need to continue to provide the benefits of competition.

• We update the process by which incumbent LECs notify interconnecting entities of planned copper retirements. Among other things, we require incumbent LECs to provide at least six months' advance notice of proposed copper retirements to interconnecting carriers in order to provide such carriers adequate time to prepare their networks for the changes.

• To fulfill our statutory obligation to ensure that changes to telecommunications services that negatively affect the public occur with proper oversight, we clarify that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input, but only when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. We emphasize that carriers must consider the impact of their actions on end user customers, including the end users of carrier-customers.

• The Commission has long intended to conduct a comprehensive evaluation of dedicated high-capacity connections used daily and intensively by businesses and institutions to transmit their voice and data traffic, known traditionally as ''special access.'' That evaluation will enable us to address critical long-term questions about the state of competition for business data connections and the role of regulation in facilitating competitive markets. Today, we adopt an interim rule to preserve competitive access while the special access proceeding remains pending and to maintain incentives for all parties to rapidly transition to IP. We conclude that to receive authority to discontinue, reduce, or impair a legacy TDM-based service that is used as a wholesale input by competitive providers, an incumbent LEC must as a condition to obtaining discontinuance authority commit to providing competitive carriers

II. Report and Order

A. Background

7. The Commission initiated this rulemaking in November 2014 to help guide and accelerate the technological revolutions that are underway involving the transitions from networks based on TDM circuit-switched voice services running on copper loops to all-IP multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. This rulemaking is only one of a series of Commission actions to protect core values and ensure the success of these technology transitions. The Commission also is undertaking a comprehensive evaluation of the correct policies for the long-run concerning access to a key form of competitive inputs and technology change—special access. The Commission will use the data and public comment addressing the data to develop the long-term policies that will supersede the reasonably comparable wholesale access requirements adopted today. However, we recognize that for them to succeed, we need to ensure competition continues to thrive and we protect consumers, especially those in vulnerable populations, who rely on POTS and other legacy services.

8. Recent data indicates that 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services. Moreover, 44 percent of households were ''wireless-only'' during January–June of 2014. The growth of ''wireless-only'' homes will necessitate more backhaul services than ever before, and these services are increasingly IP-based. Overall, almost 75 percent of U.S. residential customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities. As consumer demand for faster service speeds continues, wireless providers and their customers have benefited from the transition to Ethernet, which is more easily scalable to increasing user demands compared to copper; and, by the end of 2014, certain incumbent LECs have dropped between 30 to 60 percent of their copper-based DS1 special access circuits, replacing these special access circuits with IP offerings. Similar change is occurring in the supply of mass-market services. Moreover, advancements in technology and interconnection have changed the relationship between broadband Internet access and Voice over Internet

Protocol (VoIP) applications such that users indiscriminately communicate between North American Numbering Plan (NANP) and IP endpoints on the public switched network.

9. At the same time, competitive carriers today continue to rely on incumbent LEC TDM-based DS1 and DS3 special access services to serve a large number of utility, residential, and enterprise customer locations throughout the United States. Commenters assert that many areas across the country have few viable alternatives to currently-available incumbent LEC copper loop or TDM-based wholesale inputs. Competitive LECs have submitted evidence in this record and in other proceedings that, in such areas, the prices incumbent LECs charge for these replacement wholesale inputs (*e.g.,* for 2 Mbps IP service) are significantly higher than a comparable service using a TDM-based service subject to a dominant carrier rate regulation.

10. The Commission received comments from over 65 parties in response to the *NPRM,* including incumbent and competitive carriers, and industry organizations representing wireless, cable, rural and communications equipment companies as well as consumer advocates, state public service commissions, and local government entities. And the National Telecommunications and Information Administration weighed in on behalf of the federal government, noting that ''U.S. government departments and agencies . . . are among the largest customers of U.S. telecommunication service providers'' and that the vagaries of the budgeting, appropriations, and procurement processes make it difficult for the government to accommodate transitions quickly. It thus noted the need for ''careful planning while supporting continued growth and innovation in our communications networks.'' These parties provided a wide range of arguments and legal analyses as well as relevant data and information on the important issues raised in the *NPRM* to help the Commission make informed findings and final rules. Despite their varying positions, all the parties recognize the significance of the technology transitions and the need to protect the enduring values of our communications network.

B. Discussion

1. Revision of Copper Retirement Processes To Facilitate Technology Transitions by Promoting Competition and Protecting Consumers

11. Today, we significantly update our copper retirement rules for the first time in over a decade to address the increasing pace of copper retirement and its implications for consumers and competition. We do so to facilitate the smoothest possible transition of the Nation's legacy communications networks to newer technologies while ensuring this transition happens free from the obstacles that might arise were this transition not handled responsibly. We believe the updated rules that we adopt today will benefit the entire ecosystem of industry and consumers by ensuring that everyone has the information they need to adapt to an evolving communications environment. Interconnecting entities will be able to accommodate the planned network changes without disruption of service to their customers. Competitive opportunities will be ensured, resulting in greater consumer choice. Government departments and agencies will not be left unable to respond to changes in the networks over which their vital communications services are provided. Customer confusion regarding the impact of planned copper retirements, and possible complaints arising from such confusion, will be minimized. And incumbent LECs will be able to move forward with highly beneficial planned network changes with greater comfort and certainty. Verizon, for instance, estimates that the cost of maintaining parallel copper facilities and the consumer welfare benefits from its existing fiber deployment each run in the hundreds of millions of dollars.

12. The Commission issued the current rules governing copper retirement in 2003 in the *Triennial Review Order.* At that time, fiber to the home deployment was in its infancy. In the intervening twelve years, however, incumbent LECs have built extensive fiber networks, with fiber becoming the preferred choice for new greenfield deployments and in some instances deployed in parallel to existing copper networks. And in the last few years, the pace of copper retirement has accelerated. This rapid pace of formal copper retirements, along with the deterioration of copper networks that have not been formally retired, has led to requests from both competitive LECs and public advocates for changes to the Commission's copper retirement rules to protect competition and consumers. We reaffirm that ''the increasing frequency and scope of copper retirements call into question key assumptions that underpinned our existing copper retirement rules.'' Indeed, today we find that the pace and impact of copper retirement necessitates changes to ensure that our rules governing copper retirement serve the public interest. Sixteen copper retirement notices have been filed with the Commission since November 2014. We thus conclude, as we tentatively concluded in the *NPRM,* that the foreseeable and increasing impact that copper retirement is having on competition and consumers warrants revisions to our network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection. By retaining a notice-based process that promotes certainty for consumers, interconnecting carriers, and incumbent LECs, our actions advance the transition to fiber while serving our key pro-competition and pro-consumer goals.

13. We clarify at the outset that the revisions we adopt today to the network change disclosure rules are not intended to change the nature of the process from one based on notice to one based on approval. The current network change disclosure process applies to situations in which an incumbent LEC makes a change in its network facilities, such as when it replaces copper facilities with fiber. If this change in facilities does not result in a discontinuance, reduction, or impairment of service, then the carrier need not file an application under Section 214(a) seeking Commission authorization for the planned network change. Rather, it must only provide notice in compliance with the Commission's network change disclosure rules. However, some changes in network facilities can result in a discontinuance, reduction, or impairment of service for which Commission authorization is needed. For instance, in one prominent example, Verizon filed an application under Section 214(a) when it sought to replace the copper network serving Fire Island that was damaged by Superstorm Sandy with a wireless network over which it would provide its VoiceLink wireless service. We expect all carriers to consider carefully whether a proposed copper retirement will be accompanied by or be the cause of a discontinuance, reduction, or impairment of service provided over that copper such that they must file a discontinuance application pursuant to Section 63.71 of our rules. If the answer to that question is no, then the carrier need only comply with the Commission's network change disclosure process as revised herein.

(a) Copper Retirement Notice Process

(i) Expansion of Notice Requirements To Promote Competition

14. *Background.* Certain commenters express fear that incumbent LECs will use technology transitions as an opportunity to thwart competition from competitive LECs and others by erecting market barriers. Thus, competitive LECs and state commissions, as well as other commenters, largely support the concept of revising the network change disclosure rules to provide for more robust notice to competitors of planned copper retirements. On February 26, 2015, the California PUC filed a motion for acceptance of its late-filed comments because it was first able to consider the *NPRM* at its public meeting on February 5, 2015, and PUC staff was unable to provide a recommendation prior to that date. No oppositions to this motion were filed. We grant the California PUC's motion and accept its comments, which we cite herein without reference to the date filed. They believe that the existing network change disclosure rules ''are not sufficient to enable competitive LECs to prepare for an ILEC's broad-scale transition to an all-IP network.'' Incumbent LECs, on the other hand, argue that the Commission's network change disclosure rules are sufficient and that there is no need for the revisions proposed in the *NPRM*. They assert that the proposed revised requirements would impose onerous and unnecessary burdens on incumbent LECs. Cincinnati Bell asserts that the Commission should not require direct notice to interconnecting carriers because of the ''scores of interconnection agreements with CLECs, many of whom never became active or have only limited interconnection activity'' and because ''[m]any CLECs have been subject to various mergers and acquisitions but have failed to maintain current contact information.'' And many of the requirements proposed by competitive LEC commenters, they argue, go beyond the concept of adequate notice and would deter additional investment in fiber deployment. We note, however, that Windstream, which is both an incumbent LEC and a competitive LEC, has stated that it ''believes it could feasibly implement [the proposed] requirements, and they would not cause disruption to its copper retirement processes.''

15. *Discussion.* After reviewing the record before us, we conclude that the Commission's network change disclosure rules should be updated in light of marketplace developments to address the needs of competitive carriers for more robust notice of planned copper retirements. To make our rules sufficient for this purpose, we revise them to require incumbent LECs planning copper retirements to include in their network change disclosures a description of any changes in prices, terms, or conditions that will accompany the planned changes. In addition, as explained in detail below, we establish a process in which incumbent LECs must provide direct notice to interconnecting entities at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer being used to serve customers in the affected service area. The requirements that we adopt reflect the revisions proposed in the *NPRM,* subject to certain modifications discussed further below.

16. We conclude that receipt of the additional information and the extended notice period we adopt today will allow interconnecting entities to work more closely with their customers to ensure minimal disruption to service as a result of any planned copper retirements. Contrary to some commenters' assertions, the record in this proceeding contains significant evidence that our existing rules are insufficient to ensure adequate notice to interconnecting carriers. We wish to avoid situations such as the one recounted by XO, where it received notice that one of its customers—a group of nursing homes—would be losing service the next day as a result of glitches in the copper retirement process (a result XO narrowly managed to avoid). Although some commenters claim that our rule changes will discourage copper retirements, we find that retaining a time-limited notice-based process ensures that our rules strike a sensible and fair balance between meeting the needs of interconnecting carriers and allowing incumbent LECs to manage their networks.

17. Also contrary to some commenters' assertions, we find that the revised notice requirements do not serve to conflate the Section 251(c)(5) network change disclosure process and Section 214(a) discontinuance process. Other commenters, however, are concerned that incumbent LECs are themselves ''blur[ring] the distinction between mere retirement of copper facilities (while the carrier continues to offer the same service(s) using other facilities), on the one hand, and the discontinuance, reduction, or impairment of service on the other.'' Consistent with the proposal in the *NPRM,* we retain a notice-based regime for copper retirement, in contrast to the approval-based process for a Section 214(a) discontinuance of service. The Rural Broadband Policy Group asserts that we should not permit automatic enrollment in or switching of services unless explicitly approved by the customer. We believe this concern is obviated by the fact that we are retaining the notice-based nature of the network change disclosure process. Customers will have an opportunity to obtain service from other providers if they determine based upon a notice of a planned copper retirement that they no longer desire to receive service through their current provider. We realize certain commenters are concerned that a planned copper retirement might amount to a discontinuance of service. As discussed above, any loss of service as a result of a copper retirement may constitute a discontinuance, reduction, or impairment of service for which a Section 214(a) application is necessary. The modifications we adopt today do not convert the network change disclosure process. Customers will have an opportunity to obtain service from other providers if they determine based upon a notice of a planned copper retirement that they no longer desire to receive service through their current provider. We realize certain commenters are concerned that a planned copper retirement might amount to a discontinuance of service. As discussed above, any loss of service as a result of a copper retirement may constitute a discontinuance, reduction, or impairment of service for which a Section 214(a) application is necessary.

18. *Scope and Form.* In the *NPRM,* we proposed requiring that incumbent LECs provide public notice of copper retirement by the means currently permitted by Section 51.329(a) of the Commission's rules, as well as requiring them to directly provide notice of copper retirement to ''each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network.'' Certain commenters support the proposal contained in the *NPRM,* while other commenters seek to expand the scope further to also require notice to additional entities. For example, one group of commenters urged the Commission to extend the notice requirements to competitive LECs that purchase UNEs and special access. We decline to adopt this proposal. First, by broadening copper retirement notice to encompass ''each entity'' that directly interconnects with the incumbent LEC's network, we ensure notice to a broad range of entities. Second, if after a

change from copper to fiber facilities UNEs will no longer be available, that is an issue arising under Section 251(c)(3) of the Act, pertaining to unbundled access, rather than Section 251(c)(5), which applies to notice of change in facilities. With respect to special access, that is a service issue rather than a facilities issue. As such, any change in the availability may fall under the purview of our Section 214(a) authority, as discussed *infra* in Section II.B.2.

19. Based on the record before us, we conclude that we should adopt these proposed requirements, modified to require notice to ''each entity'' within the affected service area that directly interconnects with the incumbent LEC's network. We find that doing so constitutes ''reasonable public notice'' under Section 251(c)(5) of the Act because it will ensure that all entities potentially affected by a planned copper retirement, be they telephone exchange service providers, information service providers, or other types of providers that may or may not yet have been classified by the Commission, receive the information necessary to allow them to accommodate the copper retirement with minimal impact on their end user customers. We do not, however, similarly expand the pool of entities to whom incumbent LECs must provide direct notice of network changes outside of the copper retirement context. The record does not contain any evidence sufficient to justify such an expansion.

20. We are not persuaded by the arguments of incumbent LEC commenters that this requirement ''would impose onerous and unnecessary administrative burdens.'' AT&T argues that this requirement, in conjunction with expansion of the copper retirement notice requirement to encompass retirement of copper feeder plant, would necessitate providing direct notice to potentially hundreds of competitive LECs that do not have any facilities implicated by the planned network change. Because under existing requirements incumbent LECs must notify potentially large numbers of directly interconnected telephone exchange service providers as part of the copper retirement process, we do not find that argument supports the claim that the revisions we adopt today are unreasonable. Under the predecessor rules to those we adopt today, copper retirements were already subject to the ''short term notice provisions'' set forth in Section 51.333(a). Unless otherwise specified or dictated by context, citations in this Order to specific sections of the Commission's rules governing network change disclosures are to the version of those rules as they exist prior to the effective date of the rules adopted herein. Under Section 51.333(a), which applies ''[i]f an incumbent LEC wishes to provide less than six months' notice of planned network changes,'' the incumbent LEC must file with the Commission a certificate of service that includes a statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and the name and address of each such telephone exchange service provider upon which the notice was served. Such certificates of service reflect that incumbent LECs have been obligated to provide notice to large numbers of interconnecting carriers.

21. Incumbent LECs have not provided sufficient detail to establish that providing the direct notice described in those certificates of service was burdensome or specifically how expanding the pool of recipients as proposed in the *NPRM* would impose a new ''onerous and unnecessary administrative burden'' on them. Rather, they rely solely on conclusory allegations. As a result, we conclude that expanding this existing requirement to include all entities that directly interconnect with the incumbent LEC's network within the affected service area would not impose an appreciably greater burden on incumbent LECs. We also find this revision to our rules reasonable because it will ensure that all competitive LECs and other interconnecting entities that could be affected by the planned copper retirement receive information that would assist them in preparing to accommodate the planned network change. We require the method of transmission of the notice to match existing requirements for notice to interconnecting telephone exchange service providers, as the record does not indicate that this existing requirement has been insufficient. This approach provides as much flexibility as possible to incumbent LECs while ensuring that the notice will serve its function.

22. The rule that we adopt today requires notice to the Commission and omits the option to provide written public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. This is merely a technical modification of our proposal, under which some form of notification to the Commission would have been required in all prior cases and publication-based notice would have been optional and thus not required. Therefore, this change streamlines our rules and emphasizes that notice to the Commission initiates the copper retirement process. We find this change warranted to ensure that the Commission is notified promptly of all planned copper retirements and to streamline the rule. We nonetheless encourage incumbent LECs to provide notice through industry fora, industry publications, and the carrier's publicly accessible Internet site as a good practice.

23. *Content of Notice.* In the *NPRM,* we proposed requiring incumbent LECs to include in their public notices of copper retirement, and thus their notices to interconnecting carriers, the information currently required by Section 51.327(a) of our rules, as well as ''a description of any changes in prices, terms, or conditions that will accompany the planned changes.'' Based on the record before us, we conclude that it is appropriate to adopt these proposed requirements. We find that doing so is consistent with Section 251(c)(5)'s mandate that incumbent LECs provide ''information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks'' because it will ensure that interconnecting entities, including competitive LECs, are fully informed about the impact that copper retirements will have on their businesses.

24. We are unpersuaded by incumbent LEC commenters' assertions that the proposed expanded copper retirement notice requirements would impose an undue burden on them because it is impossible to determine how a planned change can be expected to impact various interconnecting entities. Section 51.327(a) already requires that incumbent LEC network change public notices include ''changes planned'' and ''the reasonably foreseeable impact of the planned changes.'' We conclude that the proposed expanded content requirement, which is limited to a description of any changes in prices, terms, or conditions that will accompany the planned retirement, is a narrow and targeted extension of the existing requirement to provide notice of the ''reasonably foreseeable impact of the planned changes'' already required by Section 51.327(a)(6) of our rules. We address commenter concerns regarding our legal authority to require this information in copper retirement notices *infra* in Section II.B.1.a(vi). We

do not believe providing this additional information will present an undue burden on incumbent LECs, and any such additional burden will be outweighed by the needs for an interconnecting entity to have sufficient information to adjust its network to accommodate planned copper retirements, which could require costly and disruptive changes to the interconnecting carrier's network simply to allow it to continue serving its end user customers. Indeed, the Commission rejected this very argument when it adopted the network change disclosure rules.

25. We decline, however, to require that the descriptions of the potential impact of the planned changes be specific to each interconnecting carrier to whom an incumbent LEC must give notice, as requested by the Competitive Carriers Association. We conclude that such a requirement would impose an unreasonable burden on incumbent LECs. We also decline to require, as suggested by Windstream, that copper retirement notices include information regarding impacted circuits and wholesale alternatives. Section 51.327(a) already requires that notices of planned network changes include references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection. And as discussed below, the rule we adopt today requires that incumbent LECs work in good faith with interconnecting entities to provide information necessary to assist them in accommodating planned copper retirements without disruption of service to their customers. We conclude that these requirements, included in proposed new Section 51.332, already ensure that enough information will be provided to address Windstream's concerns and ensure sufficient protection to interconnecting carriers. We further conclude that such requirements will adequately address the concerns raised by Cincinnati Bell that incumbent LECs cannot ''know what type of alternative arrangements might suit any impacted carriers.''

26. We conclude that the content requirements we adopt today capture the needs of competitive providers for information that allows them to plan for and accommodate the planned network change while providing incumbent LECs the flexibility to provide that information in the form best suited to the particulars of their situation. We therefore require only that copper retirement notices include the information set forth in new Section 51.332(c). We decline to adopt a particular required format for copper retirement notices. We are not persuaded that the Commission's rules should mandate a particular format for copper retirement notices. Rather, we believe that a specified format could prove problematic. As noted by the California PUC, ''a uniform format may not cover all aspects of each provider's copper retirement plans. The FCC should require that all necessary components of the incumbent LEC's planned retirement be contained in any notice, but also allow each provider to include additional information about options available to customers.''

27. *Notice Period.* In the *NPRM,* we sought comment on whether the 90-day minimum notice period for copper retirements currently required by our rules is sufficient or whether it should be extended. Verizon asserts that if an incumbent LEC gives notice more than six months in advance of a planned implementation, there is no justification for requiring it to comply with the more burdensome short-term notice rules. However, the Commission's short-term notice rules apply to planned copper retirements, and provide that ''under no circumstances may an incumbent LEC provide less than 90 days' notice of such a change.'' In response, commenters propose that if we replace the existing time period, we adopt either six months, one year, or an unspecified amount of time. Commenters proposed a variety of time periods for notice, ranging from the existing ninety days, to 180 days, to one year, to an unspecified amount of time as is provided for in Section 68.110(b) of the Commission's rules. Based on the record in this proceeding, we conclude that 180 days' advance notice of copper retirements is an appropriate time frame. We find that the ninety-days' notice of planned copper retirements currently provided for by the Commission's network change disclosure rules is insufficient. Most competitive LECs provide service to business customers pursuant to multi-year contracts. And competitive LECs assert that a ninety-day notice period ''may not provide competitive carriers with sufficient lead time to make the upgrades or reconfigurations necessary to complete a seamless transition to IP-based service, or to make alternative arrangements.'' The record reflects numerous instances in which competitors and their customers have suffered significantly due to the short notice period. Although current rules allow for the possibility for interconnecting carriers to object and attempt to extend the retirement to six months (*i.e.,* approximately 180 days), this procedure is rarely used, likely because of the short time to file and the fact that objections are deemed denied absent Commission action. Indeed, at least one competitive LEC asserts that shortcomings in the incumbent LEC's public notice precluded any meaningful opportunity to object within the permitted time period.

28. We conclude that a notice period of at least 180 days (*i.e.,* approximately six months) strikes an appropriate balance between the planning needs of interconnecting carriers and their customers and the needs of incumbent LECs to be able to move forward in a timely fashion with their business plans. The period of time that we adopt is approximately the maximum time period that had been available in response to a successful objection previously. We conclude a notice period of this length will not impose an undue burden on incumbent LECs, who must plan their deployments over extended periods of time. Indeed, at least one incumbent LEC has acknowledged that it has provided notice to customers of a planned fiber-to-the-premises overbuild deployment six months prior to deployment. Regardless, other incumbent LEC commenters contend that we should not extend the ninety-day notice period in the existing rules. And we find that any increased burden on incumbent LECs is outweighed by the need to ensure that interconnecting carriers receive sufficient notice to allow them to accommodate the transition without disruption of service to their customers, which can include enterprise and government customers whose communications needs and budgeting concerns require more than 90 days' notice. To ensure at least 180 days of notice, we require notice to interconnected entities to be provided no later than the same date on which the incumbent LEC provides notice of the retirement to the Commission. After the Commission receives notice of the retirement, it will issue a public notice of the retirement, starting the 180-day ''countdown'' such that the copper retirement may go forward under our rules. This use of Commission public notice to trigger the ''countdown'' matches the predecessor process, matches our proposal in the *NPRM,* and helps to further ensure that the public is informed about copper retirements. The *NPRM* sought comment on extending the notice period to 180 days, but it did not specifically propose this change and therefore the proposed rules

retained the pre-existing 90-day ''countdown'' period. The shift to a 180-day ''countdown'' period retains the timing mechanism in the proposed rules but reflects that a notice period to interconnecting entities of at least 180 days is necessary.

29. We are not persuaded by Verizon that our existing requirements provide more than sufficient notice. It is the incumbent LEC itself that controls the timing of the decision to make or procure a product whose design necessitates the network change. This is a business decision on the part of the incumbent LEC, and, as such, there is no reason to assume that the timing it chooses will coincide with the needs of interconnecting carriers—indeed, as stated above, the record reflects that it does not. We agree with Verizon, however, that where facilities are no longer being used to serve any customers, whether wholesale or retail, a shorter notice period is appropriate. Accordingly, we do not apply the new notice period of at least 180 days to such situations and instead adopt a notice period of at least 90 days, which is similar to the baseline under the prior rules.

30. Finally, we find that in light of the longer notice period we adopt today, we will discard the objection procedures as they apply to copper retirements. Specifically, we will modify the proposed rule as it pertains to objection procedures to delete the references to implementation dates in proposed paragraphs (g), (h), and (i) in their entirety. We do not, however, remove the objection procedures pertaining to short-term notices of non-copper retirement network changes in Section 51.333 because we are not creating a fixed six-month notice period for such planned network changes and because there is no evidence in the record that the concerns pertaining to copper retirements apply equally to other types of network changes. The extended notice period we adopt today will provide to interconnecting entities a notice period similar to the six months they previously would have been afforded if they successfully objected to the timing of a planned network change. Under the current rules, an interconnecting provider can object to the timing of a copper retirement and, if successful, delay the implementation of that retirement to six months from the date the incumbent LEC gave its original notice. This fixed period following the Commission's release of public notice will provide parties sufficient opportunity to work together to allow for any accommodations needed to maintain uninterrupted service to end users. And by fixing a single time period following the Commission's release of public notice, we provide all parties certainty and avoid the costs inherent in the objection process, which itself will be beneficial to all concerned.

31. We recognize the importance of information flow to competitors' abilities to ensure that a retirement of copper facilities does not disrupt service to their end users. We therefore include a good faith communication requirement in the modified rule we adopt today. Under the prior rules, an interconnecting provider could request ''specific technical information or other assistance'' to enable it to accommodate the planned network change. And in the *NPRM,* we sought comment on what additional information interconnecting providers might need in order to make an informed decision. The good faith communication requirement we adopt today will ensure that interconnecting entities still may obtain the information they need in order to accommodate the planned copper retirement without disruption of service to their customers that they would have been entitled to seek through the objection procedures that we eliminate. Specifically, we provide that an entity that directly interconnects with the incumbent LEC's network may request that the incumbent LEC provide additional information where necessary to allow the interconnecting entity to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers, and we require incumbent LECs to work with such requesting interconnecting entities in good faith to provide such additional information. We conclude that incorporating a good faith requirement into the rule strikes an appropriate balance between the needs of interconnecting carriers for sufficient information to allow for a seamless transition and the need to not impose overly burdensome notice requirements on incumbent LECs. Certain commenters propose more extensive content requirements for copper retirement notices than we adopt today. WorldNet also proposes adoption of ''a requirement for an ILEC to work with a CLEC in good faith by responding to reasonable requests for additional information about a proposed retirement and to work collaboratively with a CLEC in effectuating desired CLEC transitions to alternate facilities.'' In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on possible specific indicia of such good faith. We note that the Commission will not hesitate to take appropriate measures, including enforcement action, where incumbent LECs fail to act in good faith to provide appropriate information to interconnecting entities.

32. We conclude that the good faith communication requirement that we adopt today is consistent with the First Amendment because it compels disclosure of factually accurate information in a commercial context. Compelled commercial disclosures are not afforded the same protections as prohibitions on speech. Indeed, the Supreme Court has held that ''[b]ecause the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides,'' the commercial speaker's ''constitutionally protected interest in *not* providing any particular factual information . . . is minimal.'' The Court held further in that case that an advertiser's rights are reasonably protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers, and that the right of a commercial speaker not to divulge accurate information regarding his services is not a fundamental right. Thus, compelled disclosure is subject to a less stringent standard of review than prohibitions on speech. The United States Court of Appeals for the DC Circuit has held that the holding in *Zauderer* can be read broadly and that government interests in addition to correcting deception can be invoked to sustain a mandate for the disclosure of purely factual information in the commercial context in the face of a First Amendment free speech challenge. We find that, in this case, the government has an interest sufficient to compel incumbent LECs to provide necessary technical information to interconnecting entities to enable those entities to accommodate planned copper retirements without disruption of service to their customers. The disclosure that we require is designed ultimately to protect retail customers. This entails the provision only of factual information. We therefore find that the good faith requirement is reasonably related to the government's interest in advancing competition, and that this interest outweighs the incumbent LECs' ''minimal'' interest in not providing particular factual information to interconnecting entities. We note that, even if the higher standard of *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York* applied in this instance, the good faith communication requirement adopted as part of this Order satisfies this higher

standard of judicial scrutiny. Under *Central Hudson,* a court in a commercial speech case must determine: (1) Whether the expression is protected by the First Amendment; (2) whether the asserted government interest is substantial; and (3) whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. Even assuming the expression is subject to constitutional protection, we believe that the asserted government interest in this case of protecting retail customers is, indeed, substantial. Similarly, we conclude that ensuring competition in communications is a substantial interest. Moreover, we also find that the good faith requirement does not impose a more extensive burden than necessary because it applies only to information that is *necessary* to meet the government interest in allowing interconnecting carriers to accommodate the incumbent LEC copper retirements with no disruption of service. Thus, even were the more stringent standard of *Central Hudson* to apply in this instance, we believe that the good faith communication requirement detailed above satisfies such a standard.

33. *Revisions to Other Rule Sections.* As proposed in the *NPRM,* we revise Section 51.331 by deleting paragraph (c), which provides that competing service providers may object to planned copper retirements by using the procedures set forth in Section 51.333(c), and we revise Section 51.333 to remove those provisions and phrases applicable to copper retirement. We find that consolidation of all notice requirements and rights of competing providers pertaining to copper retirements in one comprehensive rule provides clarity to industry and customers alike when seeking to inform themselves of their respective rights and obligations.

34. *Other Proposals.* We decline to adopt Ad Hoc's proposal that, for a network change to qualify as a ''mere'' copper retirement, in contrast to a service discontinuance, ''a carrier must present the same standardized interface to the end user as it did when it used copper.'' Ad Hoc argues that if a network change requires the use of ''new or upgraded terminating equipment to convert traffic on the new facility into a format compatible with the installed base of network interface devices, customer premises equipment (CPE), or inside wire,'' the carrier should ''install that terminating equipment on its own side of the network demarcation point . . . and absorb the costs of doing so as part of its network modernization costs.'' We are not persuaded that the requirement Ad Hoc proposes is necessary. Section 68.110(b) of the Commission's rules, which speaks to the effect of ''changes in facilities, equipment, operations, or procedures'' on customers' terminal equipment, requires only that a carrier afford customers notice of such changes if such changes can be reasonably expected to render the equipment incompatible with the carrier's facilities or require modification or alteration of the equipment, or otherwise materially affect use or performance, for the purpose of allowing the customer ''an opportunity to maintain uninterrupted service.'' While Section 68.110(b) requires mere notice, Ad Hoc's proposal goes significantly further by requiring significant action on the part of the carrier, and the record is insufficient to support this significant and potentially burdensome departure from our current rules. And, as noted by AT&T in opposing this proposal, there is no reason to believe that all changes to customer CPE will be ''costly'' and that customers will not desire any freedom to select their own upgraded CPE.

35. We also decline to adopt the proposal of certain commenters that incumbent LECs should provide competitive providers with an annual forecast of copper retirements. We understand that competitive LECs would find this type of information useful in planning for the effects copper retirements might have on their respective networks and customer contracts. However, incumbent LECs maintain that this type of information can constitute some of their most competitively sensitive information, and that such an advance disclosure requirement may risk putting them at a competitive disadvantage. We note that information contained in a forecast can change over time as circumstances change. Thus, the inclusion of a particular wire center in a copper retirement forecast does not guarantee that such a change in facilities will in fact occur or that it will occur within that timeframe. Thus, based on the record before us, we are skeptical of the value of such a requirement.

36. Finally, we decline to adopt a requirement that incumbent LECs establish and maintain a publicly available and searchable database of all their copper plant, whether it has been or will be retired, whether it will be removed, or a database of where copper retirements have occurred. Incumbent LECs oppose such a requirement because it ''would divert vital resources away from the deployment of new fiber'' and because ''CLECs seeking to purchase UNEs . . . already have access to preorder systems that identify loop availability.'' It simply is not clear based on the record available that creation of any such databases would be feasible or cost-effective. We are persuaded by commenters that such a requirement could impose an expensive and potentially duplicative, and therefore unnecessary, burden.

(ii) Notice to Retail Customers

37. *Background.* In the *NPRM,* we proposed revisions to the Commission's network change disclosure rules ''to provide additional notice of planned copper retirements to affected retail customers, along with particular consumer protection measures, and to provide a formal process for public comment on such plans.'' Specifically, we proposed requiring incumbent LECs to provide notice of planned copper retirements to retail customers who are directly impacted by the planned change, and we did not limit this proposal to consumers. We further proposed allowing incumbent LECs to provide such notice to retail customers by either written or electronic means, and we sought comment on possible procedures to ensure that such notice is both received and accessible by customers. We also proposed specific content requirements to ensure that retail customers receive sufficient information ''to understand the practical consequences of copper retirement'' and sought comment on whether the proposed requirements are adequate to protect consumer interests. With respect to the timing of the proposed notice to retail customers, we proposed imposing the same requirement that currently applies to notice to interconnecting carriers and giving such retail customers thirty days from the Commission's release of its Public Notice in which to comment on a proposed copper retirement. And we sought comment on our statutory authority to impose these proposed requirements. To address allegations of inappropriate actions taken by incumbent LECs with respect to consumers, we also sought comment on requiring incumbent LECs to ''supply a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change,'' as well as requiring incumbent LECs to undertake consumer education efforts in connection with planned copper retirements.

38. *Discussion.* After reviewing the record before us, we conclude that modification of our network change disclosure rules to require direct notice to retail customers of planned copper retirements is warranted and is

consistent with the public interest, including our core value of consumer protection, and with Section 251(c)(5)'s requirement of reasonable public notice of network changes. To be clear, as explained further below, this notice is required only where the retail customer is within the service area of the retired copper and only where the retirement will result in the involuntary retirement of copper loops to the customer's premises, *i.e.,* in the circumstances in which retail customers are likely to be affected. Copper retirements of this nature often affect consumers and other end users, whether for better or for worse, and these customers need to understand how they will be affected. A variety of commenters support our proposal to require direct notice to retail customers of planned copper retirements. And consumers need to understand the ways in which copper retirement will *not* affect them; absent such notice, consumers may not understand that they may retain their existing service (if applicable in the particular circumstance). The record reflects numerous instances in which notice of copper retirement has been lacking, leading to consumer confusion. Public interest commenters have brought to our attention proceedings in various states, including Maryland, California, New York, New Jersey, Illinois, and the District of Columbia, alleging customer complaints about being migrated from copper networks to other types of facilities, including allegations that such migrations have resulted in a move from regulated to unregulated services, without adequate customer notice and consent. Based on this information, we are unconvinced by certain commenters' assertion that there is no record evidence to support the Commission's expressed concerns regarding customer confusion about their options. And such consumer complaints and confusion persist. Even commenters critical of aspects of our proposed customer notification requirements otherwise agree that consumers deserve to receive information regarding the effect of copper retirements on their service. And we believe that requiring incumbent LECs to provide this information to their customers will allow for a smoother transition by minimizing the potential for consumer complaints arising out of a lack of understanding regarding the planned network change.

39. We conclude the benefits of providing customers with the information needed to make informed decisions regarding the services they receive from incumbent LECs outweigh any additional burdens these new notice requirements may impose on the incumbent LECs. Indeed, incumbent LEC commenters note the importance of working with their customers in connection with copper-to-fiber transitions. CenturyLink has even made sure in at least one instance to send postcards to its own customers, as well as to advise competitive LECs when their end user customers would be affected by a planned network change. And under the rules we adopt today, which we have modified from the rules proposed in the *NPRM* in order to minimize the burden they impose on incumbent LECs, incumbent LECs will be required to provide only one neutral statement to consumers and will not be subject to any other additional obligations.

40. We disagree with commenters who assert that rules mandating such notice are unnecessary. Although some incumbent LECs assert that they already provide such notice, it is not clear that many or all provide such notice, and as noted above the record reflects numerous instances in which notice has been unreliable absent a regulatory mandate. We thus find unpersuasive Cincinnati Bell's argument that because a carrier that will discontinue a service after a copper retirement will have to file a Section 214 application, to also requirement a copper retirement notice ''would be redundant and confusing to consumers.'' The simple, clear notice that we require is necessary because the record reflects that consumers are not receiving sufficient notice in all cases. Some incumbent LECs assert that they already must contact customers who need to have new terminal equipment installed as a result of a network change so that they may obtain access to the customers' premises. But this merely shows that incumbent LECs have incentives to communicate to a degree sufficient to obtain access to a consumer's premises; this does not demonstrate any incentive to educate consumers about issues such as whether existing services will remain available.

41. We also find unpersuasive the assertion that a notice requirement is unnecessary because the Commission's current rules already provide for notice to the public of planned network changes via Sections 51.325 and 68.110(b). First, we note that Section 68.110(b)'s notice requirements are not always triggered by a planned copper retirement. More importantly, however, we find that the general public notice now provided by incumbent LECs under Section 51.325, which typically takes the form of a general notice posted on the carrier's Web site, is not sufficient to give actual notice to those customers most likely to be affected by planned copper retirements. Until recently, consumers generally would not be directly affected in serious ways by most network changes because copper retirements in favor of fiber-only facilities were largely voluntary. In that environment, reasonable public notice could be effectuated indirectly by posting on the carrier's Web site where those most affected (*e.g.,* competitive LECs) would know to look. Given the accelerated pace of copper retirement, however, we find that consumers are directly affected in ways they had not been at the time the Commission adopted the copper retirement rules in the *Triennial Review Order,* and therefore consumers need direct notice for these important network changes that may directly affect them. We simply do not find it credible to believe that the public regularly checks the network change notification portion of our Web site or of their service provider's Web site.

42. We disagree with commenters who assert that our proposed notice requirement would impose an unnecessary burden because most customers are ultimately happy with an upgrade from copper to fiber facilities. This line of argument reflects a fundamental misunderstanding of the purpose of the notice requirement, which in no way reflects a view that fiber services are inferior to copper—indeed, the Commission has embraced the transition to fiber and other high-capacity transmission media. First, even the many customers who are ultimately happy with a copper-to-fiber transition are likely to benefit from understanding the change that will be occurring. Moreover, there remains a segment of the population, however comparatively small, that is resistant to changes in technology or for whom the new technology proves to be inferior to the old, and that will benefit from information that might ease the transition for them or that will allow them to seek out service from another provider. In the case of copper, such individuals may prefer a line-powered transmission medium, they may be comfortable with a long-standing technology that ''just works,'' or they may not understand the benefits of alternative technologies. As noted by the Pennsylvania PUC, ''copper retirements under the existing rule apparently has the potential to reduce wholesale, incumbent, or competitor access, thereby reducing retail customer choice.'' And as noted by the City of New York, ''absent clear, direct notice to

decision-makers for any discontinuance or network change, consumers will not be empowered to either plan or respond.'' And one commenter noted the possibility for confusion regarding whether certain advanced services offer the same functionality consumers have come to depend on from their legacy services. And public interest commenters have expressed concern regarding the perceived state trend toward deregulation. While we do not establish an approval process for copper retirement that would disrupt technological advancement, neither can we ignore the benefits afforded to consumers from receiving information regarding planned network changes that may affect the service to which they subscribe. Moreover, we fear that without a clear, neutral message explaining what copper retirement does and does not mean, some consumers will easily fall prey to marketing that relies on confusion about the ability to keep existing services. As with the DTV transition, we must ensure that the most vulnerable populations of consumers do not fall through the cracks. We believe that the minimally intrusive requirements we adopt today, which represent an education-based approach, strikes the correct balance between minimizing the impact on incumbent LECs' fiber deployment plans and ensuring that consumers are informed about how they will be impacted.

43. *Recipients.* In the *NPRM,* we proposed requiring direct notice to ''all retail customers affected by the planned network change,'' and we defined ''affected customers'' as ''anyone who will need new or modified CPE or who will be negatively impacted by the planned network change.'' Based on a review of the record in this proceeding, we conclude that we should adopt a modified version of this proposal. Thus, under the updated rules we adopt today, incumbent LECs will be required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s), but only where the copper to the customer's premises is to be retired (*e.g.,* where an incumbent LEC replaces copper-to-the-premises with fiber-to-the-premises regardless of the customer's preference). We believe limiting the notice requirement to retirements involving involuntary replacement of copper to the customer's premises limits notice to circumstances in which customers are most likely to be affected, thereby avoiding confusion and minimizing the costs of compliance. We recognize that in some cases copper is removed in connection with a voluntary election by the customer to receive fiber-to-the-premises or other non-copper-to-the-premises service; in such cases, of course, the regulatory notice requirement is not triggered. Our notice requirement is focused on circumstances in which an incumbent LEC chooses to stop offering service to the customer's premises via the copper network, irrespective of the customer's preference.

44. We also believe modifying the proposed class of recipients in this way will make it easier for incumbent LECs to comply with their notice obligations by (1) limiting the circumstances under which they must provide notice to retail customers, and (2) removing the need for the incumbent LEC to make an independent determination regarding whether particular customers will require new or modified CPE or whether particular customers will be negatively impacted by the planned network change. This also obviates the need for the New York PSC's proposed requirement that incumbent LECs define ''impacted customers'' in their certifications. Notice to customers will not be required in those instances where operational copper remains in place. While under the rule that we adopt notice of a given copper retirement may be provided to more customers than would have received notice under the proposed rule, the notice requirement will be triggered less often because it will not be required if copper continues to reach the premises. Further, we conclude that this approach strikes the right balance in providing clarity, ensuring no customers are inadvertently excluded from the pool of recipients, and ensuring that notice is provided where it is most needed. Incumbent LEC commenters expressed concern regarding what they perceive as ambiguity about the proposed definition of ''affected customers.'' Another incumbent LEC feels that '' 'affected customers' should be limited to those who must take some action in response to a network change, or whose service is affected due to a change in price, service feature or function, or equipment.'' We emphasize that, consistent with our proposal set forth in the *NPRM,* the rule we adopt herein extends copper retirement notice requirements not just to consumers, but also to non-residential end users such as businesses and anchor institutions. Certain commenters assert that our proposed notice requirements should be extended to include utilities and critical infrastructure industries. This includes incumbent LEC enterprise customers, such as utilities and critical infrastructure industries within the affected service area.

45. *Content.* In the *NPRM,* we proposed requiring that copper retirement notices to retail customers ''provide sufficient information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes,'' including the information required by Section 51.327(a), as well as statements notifying customers that they can still purchase existing services and that they have a right to comment, and advising them regarding timing and the Commission's process for commenting on planned network changes. Certain commenters assert that our proposed notice requirements should be extended to include utilities and critical infrastructure industries.

46. After review of the record in this proceeding, we conclude that it is warranted and appropriate to adopt the content requirements proposed in the *NPRM,* with several modifications described below. The record supports a finding that a significant number of consumers are confused regarding the effect of copper retirements on their service, and would thus benefit from notices providing them the information needed in order to properly evaluate the continued ability of their current service to meet their needs. We note that the requirements we adopt today provide as much flexibility as possible subject to necessary limits to help ensure that consumers will receive and understand the copper retirement notices they receive. Various commenters support our proposals regarding the content of copper retirement notices to retail customers. The notice requirement will have the added benefit of increasing consumer confidence in technology transitions. We further find that these content requirements should not be overly burdensome. Indeed, they are similar to existing Commission rules governing notice in the context of the discontinuance process and the use of customer proprietary network information (CPNI). We find the CPNI notice process a useful comparison point because it also involves educating and informing consumers and because those rules prescribe detailed steps to ensure that consumers will receive and recognize email based notice, which we also permit here.

47. The rule we adopt today is modified from the proposal in the *NPRM* in four ways. First, we adopt the additional requirement that the mandatory statements in the notice must be made in a clear and conspicuous manner. As stated above,

the record reflects that a number of consumers are confused when copper retirements occur, so clear and conspicuous provision of information will help to remedy that issue. Our rules already require ''clear and conspicuous'' notice in a number of contexts. To provide additional guidance, we clarify that a statement is ''clear and conspicuous'' if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition, the statement may not contradict or be inconsistent with any other information with which it is presented; if a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner; and hyperlinks included as part of the message must be clearly labeled or described. We adopt this detailed definition of ''clear and conspicuous'' to provide guidance to help ensure that customers will understand the required notice and to provide certainty to industry about our requirements. To streamline the filing and reduce the burden on incumbent LECs, we decline to require that the notice include: (1) Information required by Section 51.327(a)(5), because that primarily requires provision of technical specifications that are unlikely to be of use to most retail customers; (2) a statement regarding the customer's right to comment on the planned network change, because, as discussed below, we decline to include in the updated rule we adopt today a provision regarding the opportunity to comment on planned network changes; and (3) a statement that ''[t]his notice of planned network change will become effective a certain number of days after the Federal Communications Commission (FCC) releases a public notice of the planned change on its Web site'' because this statement is likely to be unnecessarily confusing and because 47 CFR 51.327(a)(3), which we incorporate as to customer copper retirement notices, already requires disclosure of the implementation date of the planned changes.

48. *Neutral Statement.* In the *NPRM,* we proposed prohibiting incumbent LECs from including in copper retirement notices to retail customers ''or any other communication to a customer related to copper retirement any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.'' In addition, we proposed requiring incumbent LECs to include ''a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change.''

49. After reviewing the record before us, we conclude that we should require incumbent LECs to include in copper retirement notices to retail customers a neutral statement of the various service options that they make available to retail customers affected by the planned copper retirement. We also conclude that the notice that we require must be free from any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes, but that this prohibition will apply *only* to copper retirement notices provided pursuant to the Commission's network change disclosure rules and not to any other communication. We intend that this notice serve not only this consumer protection goal, but also provide affected customers with the opportunity to learn about the facility change and give them an opportunity to seek more information. To that end, we require that providers maintain a toll-free number that customers may call to raise any questions about the planned retirement, and a URL for a related Web page with relevant information (*e.g.,* a ''frequently asked questions'' page). Both the toll-free number and the address for the Web page should be included in the notice to the customer, along with contact information for the Commission (including a link to the Commission's consumer complaint portal) and the relevant state PUC. This requirement will ensure that consumers have direct access to the provider to better understand what to expect regarding the process of copper retirement and any possible impact on their service. Moreover, while the requirement we adopt today is for a single notice to the affected customers, we emphasize that this single notice is a floor, not a ceiling. We strongly encourage carriers to follow up with affected consumers to ensure that they have received the notification and understand the implications to facilitate a smooth transition for these customers.

50. This neutral statement requirement and limited prohibition will better enable retail consumers to make informed choices about their services and will give them the necessary tools to determine what services to purchase without swaying them towards new or different offerings. We believe that this strikes the right balance between allowing incumbent LECs to advise their customers regarding the availability of advanced services and preventing potentially aggressive marketing tactics that might lead to consumer confusion. To be clear, nothing in the requirements that we adopt prohibits marketing new or different services in communications other than the notice that we require.

51. The record reflects extensive support for these requirements, and that they will carry clear value for consumers. As ADT observes, ''[t]he Commission should not permit ILECs to use the technology transition to create new marketing opportunities for themselves.'' Contrary to some assertions, we are not inserting ourselves in carriers' marketing strategies—indeed, carriers remain free to engage in unlimited marketing with the exception of the single neutral notice that we require.

52. Certain commenters assert that there is no record evidence to support the Commission's expressed concerns regarding the pressure certain carriers have allegedly brought to bear on customers to switch services. However, the record belies this assertion. For example, NASUCA pointed to a news story in Montgomery County, Maryland describing a consumer's experience with pressure to move from copper not just to fiber but to a package of digital services offered over the fiber network. And public interest commenters cite to various incumbent LEC actions that raise the concern that incumbent LECs' motivation to sell bundles may discourage the kind of neutral communication that we require. According to the Director of Montgomery County's Office of Consumer Protection, that office received complaints from consumers alleging that the carrier in question was engaged in ''deceptive marketing practices'' as it transitioned customers to the fiber network. That article also points to nationwide complaints filed with the Federal Trade Commission. The assertions about lack of evidence in the record also ignore the sources of support cited in the *NPRM.*

53. We are not persuaded by the argument that prohibiting incumbent LECs from discussing the availability of advanced services prevents carriers from educating consumers regarding the benefits of fiber. The only thing our new rule prevents is the inclusion of such discussions in copper retirement notices issued pursuant to our rules, which could lead to confusion regarding the continued availability of the type of service to which the consumer currently subscribes. Incumbent LECs are free to provide information regarding advanced

services offered over fiber in any of their marketing materials, as those materials are not the required copper retirement notice. While incumbent LECs and their representative organizations assert that the majority of consumers have embraced the benefits of fiber, these assertions ignore the existence of those consumers who have not yet chosen to purchase services beyond basic voice, many of whom are among the more vulnerable segments of the population. And it is those consumers who are most in need of the notice requirement that we adopt. Our ''one neutral notice'' requirement ensures that consumers will receive key information on the services available to them without significantly inhibiting incumbent LEC marketing efforts, therefore striking the best balance between informing consumers and facilitating the technology transitions.

54. Aside from the neutral statement requirement discussed above and the related requirement to make available a toll-free number and contact information, we decline to adopt any further content requirements. Certain commenters want the notices to retail customers to include detailed information regarding all possible changes that could result from a planned copper retirement, including ''the impact on continuity of service in an electrical power outage'' and the availability of substitute services. And one commenter proposes that notices to retail customers also ''inform customers of their avenues to appeal to their Public Utilities Commission, Office of Consumer's Counsel, or the Federal Communications Commission if the change would bring about negative consequences for consumers.'' We decline to adopt these proposed expanded content requirements. In an effort to minimize our regulation, we additionally decline to adopt the ''separate postage'' rule proposed by ADT, which would prohibit notices to retail customers from being included ''in the same envelope'' as any material marketing advanced services. The modified rule we adopt today will require incumbent LECs to identify ''any changes to the service(s) and the functionality and features thereof,'' which would include continuity of power. And as discussed below, the updated rule will require that incumbent LECs certify their compliance with Section 68.110(b)'s requirement that carriers notify customers when a planned change in facilities will affect the compatibility of CPE. With respect to the proposal that we require incumbent LECs to identify the availability of substitute services, we proposed in the *NPRM* that incumbent LECs be required to include in their copper retirement notice to retail customers ''a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change.'' As discussed above, we incorporate this requirement into the updated rule. At this time, we do not believe it is necessary to require more than this in the context of the notice to customers, where the copper retirement does not rise to the level of a discontinuance, reduction, or impairment of service for which a carrier would need to seek Commission authorization.

55. *Constitutionality.* We are not persuaded by arguments that the prohibition on marketing new services and the requirement of a neutral statement of service offerings amount to violations of their constitutional right to free expression. We conclude that the notice requirement that we adopt is consistent with the First Amendment because it merely contains a narrow, targeted time, place, and manner restriction and compels disclosure of factually accurate information in a commercial context.

56. The ''one neutral notice'' requirement that we adopt today largely addresses incumbents' arguments in opposition to the proposed prohibition on upselling contained in the *NPRM,* which was far more restrictive. In fact, the upselling prohibition that we adopt today applies only to the notice that we require. Incumbent LECs are free to inform their customers of advanced services offered over fiber facilities through as many other communications as they wish. We believe deployment of fiber facilities is beneficial in many respects, and we do not seek to deter it. However, we must ensure that such deployments do not happen in a manner that negatively impacts vulnerable populations. The ''one neutral notice'' requirement that we adopt strikes this balance while imposing the most limited restriction possible.

57. It is well-established that government may impose time, place, and manner restrictions on protected speech ''provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a substantial government interest, and that they leave open ample alternative channels for communication of the information.' '' The Commission's upselling prohibition and neutral statement requirement are reasonable time, place, and manner restrictions given the low burden that these requirements place on providers and the substantial government interest they serve. Incumbent LECs will still be free to seek to inform customers about new or upgraded services in separate communications using whatever means they so choose, even during a network upgrade. Instead, the requirement of a neutral statement of product offerings and the prohibition on attempts at upselling in a copper retirement notice are intended to promote the substantial government interest of protecting retail customers, especially vulnerable ones such as the elderly, from aggressive and confusing upselling by incumbent LECs at the same time the carriers are informing those customers of changes in facilities. We are not seeking to control what incumbent LECs say to their customers or to impose our own view of appropriate upselling; rather, we seek to ensure that retail customers are fairly informed of the effect of a planned copper retirement without the possible added confusion of contemporaneous communications by their providers to attempt to sell them other, possibly more expensive services. The objective is to better enable retail consumers to make informed choices about their services. We conclude that this significant government interest would be achieved less effectively absent implementation of the prohibition and the neutral statement requirement.

58. The customer notice that we require is consistent with the First Amendment because it merely requires the provision of true factual information in a commercial context and therefore is consistent with *Zauderer.* We find that, in this case, the government has an interest sufficient to compel incumbent LECs to include a neutral statement in their copper retirement notices that, among other things, includes the various choices available to retail customers affected by the planned network change and provide sources of additional information related to that planned network change, and to inform interconnecting entities about technical information concerning the changes. The notice that we require is designed to protect retail customers, in particular vulnerable populations such as elderly consumers, and to ensure that they are made aware of the full range of product offerings available to them following a planned copper retirement. The notice entails the provision only of factual information. We therefore find that the notice is reasonably related to the government's interest in safeguarding retail consumers, and that this interest outweighs the incumbent LECs' ''minimal'' interest in not providing

particular factual information to their customers. We note that, even if the higher standard of *Central Hudson* applied in this instance, the notice requirement adopted as part of this Order satisfies this higher standard of judicial scrutiny. Even assuming the expression is subject to constitutional protection, we believe that the asserted government interest in this case of protecting retail customers—including but not limited to elderly consumers and other vulnerable populations—and ensuring that they are made aware of the full range of product offerings following a copper retirement is, indeed, substantial. Moreover, the requirement of a single neutral statement of service offerings has been tailored narrowly to directly advance these stated interests by providing retail customers with a list of the full range of product offerings made available by their providers. We also find that this notice requirement does not impose a more extensive burden on providers than is necessary to serve the asserted governmental interests. Thus, even were the more stringent standard of *Central Hudson* to apply in this instance, we believe that the notice requirement satisfies such a standard.

59. *Form.* In the *NPRM,* we proposed allowing incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. Based on a review of the record in this proceeding, we conclude that we should adopt this proposed requirement, which a variety of commenters support. Although certain commenters urge the Commission to permit more flexibility, we conclude that the requirement we adopt today strikes the right balance between ensuring receipt of notice and avoiding unnecessary burdens. In particular, we find that notice in formats other than email or postal mail would be too easily ignored by consumers. The requirement we adopt today should be sufficient to ensure that retail customers receive notice, without imposing unnecessary additional burdens on incumbent LECs.

60. However, we are cognizant of concerns that permitting customers to directly reply to emails containing copper retirement notices could impose a heavy administrative burden on them. Because we retain the notice-based process for copper retirement network change disclosures, we find that there is little reason to require incumbent LECs to allow customers to reply directly to these email notices. On the other hand, we find that the benefits to consumers of the other requirements we proposed in the *NPRM* outweigh any additional administrative burdens on incumbent LECs. These requirements are consistent with the requirements contained in our CPNI rules, and only one commenter opposed to our proposed notice requirements touched on this specific issue. Dissemination of the notice shall be made available and accessible to persons with disabilities. We note that incumbent LECs are required to make their disseminated information and Web site accessible.

61. *Notice Period for Retail Customers.* In the *NPRM,* we proposed providing retail customers at least ninety-days' notice of planned copper retirements. We conclude that this notice period is appropriate for residential retail customers, to whom earlier notice may be confusing and potentially forgotten over a long period of time. Based on our review of the record in this proceeding, however, we conclude that non-residential retail customers, which include businesses and anchor institutions, require more than ninety-days' notice. As discussed above, we have concluded that it is appropriate to extend the notice period for interconnecting carriers to at least 180 days. We now conclude that non-residential retail customers should receive the same amount of notice as interconnecting carriers. Enterprise customer commenters and the competitive LECs that provide them service assert that they require more than ninety days' notice of planned copper retirements to allow for planning to accommodate the network changes. Certain commenters believe 180 days is an appropriate period for notice to retail customers. One commenter asserts, however, that utilities need notice of a planned copper retirement at least one year in advance. On the other hand, CenturyLink currently gives its DSL consumer customers thirty days' notice of ''network upgrades.'' At least one commenter supports providing retail customers the same amount of notice as provided to interconnecting carriers. As stated above, we find this longer time period warranted as to non-residential customers but potentially confusing and unwarranted for residential customers. This should allow non-residential retail customers sufficient time to evaluate the impact of the planned network change on the service they would continue to receive and whether they need to seek out alternatives. Given that we are extending the notice period for interconnecting carriers, there is no significant added cost to matching that notice period for non-residential end users compared to adopting a shorter notice period solely for such end users. We note that where the facilities to be retired are no longer in use, we conclude that incumbent LECs need not provide notice of the planned copper retirement to their retail customers because there are no retail customers to whom to provide notice.

62. *Other Consumer Education.* In the *NPRM,* we sought comment on whether we should require incumbent LECs to undertake consumer education initiatives in connection with planned copper retirements. We conclude that the rules we adopt today requiring detailed notices to retail customers, together with the requirement to make available a toll-free number and contact information for additional resources, lessens the immediate need for further educational efforts directed toward consumers at this time. That said, we remain concerned about whether consumers will have the information they need on copper retirement specifically and technology transitions more generally. For instance, the Michigan PSC states that ''education during the copper transition is critical to alleviate misunderstandings and confusion for consumers and supports requiring initiatives similar to the digital television (DTV) transition to allow the copper transition to move along more smoothly.'' While we set a foundation today by implementing a more targeted solution, we suspect that more will be necessary as the transition progresses. To be clear, we do not foreclose the possibility of adopting additional consumer education initiatives in response to the *NPRM* and we otherwise may revisit the issue particularly if there is evidence of consumer confusion and concerns following copper retirements.

63. In addition, we emphasize and support the role of state commissions and Tribal governments to support consumer education around copper retirement. States traditionally have played a critical role in consumer protection, and we strongly encourage carriers engaging in copper retirement that affects consumers directly to partner with state public service commissions, Tribal entities, and other state and local entities to ensure consumers understand and are prepared for the transition. We note that the record reflects the benefit of cooperation between state commissions and carriers during the copper retirement process—including by ensuring minimal disruption to consumers. For instance, the Massachusetts Department of Telecommunications and Cable reports on its ''recent experience with the transition of the Town of Lynnfield, Massachusetts to an all fiber network''

and explains that ''the MDTC worked collaboratively with Verizon Massachusetts on prior customer notification, and that as a result the Lynnfield transition was successfully completed with minimal disruption.'' We applaud such efforts and encourage other providers to coordinate cooperatively with their state commissions.

64. *Other Proposals.* We decline to adopt the proposed rural exemption advocated by TCA, an organization representing a large number of rural LECs. TCA asserts that many of its members are small, member-owned or locally-owned businesses located in the very communities they serve. As a result, TCA asserts that the requirements proposed in the *NPRM* are ''onerous and unnecessary.'' We conclude the modifications we have adopted in response to the record received sufficiently address these concerns. And while the rules necessarily impose some burden on incumbent LECs, we do not find that burden to be greater for rural LECs or that rural consumers are less in need of information regarding planned copper retirements.

65. We also decline to adopt the proposal of the Communications Workers of America that we should impose different notice requirements for network upgrades (*i.e.,* replacing the copper facilities with fiber facilities), network downgrades (*e.g.,* ''a removal to replace the copper with [facilities for] an inferior voice-only service (such as Verizon's Voice Link service)''), and ''the complete abandonment of facilities.'' We do not believe such differentiation is necessary. The ''downgrade'' CWA refers to is framed in terms of replacing one service with a different, inferior service. Such a situation is more appropriately addressed in the context of a Section 214(a) discontinuance, reduction, or impairment of service, rather than a change in facilities. With respect to ''the complete abandonment of facilities,'' if this change in facilities results in a discontinuance, reduction, or impairment of service, then it also would fall within the purview of our rules governing such situations and the incumbent LEC would be obligated to comply with the copper retirement notice obligations and file a discontinuance application.

66. Finally, we decline to adopt the City of New York's proposal that we require proof of notice acknowledged by individual customers before allowing changes. We are concerned that such a requirement would unfairly penalize incumbent LECs for the failure of their customers to act. End users typically would not have an incentive to provide such an acknowledgement.

(iii) Ability To Comment

67. After consideration of the record and other avenues for input, we find that avenues to communicate with the Commission are sufficient and that formalizing a right to comment is not needed. We therefore decline to adopt the proposal to revise the network change disclosure rules to provide ''the public, including retail customers and industry participants, with the opportunity to comment on planned network changes.'' We are persuaded that a formalized comment process could be confusing to consumers because there is no approval process associated with copper retirements. Certain commenters support the Commission's proposal to provide retail customers with the formal right to comment on planned copper retirements, although at least one commenter urged the Commission to at least make clear how it will use comments submitted by the public. However, various commenters on both sides of this issue note that providing the public the right to submit comments formally (1) does not provide additional advantage beyond use of the existing email address, and (2) will confuse consumers and lead to dissatisfaction, because we did not propose to convert the network change disclosure process to one requiring Commission approval. As stated above, we reject requests that the Commission convert the current notice-based network change disclosure process to a process in which an incumbent LEC must obtain Commission approval before implementing a proposed copper retirement. The public, including consumers and competitive carriers, have multiple means with which to communicate with us regarding copper retirements. Since we adopted the *NPRM,* an amendment to Section 51.329 of the Commission's rules requiring that carriers file network change disclosures in the Commission's Electronic Comment Filing System and permitting responsive filings to be filed via ECFS has become effective. Thus, network change disclosures are now docketed proceedings open to public comment. Consumers and others are able to submit complaints to the Consumer and Governmental Affairs Bureau. The public also may continue to comment on planned network change disclosures via the email address established specifically for that purpose. We find that no further action is needed at this time.

(iv) Notice to States, Tribal Governments, and the Department of Defense

68. In the *NPRM,* the Commission proposed requiring incumbent LECs to send notices of proposed copper retirements to the public utility commission (PUC) and to the governor of the state in which the network change is proposed and to the Secretary of Defense, similar to the current requirement for such notice in connection with Section 214 discontinuance applications. We sought comment on whether to also require notice of planned network changes that do not involve copper retirement and whether to require notice to other governmental entities, such as the Federal Aviation Administration, Tribal governments, or municipalities. Public interest advocates, including various state PUCs, support the Commission's proposal to require notice to state authorities and the Department of Defense. We noted that the Commission is ''not the only governmental authority with important responsibilities with respect to technology transitions'' and ''[i]n particular, States serve a vital function in safeguarding the values of the Network Compact.''

69. After reviewing the record before us, we conclude that ''reasonable public notice'' in the context of copper retirements includes providing notice of the planned copper retirements directly to state authorities (the governor and the state PUC), the Department of Defense, and federally recognized Tribal Nations where the copper retirement will occur within their Tribal lands. Throughout this document, ''Tribal Nations'' and ''Tribal governments'' include any federally recognized Indian tribe's reservation, pueblo of colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; and Hawaiian Home Lands—areas held in trust for Native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, *et seq.,* as amended. The copper retirement notices containing the information required by the rule we adopt today and existing state notification obligations under Section 214 will provide state authorities with significant information concerning technology transitions. We therefore decline to impose any of the additional state and local notification requirements proposed by Public Knowledge at this time. We further conclude that this notice should occur contemporaneously

with notice to interconnecting entities. Specifically, this notice must be provided no later than the same time as the incumbent LEC notifies the Commission (*i.e.,* no later than the same time that it submits the notice that will trigger the Commission to issue a public notice that establishes a period of at least 180 days before retirement) unless there are no customers, in which case the notice must be provided at least 90 days before retirement. We find this time period warranted to ensure adequate notice to these entities so that they can discharge their responsibilities, and we find the 90-day exception warranted because governance issues are likely to be fewer where there are no customers. In light of the accelerated pace of copper retirements and the allegations in the record of this and other proceedings, we conclude that the states should be fully informed of copper retirements occurring within their respective borders so that they can plan for necessary consumer outreach and education. State authorities are an important source of consumer outreach and education, and they need the information that can allow them to field the calls that will come when consumers receive copper retirement notices. As noted by the Pennsylvania PUC, ''copper retirements under the existing rule apparently ha[ve] the potential to reduce wholesale, incumbent, or competitor access, thereby reducing retail customer choice. This has real consequences on the ground in the states.'' Because of the impact of copper retirements at the State level, we believe it is important to address ''concerns about technological change, competitive access, and universal service . . . with the principle of cooperative federalism.'' The concern is no less on Tribal lands, where state commissions may not have jurisdiction to regulate carriers or address consumer complaints, and we find no basis in the record for distinguishing between States and Tribal governments. And given the increased cybersecurity risks posed by IP-based networks, the Department of Defense should be kept informed of copper retirements. The requirement we adopt today is consistent with the requirements associated with Section 214 of the Act and Section 63.71 of the Commission's rules. Indeed, when the Commission adopted the requirement that carriers seeking to discontinue services notify state PUCs and the Department of Defense, it noted: ''State commissions with notice will be better able to bring to our attention the effects of discontinuances upon customers who may be unable themselves to inform us that they lack substitute service, upon interexchange access providers, and upon competing carriers who may not receive notice of anti-competitive discontinuances. Accordingly, 47 CFR 63.71 will include the requirement that the applicant must submit a copy of its application to the public utility commission as well as to the Governor of the State and the Secretary of Defense. . . .'' Carriers previously had been required to provide this same notice under Sections 1.764 and 63.90(d) of the Commission's rules. We decline to adopt this same notice requirement for other network change notifications at this time given a lack of sufficient support in the record or clear need on the part of the governmental or Tribal Nations.

70. No commenters in this proceeding have brought to our attention any concrete difficulties that incumbent LECs would experience due to compliance with this proposed requirement. And various states already require carriers to file notices of network change with their public utility commissions. Moreover, various state commission commenters support this requirement, undercutting incumbent LEC arguments that states will be flooded with notices they do not necessarily want. Commenters opposed to the proposed rules argue that requiring additional notice to affected states and the Department of Defense could ''introduce new and unwarranted complexity into the process'' since such agencies will already receive notice to the extent they are customers who will receive notice in the regular course, pursuant to the *NPRM's* other proposed notice requirements. And, they argue, as the pace of copper retirement accelerates, these agencies likely will be deluged with notices for which the incumbent LECs argue there is no corresponding benefit. We are not persuaded by these arguments. Various states already require carriers to file notices of network change with their public utility commissions. And we are not convinced that a government authority's receipt of notice of a copper retirement should depend on whether the authority is a customer of the carrier because: (1) Not every copper retirement in a state will affect the state as a customer; and (2) the notice of copper retirement to the state as a customer will likely go to a different administrative office than a notice to the State as a governmental entity. Nor are we convinced that carrier participation in forums such as the National Security Telecommunications Advisory Committee obviates the Department of Defense's need for copper retirement notifications. Rather, as explained above, these notifications will ensure that government authorities have timely and consistent access to information they need to perform their consumer protection and public safety responsibilities throughout the technology transitions.

(v) Certificate of Service

71. In the *NPRM,* we proposed requiring that incumbent LECs file along with their public notice a certification containing specified information, much of which was previously required by Sections 51.329(a)(2) and 51.333(a) of our rules.

72. After reviewing the record before us, we conclude that we should adopt the proposal, as modified below. In particular, we adopt a rule that requires an incumbent LEC to file with the Commission at least ninety (90) days before retirement is permissible a certificate of service, signed by an officer of the company and complying with Section 1.16 of the Commission's rules, that includes the following information:

- A statement that identifies the proposed changes;
- A statement that notice has been given in compliance with paragraph (b)(1) of the Section;
- A statement that the incumbent LEC timely served a copy of its notice filed pursuant to paragraph (b)(1) of the Section upon each entity within the affected service area that directly interconnects with the incumbent LEC's network;
- The name and address of each entity referred to in paragraph (d)(3) of the Section upon which written notice was served;
- A statement that the incumbent LEC timely notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense in compliance with paragraph (b)(4) of the Section;
- If customer notice is required by paragraph (b)(3) of the Section, a statement that the incumbent LEC timely served the customer notice required by paragraph (b)(3) of the Section upon all retail customers to whom notice is required;
- If a customer notice is required by paragraph (b)(3) of the Section, a copy of the written notice to be provided to retail customers;

• A statement that the incumbent LEC has complied with the notification requirements of Section 68.110(b) or that the notification requirements of Section 68.110(b) do not apply;

• A statement that the incumbent LEC has complied with the good faith communication requirements of paragraph (g) of the Section and that it will continue to do so until implementation of the planned copper retirement is complete; and

• The docket number and NCD number assigned by the Commission to the incumbent LEC's notice.

73. Requiring this information is reasonable and necessary to ensure compliance with our rules, will assist with enforcement if any inaccuracies were subsequently found, and is consistent with the current requirement applicable to short-term notices in Section 51.333(a). Numerous commenters support this requirement. Incumbent LEC commenters, however, believe such a requirement is unwarranted. As previously noted, under the existing rules, notices of copper retirements must comply with the short-term notice provisions. We require identification of the docket number and NCD number to facilitate our processing of the certification. Monitoring compliance with the rules we adopt today would be difficult without incumbent LECs confirming for us that they have complied. And the consumer complaints brought to our attention by public interest commenters as well as the concerns raised by various competitive providers highlight the need for the Commission to be able to monitor compliance with the requirements we adopt today. The at least ninety-day time period we adopt is appropriate because it is as prompt as possible after all possible notification duties have been completed. We decline to require multiple staggered certifications to minimize the regulatory burden on incumbent LECs. The Enforcement Bureau will investigate potential carrier violations of the rules we adopt today governing the copper retirement process and will pursue enforcement action when necessary.

74. We conclude that Section 68.110(b)'s notice requirements and the customer notice requirements we adopt today are complementary. Section 68.110(b) requires that telecommunications providers give customers ''adequate notice'' of changes in network facilities if such changes will render CPE incompatible. Certain commenters argue that the protections afforded by Section 68.110(b)'s notice requirements, in conjunction with Section 51.325's public notice requirements for network changes, afford sufficient protections. Others argue for cross-referencing Section 68.110(b)'s notice requirements in any revised rules we adopt. We note, however, that Section 68.110(b)'s notice requirements will not always be triggered when public notice of a planned copper retirement is required under revised Section 51.325. We therefore also conclude that requiring incumbent LECs to certify their compliance with Section 68.110(b)'s notice requirements, when applicable, will ensure that incumbent LECs have evaluated the effect of any planned copper retirements on customers' terminal equipment. We are not persuaded by Cincinnati Bell that requiring incumbent LECs to certify that they have directly notified all interconnecting carriers ''may be an impossible burden to meet.'' As discussed above, under the predecessor rules to those we adopt today, copper retirements have been subject to the ''short term notice provisions'' set forth in Section 51.333(a); and under Section 51.333(a), which applies ''if an incumbent LEC wishes to provide less than six months' notice of planned network changes,'' the incumbent LEC already must certify that they have provided the public notice required by Section 51.325(a) directly to interconnecting telephone exchange service providers. As previously noted, incumbent LECs in fact include such certificates of service when filing their copper retirement notices with the Commission. The accelerated pace of broadband deployment and technology transitions warrant the Commission's reevaluation of the role of network change disclosures in protecting core values. Moreover, we conclude that the certification requirement embodied in Section 51.333(a), which we carry over to new Section 51.332(d), provides important protections. It ensures that all affected parties receive the appropriate notification.

(vi) Legal Authority

75. *Notice Requirements.* We conclude that we have authority pursuant to Sections 201(b) and 251(c)(5) of the Act to adopt the proposed revisions to the network change disclosure rules regarding the types of information that must be contained in copper retirement notices. As noted above, Section 251(c)(5) of the Act requires ''reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' We conclude that this language in the Act affords the Commission broad discretion in determining the information an incumbent LEC should be required to provide to interconnecting carriers. However, in implementing Section 251(c)(5) and adopting the network change disclosure rules, the Commission in the *Second Local Competition Order* defined the phrase ''information necessary for transmission and routing'' as ''any information in the incumbent LEC's possession that affects interconnectors' performance or ability to provide services.'' Noting that network change disclosures promote ''open and vigorous competition contemplated by the 1996 Act, the Commission declined to restrict the types of information that must be disclosed and noted that ''[t]imely disclosure of changes reduces the possibility that incumbent LECs could make network changes in a manner that inhibits competition.'' The Commission thus noted that the information ''must include *but not be limited to* references to technical specifications.'' We thus reject arguments that the enhanced content requirements proposed in the *NPRM* go beyond the type of information authorized by Section 251(c)(5). We conclude that providing interconnecting entities with information regarding the effect of a planned copper retirement on rates, terms, or conditions will allow those entities to better plan their business. We further conclude that, contrary to AT&T's assertions, this is consistent with the Commission's determination in the *Second Local Competition Order* that the information to be provided in network change disclosures is not limited to information that will affect existing interconnection arrangements but rather should include ''information concerning network changes that potentially could affect anticipated interconnection.'' We also conclude that the additional information proposed in the *NPRM* is necessary to ensure that the incumbent LECs' practices are just and reasonable under Section 201(b) of the Act. Competitive providers need information regarding changes to the rates, terms, and conditions that will result from a planned copper retirement in order to engage in appropriate business planning.

76. The updated network change disclosure rules we adopt today are crucial to protecting the core values of the Act, specifically the promotion of competition and protection of consumers. We disagree with

commenters that argue that requiring incumbent LECs to provide notice to retail customers goes beyond the authority of Section 251(c)(5) to require that incumbent LECs provide ''reasonable public notice.'' We conclude that the phrase ''reasonable public notice'' requires the Commission to determine what notice must be provided and to whom it should be provided in order to serve the public interest. We agree with public interest commenters that our actions here ensure that consumers have accurate and timely notice of network changes that could impact the functionality and interoperability of their devices or third-party services, the Commission is giving clarity to what is considered '''reasonable public notice'' of changes that affect the transmission, routing, and interoperability of services on the network. We further conclude that ''reasonable'' notice to non-expert members of the public cannot strictly be limited to a bare description of the changes; instead, it should encompass the kind of clarifying information that we require here.

77. Finally, we reject arguments that Section 706 of the 1996 Act counsels against the actions we take today. Section 706(a) is a grant of authority to ''utilize, in a manner consistent with the public interest, convenience, and necessity . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' Additionally, if the Commission determines that ''advanced telecommunications capability'' is not being deployed in a ''reasonable and timely fashion,'' Section 706(b) requires that the Commission ''take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.'' Our actions are consistent with these provisions. Contrary to Cincinnati Bell's assertion, it simply is not true that we are ''forc[ing] [incumbent LECs] to preserve their copper networks.'' In fact, we retain a notice-based process that provides a clear path to copper retirement. By promoting an environment in which all parties are more able to accept transitions away from copper, creating a more predictable retirement notification process, and retaining a notice-based process that does not erect additional regulatory barriers, the Commission acts to facilitate the deployment of advanced telecommunications services and remove potential barriers to infrastructure investment in a manner consistent with the public interest. We also promote competition by ensuring that interconnecting entities have the information that they need to continue to serve customers, and thus retain income needed for further investment, when copper facilities with which they interconnect are retired.

78. *Provision to Governmental and Tribal Entities.* We also conclude that Section 251(c)(5)'s requirement that incumbent LECs provide ''reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks'' supports our decision to require notice to state authorities, Tribal governments, and the Department of Defense. State authorities and the Department of Defense already receive notice of service discontinuances, and this information provision will facilitate a consolidated understanding of technology transitions. These key public agencies are important recipients of such notice as guardians of the public interest. And given their extensive duties and limited resources, it would be unreasonable to expect them to have to constantly monitor the Web sites of numerous incumbent LECs as well as the Commission. We conclude that cooperating and coordinating with these key governmental authorities to ensure that consumers are protected and competition is preserved is also supported by Section 201(b)'s broad grant of authority to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the Act. We are persuaded that the minimal additional notice requirements that we adopt here will not reduce incentives for incumbents to continue to deploy fiber, and the consumer protection and public safety benefits outweigh the additional burden on incumbent LECs. We realize that Section 63.71(a) of the Commission's rules does not require notice to Tribes in connection with a discontinuance application, and that it could be incongruous to require greater notice for copper retirement than for discontinuances. However, as noted above, we believe it is important to act cooperatively with state and Tribal authorities to address ''concerns about technological change, competitive access, and universal service,'' and the concern is no less on Tribal lands, where state commissions may not have jurisdiction. We therefore include in the FNPRM a request for comment on revising Section 63.71(a) to include such a requirement.

b. Definition of ''Cooper Retirement''

79. Due to the current frequency and scope of copper network retirement, it is critical that industry participants and stakeholders clearly understand when our copper retirement notice process is triggered so that the momentum of prompt, responsible transitions is not abated. Therefore, it is necessary to clarify when a ''copper retirement'' occurs. We endeavor to catalyze further fiber deployment and find that eliminating this uncertainty removes one potential source of industry resistance or hesitation to retiring copper. Further, we find that providing additional clarity is critical for properly informing the public of network changes in accordance with Section 251(c)(5) of the Act and also for maintaining the Commission's core values. Our actions build on the *NPRM,* which requested comment on proposed revisions to the ''retirement'' definition, with particular focus on: (1) The types of copper facilities to be included within the concept of ''retirement'', and (2) the actions (or lack of action) constituting ''retirement.''

80. For the reasons set forth below, we adopt the expanded definition proposed in the *NPRM* and therefore define copper retirement to mean ''removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' We also define copper retirement to include *de facto* retirement, *i.e.,* failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling. By providing additional clarity in our rules, we will minimize ongoing disputes and carrier uncertainty as to what is required as technology transitions occur in the marketplace.

81. Section 251(c)(5) of the Act imposes on incumbent LECs ''[t]he duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' Although our rules require this statutorily mandated notice in the event of ''retirement'' of copper facilities, we have not specified what constitutes ''retirement,'' and we have not revisited the issue of when copper retirement triggers a network change notification requirement in over a decade. Given the increasing pace and

scope of retirements of copper facilities, we find the definition that we adopt necessary to ensure fulfillment of the goals of Section 251(c)(5).

(i) Copper Facilities To Be Included

82. The current network change disclosure rules do not include the feeder portion of loops within the relevant provisions, but they do include ''retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' In the *NPRM,* the Commission sought comment on expanding ''retirement'' to include the feeder portion of the loop and also on whether other copper facilities should also be included. Prior to the *NPRM,* various parties requested a rulemaking to adopt rules encompassing the feeder portion of the loop, noting that if the feeder portion is unavailable for unbundled access, ''the practical difficulty of obtaining access to the remaining portion of the loop forecloses competitive access to the customer.'' After considering the record received, we find that modifying our rule is appropriate in light of experience with our initial implementing rules and the current marketplace. The Commission received many comments regarding the expansion of copper facilities included within the retirement definition. Several commenters support including the feeder portion, noting the importance of that portion to gaining access to retail customers. Other commenters take no position on the matter. Incumbent LECs are generally opposed to the Commission's proposed revisions to the scope of copper facilities encompassed within the rules. While incumbent LECs refrained from offering specific comments regarding the feeder loop addition, their overall position is that there is ''little need for new rules in this area'' and that the proposed modifications do not provide ''any identifiable benefit to consumers or competition.''

83. We agree with the Pennsylvania Public Utility Commission that if the feeder portion is unavailable to competitive LECs, the practical difficulty of accessing the remaining portion of the loop for retail purposes is insurmountable. In many cases, replacement of copper feeder can have the same harmful effects as removal or replacement of the home run loops and sub loops, which are explicitly covered under the current rules. Therefore, we disagree with the incumbent LECs' argument regarding the supposed lack of benefits to consumers and competition. Incumbent LECs should not be permitted to avoid the network change notification requirements simply because they are replacing one portion of the loop instead of another equally critical portion. We also agree with XO Communications that specifying in our rules that retirement of copper feeder is a ''retirement'' will avoid confusion in the marketplace among both incumbent and competitive carriers. We therefore adopt our proposal that the feeder portion of the loop should be one of the copper facilities captured within the concept of retirement.

(ii) Defining ''Retirement'', ''Removal'' and ''Disabling''

84. The existing network change notification rules do not define what actions constitute ''retirement'' and thus what actions trigger the notification duty under Section 251(c)(5). To address this lack of a definition, we proposed defining the term ''copper retirement'' as ''the removal or disabling of'' covered copper facilities, *i.e.,* ''copper loops, subloops, or the feeder portion of such loops or subloops.'' For reasons discussed below, we conclude that it is appropriate to adopt a definition that defines retirement as the ''removal or disabling'' of copper facilities. We further define ''disabling'' to mean rendering the copper facilities inoperable (through acts of commission or omission). We limit the definition of ''removal'' to physical removal.

85. We find that the phrase ''removing or disabling'' is appropriate because it captures the typical activities by which incumbent LECs have transitioned away from copper networks. Notably, no commenters argued against the use of the phrase ''removal or disabling.'' Moreover, it is straightforward enough to indicate that providers should understand the type of activity that implicates the notification process.

86. We conclude that ''disabling'' should be further defined to include rendering the copper facilities inoperable. We also agree with the California PUC that ''disabling'' should only refer to long term or permanent periods of time and that instances where facilities are temporarily inoperable due to a catastrophe or for repair should not constitute ''disabling'' under the new rule. We do not intend for the retirement definition to encompass the downtime associated with scheduled upgrades and repairs. However, we caution that a sufficiently long disabling of facilities (or the functional equivalent thereof) with no end in sight, even if ostensibly temporary, may constitute retirement for which a carrier must undergo our network change notification process. Because each circumstance will require careful analysis of the particular facts at issue—including but not limited to the length of time in which the facilities have been unavailable, the announced plans of the incumbent LEC with respect to the facilities, and the extent of unavailability—we decline to adopt any bright line time limits and instead clarify that we will resolve each issue on a case-by-case basis.

87. We also clarify that the term ''disabling'' does not, however, mean only affirmative acts by incumbent LECs. As discussed below, acts of omission, such as the failure to repair or maintain copper facilities, can also render those facilities inoperable. A sufficient and long-term level of neglect can therefore constitute retirement.

88. As for ''removal,'' we conclude it should be defined as the physical removal of copper. Cincinnati Bell suggests that the Commission consider creating two categories for retirement—one for physical removal and one for non-physical removal. It argued there are several reasons that incumbent LECs should have an option to retire copper in place without physically removing it, such as: The provision of structural support for fiber optic cables and the provision of line power (from the copper) to other equipment in the field. We agree with Cincinnati Bell that copper that remains physically deployed but no longer performs its vestigial telecommunications function may nonetheless retain utility, but we find it necessary for such facilities to go through the copper retirement notification process so that the public is notified that the facilities no longer function. We conclude, however, there is no need for a non-physical definition of removal because if copper remains physically present but is no longer capable of providing telecommunications services (*i.e.,* it is inoperable), it has been ''disabled'' and is retired within the meaning of our rules. Therefore, contrary to Public Knowledge's suggestion, it is unnecessary to have multiple categories of ''removal'' in the new rule. As discussed below, we define retirement to include *de facto* retirement.

(iii) *De Facto* Retirement

89. The *NPRM* outlines numerous allegations that in some cases incumbent LECs have allowed copper networks to deteriorate to the extent that the networks are no longer reliable. In these circumstances, under our current rules, incumbent LECs have not been required to comply with the Commission's existing copper retirement procedures. The *NPRM* proposed revising our rules to require

an incumbent LEC to undergo the network change notification process for a *de facto* retirement, defined as the failure to maintain copper that is the functional equivalent of removal or disabling.

90. We find that the practice of deliberately allowing copper networks to deteriorate is harmful to competition, negatively impacting end users, and that *de facto* retirements should be covered in the copper retirement requirements. We therefore add to our definition of retirement any ''failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.'' We adopt this change to ensure incumbent LECs are aware that intentional neglect of copper facilities triggers their notification responsibilities, and to make such practices less likely to occur. We find that while States, localities, and Tribal Nations play a critical monitoring and enforcement role for *de facto* retirement, the Commission also has an important enforcement role to play, particularly in situations where local entities no longer have the authority to act. We encourage consumers and others to file a complaint on our Web site if their service is poor due to copper facilities that are not being maintained adequately. To be clear, the Commission will not hesitate to take appropriate measures where a provider de facto retires copper facilities without first complying with our the copper retirement requirements we adopt today, including enforcement action. We anticipate that the threat of enforcement action will serve as a deterrent to *de facto* copper retirement, but if not, the Commission reserves the right to consider more specific remedies in cases where carriers allow copper facilities to deteriorate to the point that is the functional equivalent of removal or disabling of the copper facilities (such as, depending on the particular facts and the legal authorities triggered, repairing the copper facilities or making available replacement facilities).

91. We agree with competitive LECs, state PUCs, and consumer advocates that the copper retirement definition should be expanded to include *de facto* retirements resulting from a provider's intentional neglect. In response to the *NPRM,* CWA suggests eleven factors for the Commission to consider when identifying a *de facto* retirement during a complaint process. We recognize that a wide range of information may be relevant to our evaluation, but while we gain experience with this issue we prefer to adopt a case-by-case approach rather than constrain the sources of information that we will consider. Contrary to AT&T's suggestion that ''there is no such thing as a de facto retirement,'' the record suggests that this is a significant issue. Several filings in the record detail a number of specific examples of negligence in Maryland, the District of Columbia, California, Illinois, and New York. Xchange Telecom expressly disputes Verizon's assertion that *de facto* retirement is a myth. And the Utilities Telecom Council points out the consequences of *de facto* retirements. We do not, however, adopt WorldNet's proposed broader definition of *de facto* retirement that would encompass inside wiring owned or controlled by the incumbent LEC. The record does not support adoption of such a broad approach, which would go beyond the scope of our copper retirement rules. Instead, we find that the scope of facilities to which the *de facto* retirement concept applies should be no broader than the underlying scope of facilities covered by our copper retirement rules.

92. We remind carriers that where they neglect copper facilities in a manner that constitutes *de facto* retirement, any resulting loss of service may constitute a discontinuance, reduction, or impairment of service for which a Section 214(a) application is necessary. The copper retirement network change notification process and the discontinuance approval process remain fundamentally distinct because the former concerns changes in facilities and merely requires notice, while the latter concerns changes in services and requires Commission approval. We therefore disagree with assertions that the revised definition for copper retirement ''begins to look like the service discontinuance process.'' However, in those instances where a *de facto* copper retirement also results in discontinuance, we expect carriers in such a situation to file both a notice and an application. By emphasizing Section 214(a), we do not mean to suggest that it is our only source of authority to act with respect to carriers that fail to maintain copper facilities adequately.

(iv) Scope of New Rules

93. *Flexibility to address individual customer service concerns.* In recognizing the concept of ''*de facto''* copper retirement and requiring notice of certain retirements to individual customers, it is not our intent to limit a carrier's flexibility to respond to an individual customer's service quality concerns by migrating a customer from its copper facilities in areas where a carrier has already deployed fiber-to-the-premises. Accordingly, the advance notice requirements will not apply in situations in which a carrier migrates an individual customer from its copper to its fiber network to resolve service issues raised to the carrier by the customer (*e.g.,* complaints by the customer of a frequent ''crackling'' sound on the copper voice line or frequent outages in wet conditions), provided that the retirement does not result in a change in the nature of the services being provided to the affected customers. We contrast this customer-specific network migration (which will not trigger advance notice requirements or serve as *prima facie* evidence of de facto copper retirement) with migrations in which (i) the carrier requires customers in a given area to move from its copper to its fiber network as part of a planned network migration, in which case the notice process described above should be followed, or (ii) the carrier allows its copper network serving a broader geographical area (*e.g.,* an entire neighborhood) to deteriorate in a manner that is the ''functional equivalent of removal or disabling it'' without first following the notice-based copper retirement process. In addition, we caution that this clarification is not a loophole and if we see evidence of abuse, we will reevaluate the issue and take action if appropriate.

94. The clarification we provide above provides carriers with sufficient flexibility to manage service calls by moving customers from a copper to a fiber network. We therefore do not believe it is necessary or appropriate to adopt the ''safe harbors'' from the copper retirement notice requirements we adopt today requested by Verizon—one ''in which an incumbent LEC will not be considered to have engaged in *de facto* copper retirement in areas where it has deployed a fiber network and service is available to customers over fiber facilities,'' and the other ''in which an incumbent LEC that meets a statewide Network Trouble Reports Per Hundred Lines standard will not be found to have engaged in *de facto* retirement of its copper facilities.'' Fiber to the Home Council seeks an even broader exception, asserting that there should not be a finding of *de facto* retirement ''once a carrier announces its intention to deploy fiber to residential customer premises in a specific area . . . since the carrier has an incentive to install fiber promptly and any dispute about *de facto* retirements would only impose costs without any material benefit.'' We are not persuaded by this argument in light of recent news stories of incumbent LEC failures to follow through with announced intentions to

deploy fiber. In such instances, if the incumbent LEC follows the procedures set forth in the rules we adopt today, it would not subject itself to claims of *de facto* retirement. Read literally, these safe harbors could permit immediate retirement regardless of the circumstances, *e.g.,* there would be no need to notify customers even in the event of a planned retirement (as opposed to in response to an individual service complaint), and a carrier could allow its network serving many customers over a given area to deteriorate to the point of *de facto* retirement without first following the notice-based copper retirement process. In particular, we decline to adopt the first suggested safe harbor as written because it is so broad that it would eliminate any duty to educate consumers and inform carriers about transitions to fiber, undercutting a key goal of the copper retirement rules that we adopt. We also decline to adopt Verizon's second suggested safe harbor because we find it to paint with too broad a brush. While we do not suggest that this is the intent of Verizon's proposed safe harbor, meeting a statewide average troubles per line metric set by a state would allow a carrier to mask large concentrations of bad copper lines by averaging its relatively few troubles per line numbers for its fiber lines with its relatively higher troubles per line numbers for its copper lines, again undercutting the purposes of our actions today.

95. The modest clarification addresses the underlying concern that carriers will be unable to transition customers to fiber when service issues arise, while still achieving the Commission's pro-consumer goals. We understand TelePacific's concerns regarding involuntary transitions from copper to fiber, and the rules that we adopt strongly promote transparency regarding such transitions. However, we also recognize the need for carriers, when faced with exigent circumstances, to manage their networks and ensure that their customers do not have their service disrupted while their provider goes through the copper retirement network change disclosure process. Nor do we intend to subject carriers to liability for *de facto* retirement in situations where the issue is not widespread but instead the movement of a customer from a copper to a fiber network is the most effective and efficient means of addressing the customer's service concerns. Limiting the exception in the manner that we adopt strikes an appropriate balance between the needs of the incumbent LECs and the needs of competitive LECs and retail customers.

96. *States, Localities, and Tribes.* We recognized in the *NPRM* that States, localities, and Tribal Nations play a vital role in overseeing carriers' service quality and network maintenance. Nevertheless, in light of the trend in which many states' legislatures have elected to limit the scope of their PUCs' traditional authority over telecommunications services we requested comments on whether these local institutions remain able to perform key oversight functions. Many commenters indicate a strong belief that local institutions are fully capable of administering the requisite oversight—including that of copper network maintenance. Several states emphasize that they still have unique insights into their jurisdictions and require a free hand to operate. We agree that local authorities have an important and unique role to play. And contrary to Verizon's claims, our actions do not encroach on traditional state jurisdiction regarding ongoing maintenance obligations. As stated in the *NPRM,* we emphasize that we do not seek to revisit or alter the Commission's decision in the *Triennial Review Order* to preserve state authority with respect to requirements for copper retirement. Furthermore, we agree that in addition to complaints directed to the Commission, complaints from retail and wholesale customers submitted to state regulatory agencies provide critical insight as to whether an incumbent LEC has failed to adequately maintain its copper networks.

97. *Other Issues.* We decline to adopt CWA's suggestion that we distinguish disabling copper for service upgrades versus service downgrades. Our copper retirement rules do not contain such a distinction and we decline to adopt one because the Commission and the public have an equal need to be informed about all copper retirements, regardless of the purpose. We also decline at this time to adopt Public Knowledge's proposal that we establish a process for situations where a network is damaged after a natural disaster and a carrier decides to permanently replace that network with a new technology because such a clarification is unnecessary given existing requirements. The Act and our rules establish clear requirements for emergency and temporary discontinuances, and the November 2014 declaratory ruling that we reaffirm today provides significant guidance regarding when an application is required when functionality is lost. As the Commission noted when it granted Verizon's request for a waiver of Section 63.63's requirements following Superstorm Sandy: ''[T]he information required by the rule is critical to the Commission's ability to ensure that customers of communications providers are minimally affected by discontinuance, reduction, or impairment of service due to conditions beyond a provider's control.'' Further, the discontinuance and network change notification requirements that we propose in the FNPRM and adopt today are responsive to this concern because they help to ensure that carriers will notify us and seek our approval in appropriate circumstances and meet the needs of end users, so we do not find it necessary to establish a separate process at this time.

c. Sale of Copper Facilities That Would Otherwise Be Retired

98. We continue to ''believe that sale of copper facilities could be a win-win proposition that permits incumbent LECs to manage their networks as they see fit while ensuring that copper remains available as a vehicle for competition.'' We are pleased that incumbent LECs such as AT&T and Cincinnati Bell have expressed willingness to consider selling copper facilities that they intend to retire. Although we recognize that there may be difficulties involved, we encourage other incumbent LECs to consider selling copper facilities that they intend to retire.

99. While the potential benefits of sales of to-be-retired copper facilities are clear, we are not persuaded based on the record before us that we should mandate the sale of copper that an incumbent LEC intends to retire and/or establish for ourselves a supervisory role in the sale process. First, we agree with a number of commenters that Commission oversight of sales could be intrusive, costly, potentially a barrier to technology transitions, and would tax limited Commission resources. Second, the record has not revealed sufficient demand by competitive LECs or others for retired copper to warrant addressing the challenging legal and policy issues that likely would be raised. Third, as noted above, there is reason to expect that there will be willing incumbent LEC sellers in at least some markets without the need for regulatory action. Finally, we note that some state regulators are already active in this area, which mitigates at least somewhat the need for further Commission action.

100. We reject the argument that Commission intervention is necessary because incumbent LECs will refuse to sell facilities that they intend to retire to thwart competition or exercise market

power in determining the price and terms of sale. There is no evidence on the record before us that incumbent LECs have refused to sell facilities that they intend to retire. AT&T claims in its reply comments that there ''is no evidence that market-based solutions will harm competition or consumers, and thus no basis for Commission regulation.'' Several commenters assert that there is nothing prohibiting any prospective purchaser from inquiring about the sale of copper facilities that have been or are scheduled to be retired, and that such sales will occur to the extent that these facilities offer value to prospective purchasers. Further, our action today to ensure reasonably comparable wholesale access to next-generation services pending completion of the special access proceeding mitigates the concern that incumbent LEC refusal to sell would foreclose competition on next generation technology in the near term. Given the lack of existing evidence that incumbent LECs have refused to sell to-be-retired copper facilities, the potential disruption that could be caused by Commission oversight, and the lack of clear proof of demand in the record, we do not think it necessary to impose any such oversight measures at this time. However, we note that if parties bring to our attention evidence of actual anticompetitive behavior or market failures in connection with the sale of copper, we may revisit this issue in the future. Finally, we are not convinced that we must act because ''carriers were fully reimbursed for their investments'' in copper facilities—even if true, this does not show that purchasers will be able to extract additional value.

2. Updating and Clarifying Commission Section 214 Discontinuances Policy for the Technology Transitions

101. We further facilitate technology transitions by addressing the service discontinuance requirements set forth in Section 214(a) of the Act. Section 214(a) mandates that the Commission must ensure that the public is not adversely affected when carriers discontinue, reduce, or impair services on which communities rely. Today, we act to ensure that transitions in the technologies used to provide service do not undercut the availability of competitively-provided services that benefit communities and enterprise customers of all sizes that serve those communities. Our actions encourage technology transitions that could otherwise be delayed if enterprise customers lose the option to make comparable purchases at comparable rates to those which are presently available, including through supply from competitive carriers. First, we clarify that consistent with our longstanding precedent, a carrier must seek our approval if its elimination of a wholesale service results in the discontinuance, reduction, or impairment of service to a community. This clarification will minimize further disputes and carrier uncertainty as to what Section 214(a) requires as technology transitions continue in the marketplace, thereby facilitating the ability of carriers and consumers to successfully navigate this transition. Second, we require *on an interim basis* incumbent LECs that discontinue a TDM-based service to provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions during the pendency of the special access proceeding. Competition provided by competitive carriers that often rely on wholesale inputs offers the benefits of additional choice to an enormous number of small- and medium-sized businesses, schools, government entities, healthcare facilities, libraries, and other enterprise customers. We therefore take these actions to protect consumers, preserve the extent of existing competition, and facilitate technology transitions. These actions will benefit the public by ensuring that as technology transitions proceed, end users do not lose service and continue to have choices for communications services. We are not today protecting competitive carriers; rather, we act to preserve their contributions to the market, which can include lower prices, higher output, and increased innovation and quality.

(a) Scope of Section 214(a) Discontinuance Authority and Wholesale Services

102. *Overview and Background.* In this section, we provide guidance and clarification concerning the circumstances in which the statutory obligations of Section 214(a) of the Act apply to a carrier's discontinuance of a service used as a wholesale input by one or more other carriers. Consistent with Section 214(a) of the Act and our precedent, we clarify that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. The Commission has previously equated ''community, or part of a community'' with the using public. We also clarify that a carrier may discontinue a service used as a wholesale input so long as it either (a) obtains Commission approval via the Section 214 process, or (b) determines that there will be no discontinuance, reduction, or impairment of service to end users, including carrier-customers' end users. As we explain in detail below, under the statute and our precedent it is not enough for a carrier that intends to discontinue a service to look only at its own end user customers. Instead, the carrier must follow the process established by statute and precedent for obtaining approval if its action will discontinue, reduce, or impair service to a community, or part of a community—including service provided to the community by the discontinuing carrier's carrier-customer. Thus, we explain that in order to comply with its obligations, a carrier discontinuing service—whether that carrier is an incumbent or a competitive carrier—must carefully determine whether its actions will, in fact, discontinue, reduce, or impair service to end users.

103. We provide clarity and certainty for carriers seeking to transition technologies while continuing to protect the public in the manner mandated by Congress. We find that this clarification is necessary to fortify the Commission's ability to fulfill its critical statutory role in overseeing service discontinuances under Section 214 of the Act, which requires carriers to obtain a certificate from the Commission ''that neither the present nor future public convenience and necessity will be adversely affected'' by the carrier's plan to discontinue service to a community or part of a community. Section 214(a) and our implementing rules were designed to protect retail customers from the adverse impacts associated with discontinuances of service, and they ensure that service to communities will not be discontinued without advance notice to affected customers, opportunity to comment, and Commission authorization. Section 214(a) and our implementing rules ensure that the Commission has the information needed to determine whether the present or future public convenience and necessity will be adversely affected by the carrier's action. Our rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, ensure appropriate oversight by the Commission of such changes, and provide an orderly transition of service, as appropriate. As the Commission has stated in a prior enforcement action related to the Section 214 discontinuance process, ''[u]nless the

Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives.''

104. Our actions will help to ensure that before service that benefits a community is discontinued, reduced, or impaired, the Commission is able to conduct a careful evaluation of whether that action is consistent with the public interest. Competitive LECs are concerned that they will lose the ability to access the last-mile facilities necessary to serve their customers if incumbent LECs discontinue TDM-based services when transitioning from TDM to IP-based services. Several commenters state that discontinuance of wholesale services used by competitive LECs will necessarily, or is likely to, result in a discontinuance of service to retail end users. We address these concerns in the context of Section 214(a) and precedent by emphasizing that carriers must consider the impact of their actions on end user customers, including the end users of carrier-customers.

105. We reiterate that our intent is to fulfill our statutory duty to safeguard the public interest while also facilitating technology transitions and that ''[t]o say that section 214 applies does not mean that section 214 approval will be withheld.'' We also recognize that a carrier's discontinuance, reduction, or impairment of a wholesale service may not always discontinue, reduce, or impair service to retail end users. Rather, we emphasize that a carrier must undertake a meaningful evaluation of the situation, as discussed in greater detail below.

106. Our decision will ensure that the Commission is informed and able to fulfill its statutory duty with respect to discontinuances, reductions, or impairments of service used as a wholesale input, but it also ensures that carriers need not file an application where no such discontinuance, reduction, or impairment occurs. In addition, Section 214(a) states that no authorization is required ''for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.'' Thus, our action is not in tension with commenter assertions that retail services are not necessarily discontinued, reduced, or impaired by changes in wholesale service, and that there is little evidence to support a conclusion that retail services are discontinued, reduced, or impaired by such changes. We note that we find AT&T's assertion that discontinuance of service to competitive LECs' customers would ''rarely be true'' to be in tension with its separate statement that it cannot be expected to know how its wholesale customers' end users would be affected by a service discontinuance. We further address commenters' arguments that replacement services may be available to carrier-customers such that service to retail end users may not be affected *infra* at para. 116. We do not prejudge whether and when a discontinuance occurs, and instead we simply reinforce that Section 214 mandates that our approval process be followed when it does.

107. Because our careful review of Section 214(a) and precedent leads us to adopt the clarification articulated above, we find it unnecessary to adopt the rebuttable presumption proposed in the *NPRM.* We proposed establishing a rebuttable presumption that ''where a carrier seeks to discontinue, reduce, or impair a wholesale service, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to section 214(a).'' In the *NPRM,* we proposed that this presumption would be rebutted where it could be shown that either: (i) Discontinuance, reduction, or impairment of the wholesale service would not discontinue, reduce, or impair service to a community or part of a community; or (ii) discontinuance, reduction, or impairment of the wholesale service would not impair the adequacy or quality of service provided to end users by either the incumbent LEC or competitive LECs in the market. We see no need to create a new legal mechanism with the potential to unnecessarily delay technology transitions when the clarification that we adopt is sufficient to ensure that we are able to fulfill our obligation under Section 214(a) to protect the public, while continuing to facilitate these transitions.

108. *Precedent.* We take this action pursuant to Section 214, the Commission's implementing rules, and precedent. As explained in detail below, our clarification of precedent to ensure that the public interest is protected and carriers have the clarity needed to facilitate technology transitions, particularly as discontinuances increase during these transitions, is consistent with and builds on our precedent. Section 214(a) states that ''[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.'' By the plain terms of the statute, carriers must obtain Commission approval when their actions will discontinue, reduce, or impair service to a community or part of a community, not just when their actions will discontinue, reduce, or impair their own service to their own end users. The Commission has consistently held that carrier-to-carrier relationships *are* subject to Section 214(a), and that prior Commission approval is required when a carrier seeks to discontinue service that another carrier uses to provide service to the community or part of the community if discontinuing, reducing, or impairing that service will discontinue, reduce, or impair service to the carrier-customer's retail customers.

109. In *Western Union,* the Commission addressed the purpose of the Section 214(a) notice and discontinuance requirements, finding that they ''are directed at preventing a loss or impairment of a service offering to a community or part of a community without adequate public interest safeguards.'' Similarly, in that decision the Commission stated that ''[i]n determining the need for prior authority to discontinue, reduce or impair service under Section 214(a), the primary focus should be on the end service provided by a carrier to a community or part of a community, *i.e.,* the using public.'' Our clarification is consistent with these statements precisely because they focus on impact on the using public and are directed to preventing a loss to the end-user community without adequate safeguards. Notably, *Western Union* also states that the Commission ''consider[s] carrier-to-carrier interconnection relationships to come within the context of Section 214(a),'' demonstrating that carrier relationships can be cognizable within the scope of Section 214(a). The Commission found that ''for Section 214(a) purposes, we must distinguish those situations in which a change in a carrier's service offerings to another carrier will result in an actual discontinuance, reduction or impairment to the latter carrier's customers as opposed to a discontinuance, reduction or impairment of service to only the carrier itself.'' Under the particular set of facts at issue in *Western Union,* the Commission found that the carrier-customer failed to show how its claims of increased costs and loss of operational flexibility as a result of the

upstream carrier's actions would result in a loss or impairment of service to the carrier-customer's retail end users. This conclusion does not foreclose the possibility that the impact of a carrier's actions on a carrier-customer's ability to serve its end users *could* constitute discontinuance. To the contrary, it simply was a finding that the end user community simply had not undergone a discontinuance *under the facts of that case.* Consistent with *Western Union,* we recognize that a carrier's actions can result in a discontinuance, reduction, or impairment of service to the end-user community via impact on a carrier-customer's ability to serve that community, depending on the particular facts and circumstances at issue.

110. In *Lincoln County,* the Commission again considered the question of when a discontinuance under Section 214(a) occurs. The Commission noted that ''[h]ere we have one carrier attempting to invoke Section 214(a) against another carrier'' and that ''[t]he concern should be for the ultimate impact on the community served.'' The Commission further stated that ''for Section 214(a) purposes, we must distinguish those situations in which changes . . . will result in an actual discontinuance, reduction or impairment to the latter carriers' [*i.e.,* carrier-customers'] customers as opposed to a discontinuance, reduction or impairment of interconnection to only the carrier itself,'' and found that an alternate routing reconfiguration did not impair service to the community served by the carrier-customer. Again, this holding shows that there was not a discontinuance under the particular facts of the case. The Commission's decision in *Lincoln County* shows that ''an actual discontinuance, reduction or impairment to the [carrier-customers'] customers'' as a result of the upstream carrier's actions *would* require a discontinuance application. As noted in para. 115 below, we maintain the distinction, highlighted in both *Western Union* and *Lincoln County,* between situations in which a discontinuance, reduction, or impairment of service will result in an actual discontinuance, reduction, or impairment to the carrier-customer's retail end users and situations where the actions will discontinue, reduce, or impair service to only the carrier-customer itself.

111. In *Graphnet,* the Commission again addressed the issue of whether a carrier violated Section 214(a) and stated that ''in situations where one carrier attempts to invoke Section 214(a) against another carrier, concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the carrier itself.'' The Commission found that service to a community or part of a community ''was not discontinued, reduced, or impaired *in this instance''* where domestic traffic was routed through Canada but no service disruption was noted. Thus, the Commission merely found that there was not a discontinuance based on the particular facts in that case, *i.e.,* there was not a reduction or impairment of service to the using public.

112. Our clarification finds especially strong support in *BellSouth Telephone.* In that proceeding, the Commission specifically rejected BellSouth's argument that Section 214 authorization is not required to discontinue certain service because it was only discontinuing service to its carrier-customers. The Commission again emphasized that ''[i]f, for example, a discontinuance, reduction, or impairment of service to the carrier-customer ultimately discontinues service to an end user, the Commission has found that § 214(a) requires the Commission to authorize such a discontinuance.'' It also found that, under the facts at issue, a Section 214(a) application and evaluation *was* necessary prior to service discontinuance to determine if the impairment of service to the carrier-customer's end users will adversely affect the present or future public convenience or necessity. The Commission further noted that it would evaluate BellSouth's arguments for approval and the impact of such discontinuance on end users in the proceeding on that application.

113. Therefore, we reject arguments that a carrier need not ever seek Commission approval for discontinuance of service to a carrier-customer. As explained above, these arguments ignore the fact-specific nature of the conclusions in those proceedings, and they overlook *BellSouth Telephone.* We also find that our clarification is fully consistent with and strengthens the Commission's finding in these cases that it must distinguish between discontinuances, reductions, or impairments of service that will result in the discontinuance, reduction, or impairment of service to a community or part of a community and those that will not have such an impact on the using public. Discontinuance, reduction, or impairment of wholesale service is subject to Section 214(a), and prior authorization is required when the actions will discontinue, reduce, or impair service to retail customers, including carrier-customers' retail end users. In such cases, a 214 application is necessary to determine if the impairment of service to the carrier-customer's end users will adversely affect the present or future public convenience or necessity.

114. *Required Evaluation.* We clarify that carriers must assess the impact of their actions on end user customers to prevent the discontinuance of service to a community without adequate public interest safeguards, including notice to affected customers and Commission consideration of the effect on the public convenience and necessity. Specifically, carriers must undertake a meaningful evaluation of the impact of actions that will discontinue, reduce, or impair services used as wholesale inputs and assess the impact of these actions on end user customers. This meaningful evaluation must include consultation directly with affected carrier-customers to evaluate the impact on those carrier-customers' end users. If their actions will discontinue service to any such end users, Commission approval is required. Commission approval is not required, however, for a planned discontinuance, reduction, or impairment of service: (i) When the action will not discontinue, reduce, or impair service to a community or part of a community; or (ii) for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided. Consistent with the text of Section 214(a) and precedent, a carrier should not discontinue a service used as wholesale inputs until it is able to determine that there will be no discontinuance, reduction, or impairment of service to a community or part of a community of end users, including carrier-customers' end users, or until it has obtained Commission approval pursuant to Section 214(a).

115. The framework articulated above maintains the distinction between discontinuances, reductions, and impairments that affect a community or part of a community (*i.e.,* end users) and those that only affect carrier-customers. The Commission will also continue to distinguish discontinuance of service that will affect service to retail customers from discontinuances that affect only the carrier-customer itself when considering applications for discontinuance of wholesale service and determining whether the discontinuance will adversely affect the public convenience and necessity. Thus, in undertaking this evaluation, the carrier's focus must be on impact to the using public. Our clarification therefore ensures that, consistent with the statute and precedent, a carrier *fully* evaluates

whether there will be a discontinuance, reduction, or impairment of service to a community or part of a community, including a carrier-customer's retail end users. When the carrier can determine with reasonable certainty that there will be no such impact on the community or part of the community, Commission approval is not required and the carrier may proceed.

116. When assessing whether a carrier's actions will result in discontinuance, reduction, or impairment of service to a carrier-customer's retail end users, consideration of whether replacement wholesale services are available to the carrier-customer from other sources is warranted. If such replacement services are reasonably available to the carrier-customer, retail end users may not necessarily experience a discontinuance, reduction, or impairment of service. However, we caution that bare speculation will not be sufficient to establish the necessary evaluation has occurred, and the carrier must have some basis for concluding that such alternatives will not result in discontinuance, reduction, or impairment of service to the carrier-customer's end users. Some commenters assert that retail customers will not be affected because adequate replacement or alternative services will typically be available independent of the wholesale service being discontinued, reduced or impaired. AT&T also argues that competitive LECs can ''purchase or provide for itself a substitute,'' for example by obtaining bare copper loops and utilizing their own electronics to provide service. We caution that such unsupported, blanket assertions will not be sufficient to establish the necessary evaluation has occurred. Moreover, the fact that there are other carriers in the market and other services are, or may be, available to a carrier-customers' end users does not eliminate a carrier's obligation to seek Commission approval and provide notice when its actions will discontinue, reduce, or impair service to retail customers. Consistent with precedent, any discontinuance, reduction, or impairment of service to the using public must be approved by the Commission pursuant to Section 214, and the Commission will consider whether there are adequate substitutes in the market; in such cases, the existence of alternative services ''does not obviate the need for a section 214 finding.''

117. For example, many enterprise customers receive nationwide voice and other low-speed services from competitive LECs that depend upon wholesale voice inputs that combine local loops, switching, and transport. If such commercial wholesale platform services are discontinued, then this would constitute a discontinuance, reduction, or impairment to the enterprise end users if the competitive LEC carrier-customer cannot readily obtain a replacement input that would allow it to maintain its existing service without reduction or impairment. If, on the other hand, the competitive LEC could maintain its existing service through use of alternative inputs without material difficulty or costs that would necessitate discontinuance, reduction, or impairment as to its end users, then the incumbent LEC's action would not constitute a discontinuance for which an application is necessary to that set of end users. We recognize that rate increases alone do not trigger a Section 214 application and that the issue of whether rates for a service are just and reasonable is distinct from the issue of whether a discontinuance requires Commission approval. However, we disagree with commenter assertions that this principle is in conflict with our decision here, which addresses a carrier's Section 214 obligations only when: (1) The carrier ceases to provide service used by a carrier-customer as a wholesale input; (2) that discontinuance potentially adversely impacts a community; and (3) the carrier is not merely implementing a rate change for services that will remain available. Other commenters also assert that rate increases that simply increase a customer-carrier's costs do not discontinue, reduce, or impair service to a community or part of a community and are not a basis for requiring Section 214 applications. In these circumstances, prior Commission approval may be required if the increased cost to the carrier-customer due to the loss of a service input is such that it causes the carrier-customer to exit the market or materially and negatively change the services offered in the market such that there is a discontinuance, reduction, or impairment of service to end users. As the Commission has previously stated, ''where the technical or financial impact on the carrier customer is such that it would lead to discontinuance or impairment of service to its customers, such considerations may establish that Section 214 authorization is required.'' The Commission further found that the decision in *Western Union* does not preclude ''the use of technical or financial factors in determining the applicability of Section 214 to service withdrawals to carrier customers'' and ''taken in context with the entire discussion of this issue, it is clear that the intent in Western Union was merely to exclude technical or financial considerations when their impact was limited solely to the carrier customer, and did not affect the carrier customer's ability to continue to provide service to its customers.'' Accordingly, we find that financial and technical factors affecting the carrier-customer may be relevant to determining the impact of a planned discontinuance on the retail end-user for purposes of deciding whether Section 214(a) authorization is required. Of course, the ultimate test always will be the impact on the community or part of community affected, not merely on the carrier-customer.

118. We disagree with commenters who assert that incumbent LECs are not in a position to determine whether discontinuing wholesale service will discontinue service to competitive LEC retail customers or are otherwise unsure of the impact on the community when they seek to discontinue wholesale service. These commenters further argue that, if we were to adopt the rebuttable presumption proposed in the *NPRM,* carriers will be required to seek Commission approval and file Section 214 applications for the majority of wholesale discontinuances. As noted above, we do not adopt the rebuttable presumption or a ''process for rebutting the presumption.'' Rather, we are providing greater clarity regarding the scope of the existing duty under Section 214. Obtaining approval for a discontinuance is a clear statutory obligation. If a carrier is not able to determine whether discontinuing wholesale service will discontinue service to its carrier-customers' retail end users, that carrier cannot be sure that it is not discontinuing service to a community or part of a community and it should not discontinue the wholesale service until it is able to make such a determination or until it has obtained Commission approval pursuant to section 214(a). Further, this argument overlooks avenues of information available to carriers about their carrier-customers' service. For example, Windstream states that ''[w]hen Windstream orders channel terminations for last mile special access services, it must specify the end points of those services'' and ''[t]he ILEC has those end point locations.'' Windstream further asserts that, ''[w]ithin a wire center, the ILEC should be able to determine with a high degree of accuracy whether that location is its own switching office, the switching office or point of presence of a third

party carrier, a carrier hotel, or an end user premises.'' In an analogous context, CenturyLink states that it is able to notify affected telephone exchange service providers of proposed copper retirement by email, ''with detailed information, including the Circuit ID, cable and pair numbers, and impacted addresses.''

119. We emphasize that carriers must evaluate whether an application is required using all information available, including information obtained from carrier-customers. To be a thorough evaluation that would support a conclusion that no application is required, this must include at a minimum examining all information reasonably available to the carrier and reasonable efforts to ascertain the impact on retail end users. Nevertheless, we recognize that there may be times when a carrier, even after a thorough examination, is unable to determine the impact of its actions on a carrier-customer's end users. As a result, we clarify that when such information cannot be obtained from any sources, including carrier-customers, after an exercise of reasonable effort, the carrier may permissibly conclude that its actions do not constitute a discontinuance, reduction, or impairment of service to a community or part of a community with respect to end users of its carrier-customers and need not file an application for Commission approval on that basis. We anticipate that in an enforcement proceeding concerning whether a carrier discontinued, reduced, or impaired service without approval required by Section 214(a) (whether in response to a complaint from a third party or on our own motion), such efforts would be at issue. Some commenters argue that the proposed rebuttable presumption would require applications in many cases, but the statutory command of Section 214(a) does not depend on the frequency with which it applies (and, in any event, more frequent submission of applications would tend to show the importance of the statute's application in order to ensure that communities are protected in the event of a discontinuance, reduction, or impairment of service). In any event, more frequent submission of applications would tend to show the importance of the statute's application in order to ensure that communities are protected in the event of a discontinuance, reduction, or impairment of service). As noted above, we do not adopt the rebuttable presumption or a ''process for rebutting the presumption.'' Rather, we are providing greater clarity regarding the scope of the existing duty under Section 214. The Commission will continue to address such applications expeditiously. The Commission will continue to address such applications expeditiously. We note that some commenters argue that this process should be modified, and we seek comment on proposed changes to this process in the attached FNPRM.

120. Our clarification is necessary to ensure that all carriers—including both incumbent LECs *and* competitive LECs—meet their Section 214(a) obligations when a carrier discontinues a service, the Commission is able to fulfill its obligations under Section 214(a), and carriers have the clarity and certainty needed when carrying out technology transitions. Otherwise, the Commission may not be informed prior to carrier actions that discontinue, reduce, or impair service to retail end users due to the discontinuance, reduction, or impairment of a service taken by carrier-customers, actions that potentially adversely affect the present or future public convenience and necessity. Nothing stated herein excuses carrier-customers from the requirements of Section 214(a). For instance, carrier-customers that discontinue, reduce, or impair service to retail end users as a result of the elimination of a wholesale input must also comply with Section 214(a) of the Act and the Commission's implementing rules, even if the carrier that eliminates the wholesale input also is subject to the same requirements. This helps ensure that all affected retail end users are properly notified and that the Commission is able to fulfill the duties assigned by Congress. The Commission normally will authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected. Further, carrier-customers and retail end users might not receive adequate notice or opportunity to object when such actions will discontinue service to carrier-customers' retail end users. The clarification that we adopt today does not excuse carriers from any existing applicable legal duties, including obligations under the Act, and their tariffs and terms of service unless and until modified. We therefore recognize that carrier-customers may learn of changes to tariffed carrier services through updated tariff filings. However, we note that not all carrier services are tariffed services, and the notice period before the tariff change goes into effect is very short. AT&T also argues that the Commission need not address any rules regarding notice in this area because the network change notice rules, sufficiently cover notice matters and contracts and negotiation are sufficient to address early termination fees. However, AT&T fails to recognize the distinction between parts 51 and 63 of our rules. For instance, there are circumstances when a carrier will file a Section 214 application under part 63, but not a copper retirement notification under part 51. Section 214 does not permit carriers to simply avoid filing applications for approval of discontinuances because they did not look into the impact of such discontinuances. This requirement ensures that retail customers do not suffer lapses in service. Waiting until after a carrier discontinues service to determine if retail end users had adequate service substitutes could adversely affect those retail customers. Commenters' arguments that incumbent LECs do not necessarily know how the discontinuance of wholesale services will affect the retail customers of competitive LECs that rely on those services further fuel our concerns that, in the absence of clarifying and establishing a clearly articulated obligation on the part of carriers to assess the impact of their planned actions on carrier-customers' retail customers, carriers may mistakenly assume that their discontinuance, reduction, or impairment of wholesale services will not discontinue, reduce, or impair service to carrier-customers' retail customers, and carriers will discontinue those services without complying with Section 214 and the Commission's rules and precedent.

121. We find AT&T's assertion that carrier-customers should bear the burden of persuasion that discontinuance of wholesale service will discontinue service to a community to be inconsistent with the language of Section 214(a) and precedent, which put the burden on the carrier discontinuing service. Carriers must fully evaluate the impact of their actions and determine whether Section 214 requires that they file applications prior to implementation. The clarification we provide acknowledges that carrier-customers have information that will likely be useful to carriers when determining the impact of their actions on carrier-customers' retail end users. Nevertheless, the statute clearly places the compliance obligation on the carrier to seek approval if necessary before it proceeds. Evaluating whether approval

is required is a necessary predicate to fulfilling this obligation. And we have consistently held that carrier-to-carrier relationships are subject to Section 214(a) and that carriers must obtain Commission approval to discontinue service used as a wholesale input by another carrier if its actions will discontinue, reduce, or impair service to a carrier-customers' retail end users. As a result, the obligation properly falls on the carrier seeking to discontinue service. That said, as noted above, we recognize a burden of production on carrier-customers when the discontinuing carrier seeks information relevant to making the determination of a discontinuance's impact on end-user customers (*i.e.,* customers should respond to carriers if and when they are contacted).

122. Moreover, we disagree with AT&T's assertion that the Commission's decision in *Graphnet* supports a finding that the burden of persuasion should be placed on the competitive LECs. In *Graphnet,* the Commission considered a complaint that a carrier violated Section 214(a) and failed to seek Commission approval prior to reducing or impairing service. Although the Commission determined that the carrier did not violate Section 214(a) and that the carrier-customer failed to show that there would be a discontinuance, reduction, or impairment of service to the using public, the Commission did not conclude that carriers need not make such a determination regarding the effects of their actions when deciding whether Commission approval is necessary prior to implementing changes.

123. That said, we do not agree with commenters that argue we should adopt more prescriptive requirements to ensure that carriers have met their obligations under Section 214(a). For example, some commenters have proposed requirements that: The carrier submit documentation or a certification to the Commission identifying and providing the basis for its conclusion that the carrier has adequately rebutted the presumption, the carrier submit *prima facie* evidence that it has rebutted the presumption, and the carrier provide notice of such submissions and opportunity to comment. We are not adopting a rebuttable presumption, but rather clarifying the scope of an existing duty under Section 214 that functionally leads to the same result: A considered decision as to the impact of an action on the community. Regardless, we find that it is not necessary for carriers to submit information to the Commission when it determines that a Section 214 application is not needed because its actions do not discontinue, reduce, or impair service to the community or part of the community. We agree with other commenters that argue that the burdens of the suggested obligations would exceed the benefits and we do not want to unnecessarily delay technology transitions. The Enforcement Bureau will investigate potential carrier violations of Section 214(a) and our implementing rules and will pursue enforcement action when necessary. End users and carrier-customers will have incentives to monitor compliance, and thus we anticipate that any issues of potential noncompliance are likely to be brought to our attention. We encourage carriers to ensure that they undertake the necessary evaluation in a systematic way, and to be diligent and thorough when making these determinations. If this approach proves unsuccessful, we will revisit this decision.

124. Our decision today will be less burdensome for carriers than the proposed rebuttable presumption and properly balances burdens with our goals of protecting the public interest and supporting technology transitions. AT&T argues that the proposed rebuttable presumption would impose enormous costs on incumbent LECs to the detriment of the public and will ''tax the resources of both carriers and the Commission.'' AT&T also argues that this will cause unacceptable delay that will strand incumbents' resources while the Commission rules on each application and will cause adverse effects on the deployment of next-generation services that will ultimately harm consumers. AT&T seems to base its arguments on the erroneous assumption that every discontinuance of wholesale service will require Commission approval. We have articulated above the circumstances in which an application is not required. AT&T further includes the procedural burden of a ''case-by-case adjudication to rebut the presumption'' in its burden assessment. We do not adopt the rebuttable presumption or procedures to rebut the presumption and, in fact, we allow the carrier to determine through its own internal processes whether Commission approval of its actions is necessary. We have also sought to minimize burdens and cost, and facilitate technology transitions, by not requiring carriers to submit documentation or certifications to the Commission regarding their determination that no Section 214 filing is required.

125. *Other Issues.* We decline to adopt an irrebuttable presumption that discontinuance of a wholesale service necessarily results in a discontinuance, reduction, or impairment to end users. Such a presumption would require approval even where the carrier establishes that there is no actual discontinuance, reduction, or impairment to end users. We instead determine that our goals of protecting the public interest while facilitating technology transitions are best served by emphasizing and applying Section 214 and precedent, with some additional clarification and direction for carriers. The approach we adopt today better distinguishes situations in which Commission scrutiny is warranted under Section 214 because of potential negative impacts on retail users from situations in which scrutiny is not necessary because there is no similar risk of harm to end users. Further, our decision will be less burdensome for carriers than an irrebuttable presumption, as it does not presume that Commission approval is necessary in every case. We therefore prefer to take the more modest approach here that emanates from our longstanding precedent and the clear text of the statute.

126. We find unwarranted the concern that the proposed rebuttable presumption would provide an opportunity for incumbent LECs' competitors ''to abuse the section 214 process to challenge changes in service that have little impact on end-user customers'' and are inappropriate for adjudication under Section 214. Under our decision, nothing in the Commission's Section 214 process will materially change: Carriers must assess the impact of their actions on the community and determine whether an application for Commission approval is required, the Commission will oversee the 214 process and ensure that any abuses are swiftly addressed, and the Commission will not consider objections to discontinuance applications that our precedent makes clear are not appropriate. The only change is that we have made clear that carriers cannot assume their actions have no impact on the community; they must undertake some internal process to determine whether a Section 214 filing is required.

127. In addressing the proposed rebuttable presumption, some incumbent LECs expressed concern that costs and delays associated with waiting for Commission approval may impede their plans to move to IP-based services and assert that this process, and its accompanying costs and delays, are not in the public interest. However, concerns about delays are misplaced. First, as we make clear, all situations

will not require a Section 214 filing. Second, even if—after undertaking the required evaluation—a carrier concludes it is required to file a Section 214 application, that application will be granted 31 or 60 days after the Commission releases public notice of the application filing, pursuant to our existing practices, unless the Commission removes the application from streamlined processing. In the FNPRM accompanying this Order, we seek comment on whether to alter these time periods. Further, our actions are consistent with the statutorily mandated goal of ensuring that the public not suffer discontinued, reduced, or impaired service without Commission oversight.

128. We reject the suggestion that we should not ''equate the robustness of retail competition with the availability of retail service'' when interpreting Section 214(a). This sets up a false dichotomy. AT&T attempts to suggest that the extent of retail competition is beyond the ambit of Section 214, based on the fact that ''Congress added the 'discontinue, reduce, or impair' portion of section 214(a) during World War II, when telephone service was still provided to communities on a monopoly basis.'' But Congress enacted a forward-looking statute that does not tie the relevant evaluation to the specific market conditions of the monopoly era. The text of the statute simply states that ''[n]o carrier shall discontinue, reduce, or impair service to a community'' absent approval. The statute does not say, as it could, that ''no carrier shall discontinue, reduce, or impair *the only service available* to a community.'' Moreover, the availability of substitutes is explicitly a part of our evaluation of whether an application should be granted. Section 214(a) is not written to apply only to loss of a monopoly market. In fact, Section 214(a) is concerned with discontinuances, reductions, and impairments of any service to a community or part of a community. Moreover, we find that assessing the effect of discontinuances on competition in the market and its resulting effect on consumers further ensures that the Commission is able to make the determination required by Section 214 regarding whether the public convenience and necessity will be adversely affected by the discontinuance. Our actions here help to protect the public interest and minimize harm to consumers by preventing potentially abrupt discontinuances of service and preventing harm to competition that would ultimately harm the public. These actions also provide clarity and certainty to carriers during this time of technology transitions.

129. We reject ITTA's proposal that we ''adopt a safe harbor to limit liability'' pursuant to which ''if the ILEC [or other carrier] determines in the process of conducting its evaluation that'' its action ''would not impact its own retail end users (assuming, hypothetically, that it had retail end users that would be implicated), then no discontinuance application would be required.'' Adopting such a safe harbor would be tantamount to reversing the clarification that we adopt because it would foreclose a carrier's duty to consider the full impact of its discontinuance of service on the community of end users and improperly permit it to consider only the slice of the community that it serves directly.

130. We decline to adopt the suggestions of commenters to make other modifications to the Section 214 process to benefit competitive LECs at this time. Thus, we do not interpret the statutory phrase ''community, or part of a community'' to include platform providers and other competitive LECs, in addition to retail customers, as suggested by some commenters. Such an interpretation would be inconsistent with precedent, and we decline to do so at this time. We continue to believe that our touchstone under Section 214(a) is the ultimate impact on the community served. Competitive LECs play an important role in providing (at least some of) the benefits of competition in enterprise services to many communities, but within the framework of Section 214(a) ensuring that competitive LECs remain able to compete is a means to ensure that our communications landscape serves the public, rather than an end in itself.

b. Preserving the Benefits of Competition by Maintaining Reasonably Comparable Wholesale Access to Last-Mile Services

131. Adoption of an interim rule to ensure continued access to necessary wholesale inputs will facilitate continued availability of existing competing options, reduce disputes, and provide the clarity and certainty that all carriers need to accelerate their transition to all-IP infrastructure while the Commission grapples with longer-term questions. At the same time, adoption of a flexible, balanced framework will facilitate prompt transitions by incumbent LECs. Our ultimate goal is to ensure that both incumbent and competitive LECs are able to transition to IP as promptly and effectively as possible. The central issue underlying the arguments of all stakeholders on this issue is whether incumbent LECs are subject to substantial competition in the provision of the packet-based services that will replace the services being discontinued and therefore have every incentive to price competitively to retain the wholesale business. Whether and where such competitive alternatives exist sufficient to constrain rates, terms, and conditions to just and reasonable levels is strongly disputed and the subject of complex analysis we currently are conducting in the special access proceeding. By the interim rule that we adopt today, which will remain in place only until the special access proceeding is resolved, we are establishing a balanced, flexible principle that will facilitate the ability of carriers and customers alike to navigate the transition successfully and ensure that small- and medium-sized business, schools, libraries, and other enterprise customers continue to enjoy the benefits of competition.

132. Accordingly and for the reasons discussed below, we adopt an interim rule that incumbent LECs that seek Section 214 authority prior to the resolution of the special access proceeding to transition to all-IP by discontinuing, reducing, or impairing a TDM-based special access or commercial wholesale platform service (as specified further herein) that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions. Although Section 214 applies to all carriers, the reasonably comparable wholesale access condition apply only to the services specified herein. The interim condition to which incumbent LECs must commit to obtain discontinuance authority will remain in place only for a limited time—specifically, the Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when: (1) It identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. The Commission's special access proceeding involves a comprehensive evaluation of the correct policies for the long-run concerning access to a key form of competitive inputs and technology change—special access.

Special access is the non-switched dedicated transmission of voice and data traffic between two points. The Commission's *Pricing Flexibility Order* relaxed much of this traditional price regulation for incumbent LECs in competitive areas; however, the factors used to determine the level of competition an incumbent LEC faces in a given area are the topic of much debate and will be a main focus of the special access proceedings. As explained below, the reasonably comparable wholesale access condition that we adopt applies to two categories of service: (1) Special access services at DS1 speed and above; and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage. References to wholesale inputs with respect to the reasonably comparable wholesale access condition, unless stated otherwise, applies to these two categories of services. References to wholesale inputs with respect to the reasonably comparable wholesale access condition, unless stated otherwise, applies to these two categories of services. As detailed below, we evaluate whether an incumbent LEC provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on the totality of the circumstances, and our evaluation takes into account five of the specific factors for which we sought comment in the *NPRM.* The reasonably comparable wholesale access requirement is a *condition* to a grant of a discontinuance application imposed under our authority pursuant to Section 214(c) of the Act, as further explained below. When an incumbent carrier files an application for approval to discontinue, reduce, or impair a TDM-based service, the Commission will evaluate whether approval should be granted according to the longstanding criteria by which it evaluates such applications. The FNPRM proposes articulating specific factors by which the Commission will evaluate one of the factors within its multifactor test in the context of certain technology transitions. Thus, the reasonably comparable wholesale access interim rule applies as an interim condition in addition to and separate from the multifactor evaluation of whether to grant the application. If the Commission grants approval, then by interim rule the incumbent LEC will be subject to the reasonably comparable wholesale access requirement as a condition on the grant of authority pursuant to Section 214(c) of the Act. To ensure clarity for this interim rule and to assist with compliance and enforceability, we codify the reasonably comparable wholesale access condition in a new subsection to Section 63.71 of our rules. Compliance with the reasonably comparable wholesale condition does not excuse an incumbent LEC's obligation to comply with other applicable law, including applicable provisions of the Act. To ensure clarity for this interim rule and to assist with compliance and enforceability, we codify the reasonably comparable wholesale access condition in a new subsection to Section 63.71 of our rules. Compliance with the reasonably comparable wholesale condition does not excuse an incumbent LEC's obligation to comply with other applicable law, including applicable provisions of the Act.

133. The Commission received many comments on maintaining wholesale access. Competitive LECs, industry and consumer advocacy organizations, several state commissions and other government entities, businesses, schools, and healthcare facilities support the Commission's tentative conclusion to require incumbent LECs that seek Section 214 authority to provide competitive carriers wholesale access on equivalent rates, terms, and conditions. These parties also generally support the principles proposed by Windstream as an appropriate method to evaluate whether incumbent LECs satisfy the equivalency requirement for wholesale access. Some parties support the Windstream principles with modifications, as discussed below. Many incumbent LECs, ITTA, Corning, and USTelecom and other industry groups oppose the Commission's tentative conclusion and adoption of specific factors to define ''equivalent wholesale access.'' Incumbent LEC commenters argue there is sufficient competition in the wholesale access marketplace that such use of the Section 214 discontinuance process is unnecessary and will stifle the technology transitions and harm innovation. USTelecom argues that the FCC could establish a presumption that incumbent LECs are no longer dominant in most or all voice markets nationwide because competitive LECs and cable providers control over 45 percent of the market for business voice services, attempting to draw a parallel with the FCC's finding that there is effective competition for cable companies in the market for multichannel video programming (MVPD) services because the direct broadband satellite (DBS) providers have captured 34 percent of MVPD subscribers. However, we find USTelecom's comparison to be inapposite because, despite the relatively similar degrees of market share, the DBS providers do not rely on incumbent cable operators to provide their products to customers whereas competitive LECs rely on the networks and services of incumbent LECs. In addition, ''effective competition'' for cable systems is a term of art established in the Communications Act via specific tests, and such tests do not apply in the context of competition between incumbent LECs and competitive LECs.

134. We recognize the importance of preserving opportunities to continue to provide the competition that competitive LECs have brought to the enterprise market. Competitive LECs are the primary source of competition for wireline communications services purchased by enterprise customers, including government, healthcare, schools, and libraries. We note that according to the Commission's most recent Local Telephone Competition Report, competitive LECs using leased copper and fiber facilities provide substantially more business lines than cable operators. COMPTEL explains that Ethernet over Copper (EoC) services built using DS1s and DS3s as wholesale inputs allow small and medium-sized businesses to realize many of the same efficiencies of Ethernet technology that previously only were available to larger enterprise customers. Moreover, XO states that it currently provides EoC from over 565 local serving offices and to approximately 953,000 buildings. The continued existence of these competitive options enhances the ability of enterprise customers to choose the most cost-effective option for their business or organization.

135. The record contains compelling comments alleging that competitive LECs will be unable to serve their retail customers at competitive rates, terms, and conditions without reasonable access to incumbent LEC last-mile inputs. As such, their end-user customers could potentially face higher communications costs and less competitive choice. We seek to avoid the situation where a competitive LEC may irrevocably lose business as a result of the technology transitions and loss of wholesale inputs even though such wholesale inputs may ultimately be made available as a result of the special access proceeding. Although some commenters disagree, competitive LECs maintain they are still dependent on incumbent LEC last-mile inputs to serve small- and medium-sized customers. In particular, competitive LECs, which often serve their customers pursuant to long-term contracts, question whether they may continue to serve these

customers if the wholesale input prices that they relied on when negotiating their end-user contracts materially increase when incumbent LECs discontinue their legacy services, such as DS1 and DS3 special access services, and replace them with packet-based services at different rates, terms, and conditions. Competitive LECs assert that in the majority of cases there are no alternative sources for the necessary wholesale inputs, and the incumbent LEC rates for proposed replacement services are unreasonably high. Windstream has submitted a CostQuest study that it states ''demonstrates that ILECs continue to enjoy a dramatic advantage over CLECs in the average cost per building of new last-mile fiber deployment'' and that ''[t]hus, competition for most business service customer locations likely will continue to depend on CLECs' being able to lease ILEC last-mile inputs so that they can connect their CLEC fiber backbone facilities to individual customer locations.'' As Windstream notes, a replacement of a DS1 service with a 2 Mbps Ethernet service in Kings Point, Florida would result in an 800 percent input price increase to Windstream. This type of rate increase, far beyond the bounds of reasonable comparability, may result in certain geographic areas or certain classes of customers, including enterprise consumers, government, healthcare, schools, and libraries facing fewer competitive options and potentially higher rates—ultimately harming the public that these institutions and enterprises serve.

136. We conclude that in the absence of any interim protection, competition from competitive LECs could be irrevocably lost depending on the answers to key factual questions that we are not yet able to answer. To the extent the wholesale prices of replacement packet-based services are unreasonably high, competitive LECs may be unable to modify the terms of their long-term retail contracts to recover the increased cost of the wholesale inputs without losing customers or losing revenue and potentially exiting the market, to the detriment of its customers and the public they serve. Moreover, in offering new contracts to customers, competitive LECs could in these circumstances be forced to raise their prices, so a switch to packet-based services could weaken the constraint competitive LECs place on incumbent LEC market power. These results would delay the positive effects of the technology transitions on competition and the economy. Thus, without our interim reasonably comparable wholesale access rule, the prices competitive LECs must pay for wholesale inputs could substantially increase, thereby substantially increasing the costs to their customers. We want to ensure that technology transitions continue to positively affect competition to the benefit of end-user retail customers and the economy at large. Therefore, we conclude we should limit potential temporary disruptions by requiring that wholesale inputs continue to be offered on reasonably comparable rates, terms, and conditions until the Commission develops longer-term policies for such services after a full analysis of the special access market.

137. The reasonably comparable wholesale access interim rule will ensure existing competition is not diminished by bridging the gap until the Commission's special access proceeding is complete. As stated above, data show that competitive LECs currently are the principal source of competition to incumbent LECs in the enterprise market. Competitive LECs provide broadband services that ''are vital inputs for small and medium business and enterprise users, including mobile carriers.'' The Commission recognizes the critical role that wholesale access to last-mile inputs plays in promoting competition and has emphasized the ''technology transitions should not be used as an excuse to limit competition that exists.'' In addition, the City of New York expressed concern about the cost of replacement services, ''both in its role as a consumer advocate and in its role as a large customer.'' Ad Hoc Telecommunications Users Committee also expresses concern about continued availability of competitive services from the perspective of retail customers. Moreover, Public Knowledge, NASUCA and state public service commissions also recognize that retail customers will be harmed if competitive LECs do not have sufficient access to wholesale inputs. We find these arguments persuasive that action is needed.

138. In the *NPRM,* we sought comment on whether an ''equivalent'' standard of wholesale access or a ''reasonably comparable'' standard would best achieve our goals. We now conclude that the ''reasonably comparable'' standard best comports with our goals of promoting technology transitions by all parties and maintaining competition-facilitating wholesale access to critical inputs as we continue our special access rulemaking proceeding. The approach that we adopt facilitates prompt transitions to IP by incumbent LECs because it removes issues that may otherwise pose barriers to transitions while the special access proceeding remains pending and provides as much flexibility as possible consistent with the goal of preserving competition. It also reflects our commitment to accelerated and seamless technology transitions by preserving the benefits of the competition that exists today. Because our goal is to accelerate carriers' transition to all-IP infrastructure through creating clear rules of the road, we recognize the importance of balancing the goals of preserving current levels of competition through interim wholesale access requirements pending resolution of the special access proceeding, with avoiding unduly costly impediments to competition in innovation and the technology transition. We agree with CenturyLink that the Commission's role in facilitating the transitions should not be to ''perpetuate the specific characteristics (and costs)'' associated with the legacy TDM-based services, but instead should be focused on ''facilitating a shift to the services and features that actual customers demand.'' Our reasonably comparable standard is consistent with this goal. We do not require incumbent LECs to maintain multiple networks or to forego the advantages of new technologies or services to fulfill these requirements; indeed, these competition-preserving requirements are necessary precisely because we anticipate that incumbent LECs will continue to have incentives to transition. Accordingly, and for the reasons stated herein, we reject arguments that we should adopt an ''equivalent'' wholesale access standard out of concern that it would impose potentially unnecessarily high costs on incumbent LECs that could unduly deter the pace of transitions and thereby diminish the supply or quality of replacement services.

139. We agree with CenturyLink that incumbent LECs should be required to provide no more than a ''reasonably comparable'' alternative.'' Our interim rule adopts such an approach. We recognize concerns that temporarily basing rates for higher speed IP-based services that replace discontinued TDM wholesale inputs on legacy rates, terms, and conditions may create disincentives for innovation, and we find that a moderated ''reasonably comparable'' approach best balances ensuring ongoing competition with minimizing disincentives for incumbent LECs.

140. As stated above, the record convinces us that there is a substantial risk that competition could be lost in the absence of the interim wholesale access condition that we adopt. However, we recognize that we are

acting based on the best information available at present while we are separately conducting a related in-depth analysis, and we adopt a time-limited interim measure for this reason. We will be able to evaluate the state of competition and need for regulation with far greater certainty and granularity once we complete our evaluation of the special data collection. Incumbent LECs assert that they are subject to substantial competition in the provision of packet-based special access services and have every incentive to price competitively to retain the wholesale business. Verizon asserts that ''it is better for an ILEC if . . . consumer[s] take . . . retail service from one of the incumbent LEC's wholesale customers—and therefore generates wholesale revenues for the ILEC—instead of one of the many available intermodal options competitors offer.'' The reasonableness of the incumbent LEC arguments depends on the availability of competitive alternatives to constrain the discontinuing incumbent LEC's rates, terms, and conditions for packet-based special access services to just and reasonable levels. Whether and where such competitive alternatives exist is precisely the analysis we currently are conducting in the special access proceeding. The Commission is in the process of comprehensively evaluating its special access rules by analyzing data collected from both providers and users of special access services. The deadline for responding to the mandatory collection is currently September 25, 2015. Our review of such data will provide the objective foundation for a thorough analysis of competition in the special access service marketplace. Such analysis will support our adoption of the appropriate rules and policies to ensure access to critical wholesale inputs at just and reasonable rates, terms, and conditions over time and in connection with technology changes. Given that we do not yet have the benefit of evaluation of the special access data, we find that the flexible interim approach that we adopt strikes an appropriate middle course that avoids any unduly strong assumptions about the ultimate outcome of our evaluation.

141. If we were to fail to adopt any wholesale access requirement, we risk allowing the benefits of competition to be lost irrevocably. At the same time, we have come to the conclusion that adopting an ''equivalent wholesale access'' requirement would go too far in advance of determinations yet to be made in the special access proceeding by exporting in its entirety the complex tariffed framework currently applicable to incumbent LEC DS1 and DS3 services and applying it to replacement services. Given the factual disputes that underpin the parties' arguments, which we will examine in the special access policies. access proceeding, we find that the middle course that we adopt today strikes the correct balance between preserving competition and promoting transitions by all parties during the interim period of factual uncertainty before the resolution of the special access proceeding. We agree with the New York PSC that ''legacy policies regarding wholesale access and obligations should be reviewed so as not to burden ILEC investment in more reliable, robust and innovative networks.'' We find that the standard that we adopt accomplishes this goal. We also disagree with ITTA that our actions are ''premature'' in light of any actions the Commission may take as part of that proceeding. We do not attempt to prejudge any findings in the special access proceeding in this Order. Rather, by limiting the duration and stringency of the equivalent wholesale access requirement proposed in the *NPRM,* we are striking the right balance by taking interim measures to ensure that competition does not decrease as incumbent LECs discontinue their legacy services while facilitating such transitions as the Commission continues to consider long-term special access policies. The Commission expects to release a Report and Order addressing issues raised in the *Data Collection Reconsideration Order.* We reject as improperly prejudging the final outcome of the special access proceeding CenturyLink's proposal that we adopt a ''glide path'' pursuant to which ''[r]ates for existing circuits would gradually adjust to the market rate for the IP replacement product.''

142. We reject arguments that adopting a wholesale requirement is bad policy. These arguments misconstrue the modest, time-limited nature of the requirements we adopt and fail to take into account the ''reasonably comparable'' standard that we adopt. CenturyLink cautions that ''exit approval requirements are among the very most intrusive forms of regulation . . . [and] are only appropriate when retail customers will be left without any reasonably comparable alternative.'' Since our interim rule is specifically designed to ensure the availability of reasonably comparable offerings to retail customers by ensuring competitors maintain access to reasonably comparable wholesale inputs, we find it appropriate to avoid precisely the situation that CenturyLink describes as warranting action. As discussed above, it is not yet clear whether (or where) competitive alternatives exist that are sufficient to constrain a discontinuing incumbent LEC's rates, terms, and conditions for replacement services. Absent such alternatives, competitive LECs and their customers could be left with less choice and higher prices. To ensure technology transitions do not harm our core value of competition, prophylactic action is necessary to ensure that the competition that exists today is not undermined, at least until the Commission completes its full, data-driven evaluation of the special access market.

143. Some commenters further assert that a wholesale access condition will ''micromanage'' technology decisions or network upgrades. We disagree. As discussed herein, the interim rule the Commission has established is flexible in nature and avoids rigid prescriptions. It also is limited in duration and scope so as not to overburden the incumbent LECs or impede their technology transitions. Of note, the condition applies only when an incumbent LEC discontinues a TDM special access or commercial wholesale platform service used as a wholesale input (as opposed to when it offers that service alongside new IP-based services). And within those bounds, this rule will ensure that competitive LECs continue to access wholesale last-mile inputs at reasonably comparable rates, terms, and conditions during the technology transitions while the Commission continues its review of special access market.

144. Some commenters also claim that there is sufficient intermodal competition so an interim wholesale access condition is not necessary to ensure businesses, government, and other organizations have choice, competitive prices, and innovative service offerings. Verizon and USTelecom point to the growing broadband market share of mobile and cable providers as proof that competitors are successfully serving the enterprise market over their own last-mile facilities or wholesale arrangements and therefore no additional regulation is necessary. We are encouraged by the growth in intermodal competition; however, we do not wish to prejudge the special access proceeding's comprehensive data evaluation. As discussed above, competitive LECs are dependent on incumbent LEC last mile wholesale inputs to provide service to enterprise customers, governments, schools and libraries, and other organizations. Our goal, as reiterated throughout this Order,

is to encourage the accelerated technology transitions to IP while we continue to evaluate claims about competitiveness in the special access market. Our interim reasonably comparable wholesale access condition is a light-handed, temporary regulation to avoid transition delays due to diminished competition while the Commission conducts an analysis of the special access marketplace.

145. We also decline to adopt a presumption in favor of approving discontinuance of a retail service if at least one competitive alternative is available. Under our precedent, the Commission evaluates a range of factors to determine whether to grant a discontinuance application. In evaluating an application for discontinuance authority under Section 214(a), the Commission considers five factors that are intended to balance the interests of the carrier seeking discontinuance authority and the affected user community: (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) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. As explained above, the reasonably comparable wholesale access interim rule applies as an interim condition in addition to and separate from the multifactor evaluation of whether to grant the application. We do not see a reason to deviate from these longstanding and clearly articulated criteria by which we evaluate Section 214(a) applications, which already take into account whether alternatives are available. Moreover, our existing criteria better capture and balance the public interest than would CenturyLink's proposal to give the availability of a competitive alternative new primacy. Thus, we are not convinced that this proposal is in the best interest of the public that consumes communications services, which must be our primary consideration. Further, at present we grant the vast majority of applications within 31 or 60 days of release of the Commission's public notice of the application filing, and we are not currently convinced that this process needs to be further expedited.

146. *Scope of Service Covered.* Because of our intent to prevent potential irrevocable loss of competition during the pendency of the special access proceeding, we apply the reasonably comparable wholesale access interim rule to special access services. However, we agree with Verizon that applying the reasonably comparable wholesale access condition to lower speed special access services is not consistent with our efforts to guide and accelerate the technological revolutions that are underway. Accordingly, we will only apply the reasonably comparable wholesale access condition to special access services at or above the DS1 level. While there is evidence in the record that there is a demand for commercial wholesale platform services that include voice grade circuits equivalent in speed to DS0 level special access service, there is no evidence of significant demand for stand-alone DS0 service. That is, competitive carriers have not asserted they will be unable to serve their retail customers at reasonably comparable rates, terms, and conditions without comparable access to incumbent LEC DS0 replacement services. We thus do not find on this record that competitive LEC will likely irrevocably lose business as a result of the technology transitions without access to DS0 special access wholesale services. We also note that Verizon asserts that ''the proposed equivalence standard would be particularly burdensome for providers seeking to grandfather or discontinue DS0 dedicated services'' and cites the example of its efforts to provide DS0 equivalent services over fiber in six wire centers where it has fully transitioned to a fiber network—noting that ''necessary equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than $30,000.'' We accordingly conclude that the purpose of our wholesale access condition—to promote technology transitions by maintaining current competition—is satisfied if competitors can access replacement services for discontinued TDM-based special access service at or above a DS1 level.

147. While we categorically exclude special access DS0s from the reasonably comparable wholesale access interim rule, we recognize the importance of competition in basic voice service to businesses and other enterprises. If an incumbent LEC discontinues a TDM-based wholesale voice arrangement that includes DS0 local loops, switching, and transport in a commercial unbundled network element platform (UNE–P) replacement arrangement, such as AT&T's Local Service Complete and Verizon's Wholesale Advantage (commercial wholesale platform service), under the interim rule the incumbent LEC must offer the replacement service at reasonably comparable rates, terms, and conditions. AT&T argues that before the Commission can condition the withdrawal of commercial wholesale platform services on the availability of reasonably comparable replacement services, it must address the basis for its jurisdiction over wholesale voice platform services because they are local in nature, do not appear in any interstate tariffs, and are not classified as Section 251 unbundled network elements. However, the interim reasonably comparable condition will apply to commercial wholesale platform services only in the limited context of Section 214(a) discontinuances, thereby obviating AT&T's concern about our overall jurisdiction over such services. Large, well-known companies—including Starbucks, Sears, Bed Bath and Beyond, Panera, Tory Burch, Domino's, Simon, and Scholastic—and education, community, and governmental organizations—such as YMCA of San Francisco, Scholastic, and Washington Metropolitan Area Transit Authority—have filed letters with the Commission expressing concern about the lack of competitive options if competitive LECs lose access to commercial wholesale platform service. Based on the record, we conclude that these IP-replacements services should be subject to the reasonably comparable wholesale access condition so competitive LECs may continue to serve multi-location business customers that have modest demands for voice service.

148. Certain competitive LECs depend significantly on commercial wholesale platform services. These competitive LECs offer multi-location businesses voice services at each location by combining value-added services with underlying TDM-based telephone services purchased at wholesale from incumbent LECs. These competitors also argue that the combined platform services are necessary as a complete wholesale input to serve customers with lower bandwidth needs. We are persuaded by evidence in the record that competitive LECs are unable to offer their multi-location services without access to the wholesale platform replacement service pursuant to agreements that are reasonably comparable to the entire wholesale platform agreements for the discontinued service with incumbent LECs. Moreover, the information in the record does not suggest that the costs of providing this commercial wholesale platform replacement service are significantly different than those of the TDM-based service. However, with respect to the cost to provide DS0 service, Verizon claims ''that necessary

equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than $30,000.'' That said, we reject a strict equivalency standard and deem the provision of a substitute on ''reasonably comparable'' rates, terms, and conditions most appropriate to ensure continued opportunities for competition while avoiding deterring transitions or adopting an unduly prescriptive rule. Moreover, we are not imposing any special access regulation on switching or transport elements, as they are not special access services. We also are not resurrecting any UNE–P-type regulation on these commercial offerings. Rather, we are imposing the interim reasonably comparable wholesale access condition on the commercial wholesale platform service, which includes not only switching and transport but also voice (*i.e.,* DS0 speed) loops. As such, an incumbent LEC's IP replacement for its commercial wholesale platform service must be offered at reasonably comparable rates, terms, and conditions during the pendency of the special access proceeding. This will protect against the loss of competition by multi-location enterprise customers that rely on low-bandwidth voice services during the pendency of the special access proceeding and the FNPRM.

149. This extension of our reasonably comparable wholesale access condition is necessary to further the technology transitions underway. Verizon argues that the fact that incumbent LECs offer on a ''voluntary'' basis commercial wholesale platform service ''is the best evidence these customers will continue to have options.'' We note that Section 214(a) requires carriers to obtain Commission authority to discontinue, reduce, or impair service to a community, or part of a community, without respect to whether the service was initially provided on a voluntary basis. We are encouraged by the availability of these TDM offerings in the marketplace. However, we note that Section 214(a) requires carriers to obtain Commission authority to discontinue, reduce, or impair service to a community, or part of a community, without respect to whether the service was initially provided on a voluntary basis. Our Section 214 authority addresses AT&T's assertion that before including commercial wholesale platform services under the revised Section 214 discontinuance regulations, the Commission must ''address the fact that the ILECs have been providing these services on a voluntary basis under commercially negotiated contracts since the obligation to provide the unbundled network element platform was struck down by the Courts.'' Pursuant to this Section 214 framework, we are persuaded that the temporary condition we adopt today for commercial wholesale platform services is warranted in order to provide certainty and clarity during these stages of the technology transitions, in which the perceived, looming sunset of TDM service raises questions as to whether end-user customers will continue to receive competitive options for their multi-location, low-bandwidth businesses.

150. In reaching these conclusions, we reject the argument that the interim reasonably comparable wholesale access condition ''must be limited to DS1 and DS3 special access services.'' With respect to special access, we include within the scope of the condition all special access services at or above DS1 speed to provide both competitive and incumbent LECs with greater flexibility than would be available if we limited speed intervals more rigidly. And for the reasons stated above, we reject the argument that we should exclude commercial wholesale platform services, which provide a crucial input for services on which many multi-location businesses depend.

151. *Timing.* We also reject the contention that we should establish a date certain by which the reasonably comparable wholesale access condition will sunset. Under such an approach, competition may be lost irrevocably due to the absence of workable wholesale inputs during any gap between the end of the condition and the effective date of special access rules and/or policies. Further, adoption of a date certain sunset increases uncertainty in the market by leaving all parties uncertain as to whether their rights and obligations will be altered substantially due to the passage of time in the interim of adoption of effective special access rules and/or policies. These results would be contrary to the purpose of the interim rule that we adopt herein. Additionally, adopting a date certain sunset would create an undesirable incentive for parties that benefit from the status quo in the absence of the condition to attempt to forestall completion of the special access proceeding. USTelecom argues that ''the Commission has always placed a premium on facilities-based competition over less-sustainable competition models'' and that ''competing providers would be well-served to focus on decreasing their dependence on incumbent local exchange carrier legacy facilities rather than slowing down the transition'' such that ''[a] hard deadline . . . would ultimately do more to ensure the success of the transition than would a wait-and-see approach.'' This argument presupposes that a less regulated special access market will be preferable for competition in the long run, an issue the Commission cannot resolve until it completes its review of the relevant data. In the interim, the reasonably comparable standard that we adopt best preserves the benefits of the status quo and best charts a course between the competing risks of (1) irrevocable loss of competition due to the elimination of potentially necessary inputs and (2) deterrence of transitions and facility construction due to overly prescriptive regulation. In contrast, the standard for termination that we adopt protects against the irrevocable loss of competition during the full interim period until completion of the special access proceeding and provides certainty to all parties regarding their rights and obligations until that time. We emphasize that we intend fully for the condition to be interim and short-term in nature, and consistent with that goal we have adopted a specific and foreseeable endpoint. We specifically reject arguments that we should adopt a purportedly ''interim'' standard that is unmoored from any specific and foreseeable endpoint. Moreover, the Commission and its staff is working hard to bring the special access proceeding to as rapid a conclusion as possible.

152. We seek comment in the FNPRM about whether or not the reasonably comparable wholesale access condition, as it applies to the commercial wholesale platform service, should be extended beyond the completion of the special access proceeding. Even though commercial wholesale platform services are not special access services, the timing we adopt is appropriate because the special access proceeding provides a foreseeable and definitive point in the future at which we can reassess the efficacy and necessity of the requirement that we adopt and will entail a comprehensive evaluation of competition pursuant to which the Commission intends to adopt a set of rules and/or policies that may have wide-ranging effects on telecommunications competition. We reject Granite's argument that we should not specify the term for the condition as to commercial wholesale platform services at this time and instead merely seek comment on the appropriate term. We find that this approach would leave a key aspect of our requirements too vague and that the lack of predictability inherent in this approach risks deterring

investment. We also reject Granite's argument that we should extend the condition ''until such time as the Commission adopts rules governing the economic regulations governing incumbent LEC wholesale voice services in the pending *IP-Enabled [Services]* proceeding'' in response to the Notice of Proposed Rulemaking issued in 2004 in that proceeding. In our view, the special access proceeding provides a more clearly foreseeable point at which to reevaluate appropriate duration of the reasonably comparable wholesale access interim rule as to commercial wholesale platform services.

153. *Legal Authority.* We find the Commission has authority under Section 214 to condition an incumbent LEC's authorization to discontinue TDM-based services by requiring the incumbent LEC to offer the IP replacement wholesale service on reasonably comparable rates, terms, and conditions and therefore disagree with arguments to the contrary. Section 214(c) states the Commission ''may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require.'' The Commission has the discretion to condition a 214 authorization and regularly does so when necessary to protect the public interest. Specifically, in the *December 2014 Connect America Fund Order,* we held the Commission ''has discretion to grant a discontinuance request in whole or in part, and may attach conditions as necessary to protect consumers and the public interest.'' Although the Commission could impose the reasonably comparable wholesale access condition on a case-by-case basis, we find it less administratively burdensome and clearer to the parties to include the condition as part of the Section 214 rules for a limited time until the Commission concludes the special access proceeding. We reject AT&T's claim that the Commission is obligated to consider the facts of each individual discontinuance application to apply the wholesale access condition. As stated above, we could adopt the condition on a case-by-case basis but find our approach here less administratively burdensome and clearer to parties. In a case-by-case analysis, we would find the condition necessary as to the class of applications that we identify here in order to ensure the technology transitions are successful and promote the public interest by maintaining currently levels of competition. Moreover, we find that an industry-wide rule is preferable to a case-by-case analysis as the reasonably comparable condition is time-limited and will only apply when (1) an incumbent LEC has determined that end-user customers will experience a discontinuance, reduction, or impairment of service; or (2) is unable to conclude that end-user customers will not experience a discontinuance, reduction, or impairment of service. In these limited circumstances where an incumbent LEC is seeking discontinuance authority under Section 214(a), a temporary, industry-wide reasonably comparable condition is warranted to encourage technology transitions and competitive choice.

154. Further, we find that our authority under Section 214(a) supports adoption of the reasonably comparable wholesale access interim rule. As discussed above, consistent with Section 214(a) and precedent, a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to retail end users, including a carrier-customer's retail end users. We find that as incumbent LECs transition from TDM-based services to IP, competitive LECs may be unable to obtain wholesale replacement services at reasonably comparable rates, terms, and conditions, and lack of wholesale alternatives will adversely affect its retail customers and harm the public interest. And, as discussed above, as a matter of statutory interpretation, these retail customers are part of the community identified in Section 214(a) and thus it is consistent with precedent to address their needs through Section 214 when services are discontinued. This is the best interpretation of the relevant statutory language and helps us to ensure that technology transitions do not thwart the public policy objective, enshrined in the Telecommunications Act of 1996, to promote competition. The rule changes we adopt in this rulemaking process ensure that Section 214 of the Act continues to be implemented in an effective manner throughout the technology transitions process. For these reasons, we are not persuaded by the argument that the Commission's application of Section 214 conditions to wholesale services exceeds its statutory authority.

155. Some commenters claim that our interpretation of Section 214 cannot be squared with other provisions of the Act. That is, they claim that there are statutory provisions directed to competition between carriers, including Sections 201, 202, 251, and 252, and they claim that the Commission cannot impute competition provisions into Section 214. We are not persuaded by this argument. The mere fact that the Act contains provisions designed to open markets to competition does not preclude the Commission from considering competition in the wholesale last-mile input market as part of its Section 214 public interest analysis. The wholesale access condition and requirements we adopt in this Order ensure that Section 214 is implemented in a way that maintains its effectiveness in the technology transition context. Moreover, we consider the pro-competition provisions of the 1996 Act as a whole, and thus disagree that competition is considered as a factor in Sections 251, 201, and 203 but not 214, as competitive access to wholesale inputs ultimately affects end users. We further disagree with ITTA that ''established law'' prohibits the reasonably comparable wholesale access interim condition. The Commission's ''public convenience and necessity'' mandate includes pro-competition considerations more strongly now than prior to enactment of the Telecommunications Act of 1996.

156. It is not necessary for us to satisfy the substantive and procedural requirements of Section 205 to adopt the interim reasonably comparable wholesale access condition, contrary to AT&T's assertion otherwise. Sections 205 and 214 are distinct and independent sources of authority. The DC Circuit has confirmed that ''Section 214(c) does, in [the court's] judgment, authorize the Commission to restrict'' Section 214 applicants outside of the tariffing process ''in derogation of the legislative compromise embodied in Sections 203–205'' so long as ''it has affirmatively determined that 'the public convenience and necessity [so] require.' '' AT&T asserts that the 1977 *MCI* court ''did not address, and had no occasion to address, the much different situation presented here.'' But of course courts only address the facts in front of them. Nonetheless, the decision clearly stands for the proposition that Section 214(c) authorizes conditions ''in derogation'' of Sections 203–205 so long as the Commission determines that the public interest so requires. Indeed, on many occasions the Commission has granted Section 214 applications conditioned on obligations regarding pricing. The condition applies only if an incumbent LEC voluntarily discontinues a specified service and offers an IP service in the same geographic market(s). Thus, Commission precedent regarding ''voluntary transactions'' is relevant to understanding the scope of

our Section 214(c) authority here. For the reasons articulated herein, we affirmatively determine that the public convenience and necessity requires imposition of the interim reasonably comparable wholesale access condition when certain discontinuance applications are granted, and therefore our action comports with Section 214(c) and the Act as a whole.

157. It would be incongruous for Section 205 to restrict our authority under Section 214 given the different scope of the two provisions—while our Section 205 authority applies to ''any charge, classification, regulation, or practice of any carrier or carriers,'' the reasonably comparable wholesale access condition applies *only* if a carrier voluntarily discontinues a specified service during the interim period. Additionally, we note that a number of the cases cited by AT&T specifically support the Commission's authority to take action to preserve the status quo on a limited-term basis, and our action today preserves certain key aspects of the market status quo pending completion of the special access proceeding. AT&T's contentions rest on the idea that if we preserve a status quo, it must specifically be the ''status quo in the *Ethernet* market.'' But in light of the rapidly transitioning marketplace and given our goal of avoiding the irrevocable loss of competition, we find that the relevant status quo is that of the overall market, encompassing multiple transmission technologies. This un-blinkered framework best comports with the direction in Section 214(a) and (c) to consider the public convenience and necessity. For the same reasons as articulated above with respect to Section 205, we reject AT&T's contention that the prior grant to AT&T of forbearance for certain non-TDM services poses an ''insurmountable legal bar[ ].'' Section 214(c) provides sufficient authority to condition the voluntary discontinuance of TDM-based special access and commercial wholesale platform services, and AT&T does not claim that the Commission granted forbearance as to these TDM services. Thus it simply is irrelevant whether forbearance has been granted as to IP service because the Commission has sufficient authority under Section 214 as to the discontinuance of TDM service. To conclude otherwise would improperly nullify Section 214(c) by suggesting that it must be supplemented by a second source of authority. AT&T's arguments presume that Section 205 regulation of IP would be, but for forbearance, the only permissible means to achieve the policy adopted herein. But it is not nor is it surprising that the Commission has available multiple sources of authority to implement a policy—the Commission regularly identifies multiple sources of authority to justify its actions.

158. *Enforcement.* We further find that to continue efficient network transitions and avoid possible delays, competitive LECs that believe an incumbent LEC has violated the reasonably comparable wholesale access condition must be able to seek enforcement action. We note the Commission's longstanding precedent that ''the Section 208(b)(1) deadline shall apply to . . . those matters that would have been included in tariffs but for the Commission's forbearance from tariff regulation.'' We thus agree with Windstream's argument and find that incumbent LECs should not preclude their wholesale customers that receive an IP replacement service under the Commission's reasonably comparable wholesale access condition from disclosing the rates, terms, and conditions to a regulator in the context of an action before the Enforcement Bureau. We further agree that an enforcement action subject to this prohibition would include formal complaints, informal complaints, and any mediation processes, provided the wholesale customer seeks confidential treatment of such rates, terms, and conditions.

(i) Totality of the Circumstances Evaluation for Reasonably Comparable Wholesale Access

159. Because of the flexible nature of our reasonably comparable wholesale access standard, we recognize the need for a similarly flexible case-by-case approach to evaluating the reasonable comparability of rates, terms, and conditions. This approach also is beneficial because it recognizes that circumstances in each market will vary, as will the rates, terms, and conditions associated with the discontinued service and the replacement service. We therefore adopt a ''totality of the circumstances'' test for evaluating compliance with the ''reasonably comparable wholesale access'' condition. Notwithstanding the flexible approach that we adopt, we are cognizant of the importance of providing guidance to parties. In the *NPRM,* we sought comment on six specific ground rules to facilitate the IP transition by establishing objective standards and clear criteria for applying the proposed ''equivalent wholesale access'' standard. Specifically, the *NPRM* sought comment on six principles proposed by Windstream to apply as the specific conditions of the proposed ''equivalent wholesale access'' standard when an incumbent LEC is discontinuing a legacy service. Given our adoption of a ''reasonably comparable'' standard, we find that Windstream's specific proposals—which focus on ensuring equivalency—are inappropriate for adoption verbatim. However, for the reasons stated below, in evaluating whether the reasonably comparable wholesale access requirement is fulfilled, we will consider the following questions, adapted from five of Windstream's proposals, as well as any other relevant evidence:

- *Will Price per Mbps Increase?* Will the price per Mbps of the IP replacement product exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below? Providing reasonably comparable pricing, terms, and conditions should be reasonably achievable by the incumbent LECs, as the record is replete with references to the efficiencies inherent in IP-based networks and services and the cost savings that the incumbent LECs should realize from transitioning away from TDM networks and services.
- *Will A Provider's Wholesale Rates Exceed Its Retail Rates?* Will an incumbent's wholesale charges for the replacement product exceed its retail rates for the corresponding offering?
- *Will Reasonably Comparable Basic Wholesale Voice and Data Services Be Available?* Will the price (net of any and all discounts) of wholesale voice service purchased under a commercial wholesale platform service be higher than the price of the existing TDM wholesale voice service it replaces, and the price (net of any and all discounts) for the lowest capacity level of special access service at or above the capacity of a DS1 increase?
- *Will Bandwidth Options Be Reduced?* Will wholesale bandwidth options include the same services retail business service customers receive from the incumbent LEC?
- *Will Service Delivery or Quality Be Impaired?* Will service functionality and quality, OSS efficiency, and other elements affecting service quality be equivalent or superior compared to what is provided for TDM inputs today? Will installation intervals and other elements affecting service delivery be equivalent or superior compared to what the incumbent delivers for its own or its affiliates' operations?

160. We adopt these specific questions to provide guidance as to what constitutes reasonably comparable

wholesale access and provide additional guidance on their meaning below. We will examine responses to these questions holistically, including the evidence concerning the motivation for an incumbent LEC's actions. We emphasize that no one question is dispositive, and we will evaluate each situation individually based on the totality of the circumstances, including but not limited to consideration of these questions.

(a) Will price per Mbps increase?

161. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will the price per Mbps of the IP replacement product exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below?'' A positive response would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if there is not a sound reason for a given rate increase.

162. Competitive LECs argue that this inquiry (framed as a requirement by Windstream) is necessary to ensure the continued availability of wholesale access to last-mile inputs at a cost to competitive LECs that will enable them to remain effective competitors. In addition, Windstream and Birch et al. assert that many small- and medium-sized businesses and multi-location businesses benefit from the availability of TDM-based special access services. As discussed above, incumbent LECs and other commenters object to a wholesale access condition as a whole, but do not address this specific issue. They argue that pricing conditions attached to a Section 214 discontinuance application are unlawful and would impede deployment of next generation services. However, as discussed above, we find that requiring reasonably comparable levels of wholesale access to services when incumbent LECs transition their legacy networks is necessary to preserve the Commission's core value of competition during the pendency of the special access proceeding. This specific question that we will ask goes to the price relationship between TDM and IP products that is the heart of the interim reasonably comparable wholesale access condition that we adopt.

163. We ask this question on a ''price per Mbps'' basis to emphasize flexibility for both incumbent and competitive LECs. Unlike DS1s, Ethernet services do not have to be offered in 1.5 Mbps increments. We agree with CenturyLink and other incumbent LECs that IP-based technologies allow greater flexibility in speed offerings compared to TDM. We wish to preserve this flexibility for incumbent LECs so that they can respond to market demands in deciding speeds for their Ethernet service offerings. But to preserve this flexibility and to avoid rendering the reasonably comparable wholesale access condition toothless, it is necessary to ask whether price comparability is available across the speeds that the incumbent LEC offers. This specific question that we will ask goes to the price relationship between TDM and IP products that is the heart of the interim reasonably comparable wholesale access condition that we adopt. Moreover, because we recognize speed offerings between TDM and IP may vary, incumbent LECs are able to offer IP speeds that have no TDM predecessor offering at exactly equal speeds. Because it is not possible to calculate rates solely on a ''one-to-one'' basis, it is necessary to inquire about the rate to be calculated based on a ''per Mbps'' speed of service denominator.

164. We will generally limit our inquiry regarding price per Mbps to replacement services at or below 50 Mbps. Based on the record, 50 Mbps appears to be the closest standard speed offering to a DS3 offering of 44.736 Mbps. In doing so, we reject arguments by the Wholesale DS–0 Coalition, Granite, and others that this inquiry (framed as a requirement in the *NPRM*) should not have a maximum speed. The underlying purpose of our reasonably comparable wholesale access condition is to preserve for a limited time the opportunities for competition that exist today. Inquiring about rate equivalency at any speed would go too far because it would create obligations regarding price for speeds that are not offered as TDM services and thus not related to the discontinuance of TDM services. The vast majority of the special access inputs used by competitive LECs are at or below the DS3 speed level of 44.736 Mbps. The 50 Mbps figure, as the nearest ''round number'' above the DS3 speed, is a sensible dividing line that allows incumbent LECs to offer tomorrow's speeds without price limitation while we inquire as to whether substitutes and near-substitutes for today's services remain available to competitive LECs at reasonably comparable rates. We find that this bright-line cutoff strikes the best balance between preserving the competition that exists and leaving incumbent LECs flexibility to invest in and deploy service improvements. However, if the only replacement service for a DS3 special access service available to competitive LECs is higher than 50 Mbps, then we will inquire about the next-highest-speed offering so that DS3 replacement services, which are important for competitive LECs to serve their end-user customers, are not excluded from our inquiry.

165. With respect to special access services, we believe that the incumbent LECs' DS1and DS3 generally available tariffed rates at the time of discontinuance, including discounts associated with three- and five-year term and volume discount plans, are the appropriate interim benchmark for measuring the rate relationship between IP-based replacement service and the discontinued service during our inquiry and will provide an efficient and objective measure for both incumbent LECs and their wholesale customers to determine rate comparability. We specifically will inquire about the rates, terms, and conditions associated with three- and five-year term and term-and-volume discount plans as a pricing benchmark given the fact that a significant share of special access purchases takes place at those terms and that they therefore function as reasonably representative interim pricing arrangements. We acknowledge that these pricing options still encompass a variety of different pricing arrangements. Rather than attempt to address all aspects of these varied arrangements, we will evaluate these issues as they arise and leave it to the parties to resolve these details in good faith in their negotiations. We expect that, other things being equal, we would deem it to be reasonably comparable and thus compliant with the wholesale access condition for parties to treat existing pricing arrangements as a default setting for rates for replacement services. This approach will facilitate technology transitions in the interim until the Commission completes its current review of special access regulation. To ensure that current levels of competition are not curtailed as we facilitate technology transitions, we also include within the scope of our reasonably comparable wholesale access requirement new customers and existing customers who wish to purchase additional services; reasonably comparable rates, terms, and conditions must be offered to such entities and not only to existing customers as to existing services. Finally, we will inquire whether purchasers that make volume commitments under tariffed special access discounts are being penalized through loss of a discount or through shortfall or early termination penalties

for purposes of services discontinued as a result of an incumbent LEC's technology transition. Similarly, we will inquire whether replacement services are counted toward fulfillment of a purchaser's volume commitment where TDM services have been discontinued. In both instances, it would be inconsistent with the purpose of the reasonably comparable wholesale access standard that we articulate if competitors suffer changes that are not reasonably comparable because of an incumbent LEC's unilateral decision to transition technologies. We find that anchoring our evaluation of this question concerning IP rates to DS1 and DS3 rates creates predictability, simplicity, and clarity due to the prevalence of DS1 and DS3 services on the market today. Specifically, under this inquiry, for IP services at or below 12 Mbps, we will calculate the TDM benchmark per Mbps rate based on the DS1 TDM service it offered in the area; for IP services above 12 Mbps and at or below 50 Mbps, we will calculate the TDM benchmark per Mbps based on the DS3 service it offered in the area. We adopt a 12 Mbps threshold for calculating comparable rates for replacement services based on DS1 pricing because it most closely replicates the options that exist today since it is technologically infeasible to bond DS1 special access services to provide more than 12 Mbps in capacity. We inquire about replacement services above 12 Mbps based on comparisons to DS3 prices since the only viable TDM special access option for delivering more than 12 Mbps service to a customer location is a DS3 service. We recognize that 12 Mbps is an approximate figure but nonetheless use it for convenience.

166. *Wholesale Platform Services Approach.* We recognize that this initial inquiry, which is evaluated on a per Mbps basis, is not directly relevant to commercial wholesale platform services. Thus, with respect to pricing for such services, we will focus on the inquiries below and not this first inquiry. Nevertheless, for clarity and parallelism we set forth here our benchmarking approach for such services. In contrast to our inquiry for special access services, we adopt an individualized approach to the interim benchmark for our inquiry with respect to commercial wholesale platform services. Under this approach, we will ask whether the competitive LEC is able to take the IP-replacement service at reasonably comparable rates, terms, and conditions to the service taken before discontinuance. We agree with Granite that, ''[p]arties to wholesale TDM-based voice agreements know the prices in their agreements.'' Unlike the special access services discussed above that are offered on tariffed rates, commercial wholesale platform services are non-tariffed commercial offerings. Thus, we adopt an inquiry for these services that is based on market-negotiated rates, terms, and conditions, as such an inquiry is administratively more straightforward to implement.

(b) Will a provider's wholesale rates exceed its retail rates?

167. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will an incumbent's wholesale charges for the IP replacement product exceed its retail rates for the corresponding offering?'' A positive response would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if the rate disparity is significant or if there is not a sound reason for any differences in offerings. It remains an open question whether there are suburban, remote, rural and other areas not served by cable or other modes of service where the only competition that exists at the retail level is between an incumbent LEC and a competitive LEC that needs wholesale access from the incumbent LEC in order to compete at the retail level. We recognize that competitive LECs continue to play the most significant role in competing with incumbent LECs for enterprise telecommunications business. As a result, depending on the competitive state of various markets, there may be an incentive for the incumbent to charge higher rates at the wholesale level in order to prevent or disadvantage competition at the retail level. Whether and where such competitive alternatives exist is precisely the analysis we are conducting in the special access proceeding. Absent such alternatives, competitive LECs and their customers will likely be left with less choice and higher prices.

168. We find that this inquiry is necessary to verify the offering of reasonably comparable wholesale access, which ensures that competitive LECs are able to compete. We further find that this inquiry concerning discrimination includes related costs such as the imposition of special construction charges and timing of provisioning. The guarantee of competitive wholesale access free of unreasonable discrimination has played a bedrock role in facilitating the market competition that exists today. Until we are able to reach appropriate long-term conclusions about the state of the wholesale access market in the special access proceeding, we find it necessary, as an interim measure, to inquire whether and to what degree discrimination exists between retail and wholesale customers to determine whether reasonably comparable rates, terms, and conditions are being offered.

(c) Will reasonably comparable basic wholesale voice and data services be available?

169. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will the price (net of any and all discounts) of wholesale voice service purchased under a commercial wholesale platform service be higher than the price of the existing TDM wholesale voice service it replaces, and the price (net of any and all discounts) for the lowest capacity level of special access service at or above the capacity of a DS1 increase?'' A positive response to any of these questions would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if there is not a sound reason for a rate increase. We emphasize that this pricing-related factor—given that pricing is at the heart of commercial negotiations—will be extremely important in our analysis.

170. *Pricing for data services.* We will evaluate whether the incumbent LECs price their lowest capacity level of IP-based special access service providing speeds equal to or greater than a DS1 at wholesale rates that exceed the generally available tariffed rates for DS1 services at the time of discontinuance, including discounts associated with three and five year term and term and volume discount plans—and if there is a price discrepancy, we will evaluate its scope. We find that this inquiry is important to evaluate whether competitive LECs retain access to replacements for DS1 service at reasonably comparable rates, terms, and conditions. Incumbent LECs argue that imposing specific speed and rate requirements for next generation IP-based services in parity with TDM-based technology requirements interferes with their ability to innovate and compete. We agree for the reasons stated above. At the same time, there is significant evidence in the record demonstrating a significant continued reliance upon basic service levels at this time. Therefore, to evaluate whether reasonably comparable rates, terms, and conditions are being offered, we will

focus with particularity on whether competitive LECs are offered a replacement service priced comparably to DS1 service.

171. This question is distinct from the first question articulated above because it is not calculated on a per Mbps basis; we simply ask whether the lowest capacity level at or above DS1 to be offered is offered at the DS1 rate. This more stringent component of any evaluation will help to obviate the risk that an incumbent LEC would only offer higher speed services and thereby cutoff any replacement similar to DS1s because such a change would be unlikely to constitute reasonably comparable rates, terms, and conditions. Without any focus on the price relationship of the closest IP equivalent to the current pricing for basic service, incumbent LECs could avoid a rate standard ''by simply offering only high capacity (and therefore higher priced wholesale inputs).'' We expect the efficiencies inherent in the provision of IP service will ensure that even if incumbent LECs maintain rates equal to or below TDM rates for the DS1 replacement service, the resulting rates will allow incumbent LECs to recover their investment in marginally faster IP services.

172. *Pricing for wholesale voice services.* We further will evaluate whether incumbent LECs price their replacement wholesale voice service, purchased under a commercial agreement, net of any and all discounts, greater than the price of the existing TDM wholesale voice service it replaces, and if so to what degree. We agree with Granite that both the incumbent and competitive LECs know the prices of their commercial wholesale platform services, and those prices can be readily applied to replacement products. We find this is an appropriate evaluation to promote technology transitions by helping to ensure that competitive carriers can continue to provide multi-location enterprise services pursuant to commercial wholesale platform arrangements.

173. We find this additional inquiry to evaluate the comparability of rates, terms, and conditions for commercial wholesale platform arrangements builds on the other inquiries that we adopt and our proposals in the *NPRM.* This additional language to the third question emphasizes treatment of ''basic service'' for this important service used by competitive LECs to serve a large sector of enterprise customers in many locations with low bandwidth needs. The first question discussed above is not on point for commercial wholesale platform services, since that inquiry is based on a per Mbps offering at the DS1 level and above, not a platform offering that includes loops, switching and transport. We further clarify that we will ask our other specific questions, particularly the fifth question as to whether there will be impairment in service quality or delivery, as to these commercial wholesale platform services.

(d) Will bandwidth options be reduced?

174. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will wholesale bandwidth options include the same services retail business service customers receive from the incumbent LEC?'' A negative response would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if the range of offerings is significantly more limited or if there is not a sound reason for any differences in offerings. We recognize that any wholesale access standard could be obviated ''by simply offering only high capacity (and therefore higher priced wholesale inputs).'' We will therefore ask this question as a part of our totality of the circumstances inquiry to facilitate a determination of whether rates, terms, and conditions of replacement services are reasonably comparable. We find that the existing services an incumbent LEC makes available to retail business service customers provides baseline from which to conduct our evaluation because incumbent LECs find it convenient to provide these services in the market. Sprint argues that an incumbent LEC, at a minimum, should be required to offer the same variety of speed offerings that it currently offers in TDM-based services, ''or the speed offerings of its retail IP services, whichever is greater.'' While we agree that we should evaluate the relationship between the speeds of IP offerings to retail business customers and to competitive LECs, we decline to focus our inquiry on whether incumbent LECs retain TDM-based speeds. Such an inquiry may improperly lock incumbent LECs into legacy speed offerings, which is contrary to the purpose of the flexible reasonably comparable wholesale access condition that we adopt.

(e) Will service delivery or quality be impaired?

175. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we will inquire, ''Will service functionality and quality, OSS efficiency, and other elements affecting service quality be equivalent or superior compared to what is provided for TDM inputs today? Will installation intervals and other elements affecting service delivery be equivalent or superior compared to what the incumbent LEC delivers for its own or its affiliates' operations?'' A negative response to either question would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if the level of difference is significant or if there is not a sound reason for any impairment. We are persuaded that quality of service and reliable installation and delivery are important so that wholesale customers can continue to compete. Therefore, in considering whether reasonably comparable rates, terms, and conditions are available, we will examine the factors identified by the question above. As discussed herein, competitive LECs are dependent on wholesale inputs to serve their retail customers and if the service delivery or quality of the IP replacement service is unduly impaired, these carriers likely will be unable to provide competitive services to their customers. We note the Commission addressed discrimination issues with respect to broadband Internet access service in its *Open Internet Order,* when it declined to forbear from Sections 201 and 202 of the Act for broadband Internet access service. The Commission found that broadband providers are ''gatekeepers'' to end-users of broadband Internet access service and antidiscrimination provisions are necessary to protect the public interest from harmful effects. We find a similar rationale applies in the context of the reasonably comparable wholesale access interim rule since incumbent LECs control the last-mile inputs competitive LECs need to serve their customers and technology transitions may create a predicate for discriminatory acts that could harm enterprise consumers and organizations.

176. We agree with competitive LECs and enterprise customers that at least in areas where incumbent LECs face competition only from their wholesale customers, the incumbent LECs may have an incentive to disadvantage their wholesale customers by degrading the quality of the wholesale service. Given the inherent efficiencies of IP-based service, we do not believe that this component of our inquiry—or the overall reasonably comparable wholesale access condition—will be unduly burdensome, and we anticipate that the costs of compliance generally will be lower than (or at a minimum

will not exceed) the costs of compliance with similar obligations as to TDM services. For instance, AT&T states that this technology transition ''will 'dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices.' ''

(f) Other

177. Although the Commission will consider the questions discussed above as part of the totality of the circumstances test, the Commission is not limited to these questions in its analysis and may consider other evidence. For example, in the 2011 *Data Roaming Order,* the Commission held that it would consider ''other relevant factors in determining the commercial reasonableness of the negotiations, providers' conduct, and the terms and conditions the proffered data roaming arrangements.'' Similarly, here we may consider evidence as to these and other issues provided by the incumbent LEC, competitive LEC, and other parties.

(ii) Inquiries and Requirements Not Adopted

178. *Backdoor Price Increases.* In the *NPRM,* we sought comment on whether, as a part of a wholesale access condition, to prohibit price hikes from being effectuated via significant changes to charges for network to network interface (NNI) or any other rate elements, lock-up provisions, early termination fees (ETFs), special construction charges, or any other measure. We agree that it would be a cause for concern if incumbent LECs evaded the interim wholesale access condition through improper workarounds, and emphasize that our ''reasonably comparable'' standard allows us to evaluate the totality of the circumstances, including any apparent attempts at evasion. However, given the complexity of these issues—which extend significantly beyond what otherwise was raised in the *NPRM*—and given that we are examining a number of them in other proceedings, we decline to take any additional specific actions on these issues at this time.

179. *Other Requests.* We decline to include any rate publication requirement in our evaluation of compliance with the reasonably comparable wholesale access condition. Birch proposes that the Commission require incumbent LECs to ''memorialize all of the rates terms, and conditions governing [the incumbent LEC's] Replacement Service offerings on its Web site.'' Moreover, Windstream also proposes that incumbent LECs publish the TDM rates for the services being discontinued. We do not find sufficient evidence to impose publication obligations on incumbent LECs. Given the interim nature of the reasonably comparable wholesale access condition, we are highly skeptical that a publication requirement would carry significant value despite its clear costs. In addition, we agree with CenturyLink that this requirement would go beyond merely preserving the essence of the status quo to create an obligation that does not presently exist for TDM services that are discontinued, and therefore is contrary to the overall framework and purpose of our reasonably comparable wholesale access obligation.

180. We also decline to include additional requirements to our evaluation of the reasonably comparable wholesale access condition. Specifically we decline to impose a certification requirement proposed by some commenters as it is unclear the timing of certification, and requiring certification is inherently backward-looking, *i.e.,* it is best suited to confirming that an entity has already complied with a regulatory obligation. We find that the condition we adopt to govern the discontinuance process is better suited to ensuring forward-looking, ongoing compliance on an interim basis. And we see no need at this time to adopt additional ''belt and suspenders'' methods to ensure compliance when doing so imposes costs—even if incrementally small—when it is not clear that doing so will result in any benefit. For the same reasons, we decline to include any audits or specific performance metrics. We note that in the FNPRM we seek comment on possible revisions to rule 63.71 to provide additional notice to customers that use the proposed discontinued TDM service as a wholesale input.

III. Order on Reconsideration

181. On December 23, 2014, the United States Telecom Association (USTelecom) filed a Petition for Reconsideration of the Declaratory Ruling (*Declaratory Ruling*) that accompanied the *NPRM.* For the reasons set forth below, we deny USTelecom's Petition.

A. Background

182. Along with the *NPRM,* the Commission adopted the *Declaratory Ruling,* which clarified that when analyzing whether network changes constitute a ''discontinuance, reduction, or impairment of service'' under Section 214, the Commission applies a ''functional test'' encompassing ''the totality of the circumstances.'' The Commission found this clarification was necessary in order to terminate an industry controversy that arose after Hurricane Sandy. In 2012, Hurricane Sandy destroyed much of the legacy network in the barrier islands of New York and New Jersey. The following year, Verizon proposed to serve affected customers with network facilities and services that differed in meaningful ways from those available prior to Sandy. Verizon subsequently decided to rebuild its network in Fire Island, New York with fiber. Verizon's discontinuance application relating to the NJ barrier islands currently is pending. Consumers complained the new network may not support certain third-party services and devices (fax machines, DVR services, credit card machines, medical devices, etc.) that functioned well on the legacy network. Verizon argued that because these services and devices were not described in its tariff, network changes resulting in their loss could not be considered a ''discontinuance, reduction, or impairment of service'' under Section 214(a). Verizon points out that ''[s]uch devices and services were not, however, offered by Verizon as a 'POTS feature or service capability' of its telecommunications services.''

183. In the *Declaratory Ruling,* the Commission found that ''[t]he purpose of a tariff is not to define the full scope of the service provided'' and that Congress did not intend Section 214(a) ''to allow the carrier to define the scope of 'service' via its tariff.'' The Commission further noted that ''[t]he value of communications networks derives in significant part from the ability of customers to use these networks as inputs for a wide range of productive activities,'' and ''[a]n important factor in this analysis is the extent to which the functionality [at issue] traditionally has been relied upon by the community.''

184. In its Petition, USTelecom first asserts that the *Declaratory Ruling* is procedurally infirm because the Commission's ''new'' definition of ''service'' constitutes a legislative rule for which a notice of proposed rulemaking and comment period is required under the Administrative Procedure Act. USTelecom argues that the Commission impermissibly expanded the definition of ''service'' because the Commission and several courts historically have equated tariff and contract terms with the ''service'' offered by providers. Second, USTelecom argues the ''new definition [of service] is impermissibly vague and,

instead of terminating a controversy or removing uncertainty, it creates unnecessary confusion.''

185. Several commenters support USTelecom's Petition, arguing that the *Declaratory Ruling* violates the Due Process Clause because it substantively changes the application of Section 214(a), and that therefore the Commission was required to give notice and an opportunity to comment. These commenters also agree with USTelecom's forecast that the *Declaratory Ruling* will result in a ''regulatory guessing game,'' and will create particular difficulties for small, high-cost carriers. Specifically, they argue carriers have no way of knowing every piece of third-party equipment used in connection with offered services, nor can carriers presage which third-party incompatibilities the Commission will deem requires an application.

186. Opposing commenters argue the *Declaratory Ruling* does not create a new substantive rule, but rather that the Commission declared its interpretation of an existing rule in order to provide necessary clarity. They assert that clarifications do not qualify as the type of substantive change for which a rulemaking is necessary. Several of these commenters note that USTelecom does not cite any instances where the Commission interpreted ''service'' differently from how it is defined in the *Declaratory Ruling.* They also assert that the cases relied upon by USTelecom are inapposite to its arguments. Finally, opposing commenters find USTelecom's concerns about vague and amorphous standards disingenuous, noting that the Commission articulated the specific concerns giving rise to the *Declaratory Ruling*—*i.e.,* the ability of devices and functionalities such as 9–1–1 location accuracy, alarm monitoring, medical alert capabilities, and fax machines to work on carriers' networks.

B. Discussion

187. We find that USTelecom's arguments are meritless. First, the *Declaratory Ruling* did not require a notice and comment period because it does not substantively change existing rules. The Commission's interpretation only clarified Section 214. Second, the *Declaratory Ruling* is not impermissibly vague. For the reasons set forth below, we deny USTelecom's Petition.

1. The Clarification in the Declaratory Ruling Is Not a Legislative Rule and Thus Did Not Require a Notice and Comment Period

188. USTelecom claims that the analysis set forth in the *Declaratory Ruling* is a new legislative rule requiring notice and comment under the APA. We disagree. The *Declaratory Ruling* clarified a misconception held by at least one incumbent LEC that an incumbent LEC's tariff is the sole source to which the Commission will look in determining what constitutes the ''service'' offered by the incumbent LEC. Per the Commission's rules, the Commission may issue declaratory rulings ''terminating a controversy or removing uncertainty''; therefore, its effort at eliminating confusion on this issue was entirely appropriate. The clarification in question comports with Section 214, with existing Commission regulations, and with Commission precedent. As explained in greater detail below, the *Declaratory Ruling* therefore does not constitute a legislative rule.

a. The Commission Has Never Used Tariffs To Exclusively Define the Scope of Service

189. As stated in the *Declaratory Ruling,* ''the purpose of a tariff is not to define the full scope of the service provided.'' Rather, a tariff's purpose is to provide ''schedules showing all charges for itself and its connecting carriers . . . and showing the classifications, practices, and regulations affecting such charges.'' The Commission has never stated that its evaluation of whether a ''service'' is discontinued *only* examines the service offering detailed within a tariff or contract. Nor is there anything in Section 214 or the Commission's rules establishing such limited parameters. As stated in the *Declaratory Ruling,* tariffs cannot define the scope of a ''service'' under Section 214(a) given that there are circumstances in which the Commission has forborne from tariffing requirements but in which Section 214 obligations remain intact. For example, when AT&T, Embarq, and Frontier were granted forbearance from tariffing requirements, the Commission stated, in no uncertain terms, that the services at issue remained subject to Section 214. USTelecom's preference to tether our Section 214 analysis to tariff language would yield potentially absurd results. For example, under USTelecom's view, any rate increase could be construed as a discontinuance and would therefore trigger Section 214's approval process. Such an outcome would be inconsistent with Section 214(a) and Commission precedent and is precisely why the Commission does not limit its Section 214 evaluation to the four corners of the tariff.

b. USTelecom's Reliance on Other Sources Is Misplaced

190. *The Brand X Case is Inapposite.* Given that Section 214 contains no ''clear'' law stating that service is solely defined by what a provider offers its customers, USTelecom attempts to find it elsewhere. These attempts are unavailing. For example, USTelecom cites the *Brand X* case to support its conclusion that services are strictly ''defined by the terms of its federal tariff, or in the case of telecommunications services that have been detariffed, in its contracts with its customers.'' However, in *Brand X,* neither the Court nor the Commission focused on the carrier's tariff or other contractual language in defining the service; instead, the Commission (and later the Court) explicitly relied on the consumer's point of view when determining how to classify the types of services customers receive from Internet service providers and whether consumers truly had been ''offered'' certain services at all. Therefore, *Brand X* does not support USTelecom's argument that the Commission strictly relies upon tariff language when defining services.

191. *Filed Tariff Doctrine Is Also Inapplicable.* USTelecom next turns to the filed tariff doctrine to contend that the tariff '' '*conclusively and exclusively* enumerate[s] the rights and liabilities' of the carrier and its customer.'' But it cannot show that the filed rate doctrine somehow controls the scope of Section 214(a). First, the filed rate doctrine only applies to tariffed offerings. Therefore, it is irrelevant to detariffed services under contract. Moreover, it is not clear how the filed rate doctrine could ''conclusively and exclusively'' control the meaning of Section 214(a) when the Commission has forborne from tariffing requirements in circumstances in which Section 214(a) still applies. Second, nothing in Section 214 references Section 203 or otherwise indicates Section 214 defines ''service'' to only include the written terms of a carrier's offering. As stated in the *Declaratory Ruling,* such an interpretation would be contrary to Commission precedent. Third, it is reasonable to define ''service'' differently for purposes of the filed rate doctrine and the market exit framework in Section 214 because they serve different purposes. The filed rate doctrine is intended to prevent price discrimination against end users by guaranteeing providers offer similarly situated customers equivalent terms and conditions. In that context, a rigid focus on the specific terms and conditions of the tariff is wholly appropriate.

However, Section 214 broadly directs the Commission to ensure that ''neither the present nor future public convenience and necessity will be adversely affected'' by discontinuance of service. As one commenter noted, the ''totality of circumstances'' standard detailed in the *Declaratory Ruling* does not compromise the filed tariff doctrine's non-discrimination principle. However, limiting the meaning of the term ''service'' under Section 214(a) to only what is contained in a provider's tariff could cause the public to lose services upon which it has come to rely, directly affecting the public convenience and necessity so central to Section 214. The two statutes serve distinct purposes within the Act, and USTelecom's direct comparisons are unconvincing.

c. The Declaratory Ruling Does Not Rise to the Level of Legislative Rule Under Longstanding Precedent

192. USTelecom argues that the Supreme Court's decision in *Shalala* v. *Guernsey Memorial Hospital* demonstrates that notice and comment were required for the *Declaratory Ruling.* However, the Court in *Shalala* held interpretive rules only require a notice and comment period when they adopt positions inconsistent with existing regulations. Because it merely confirms and clarifies existing precedent, the *Declaratory Ruling* does not require notice and comment under *Shalala.* USTelecom does not cite a single Commission rule or adjudication adopting a definition of ''service'' contradicted by or inconsistent with the *Declaratory Ruling.* Furthermore, much of the precedent USTelecom relies upon confirms that the *Declaratory Ruling* merely removed uncertainty and does not rise to the level of a legislative rule.

193. For example, USTelecom references several D.C. Circuit cases where the court distinguishes between interpretative rules and legislative rules. Yet in each case USTelecom cites, the court found the agency in question departed from previous rules that were well-defined. In each case, the court found the agency's shift in policy was the critical factor transforming what was ostensibly an interpretation into a legislative rule. However, in this matter, USTelecom has not identified the prior rule or decision that is purportedly inconsistent with the *Declaratory Ruling* because no such rule or decision exists. Moreover, the Supreme Court recently held that notice and comment is not required even for subsequent updates to interpretative rules. This effectively overturned much of the DC Circuit precedent upon which USTelecom relies.

194. The *Declaratory Ruling* does not contradict any existing regulations, nor does it create any new obligations for providers. It simply clarifies how the Commission analyzes discontinuance under Section 214. USTelecom's inability to identify any rule the Commission diverted from distinguishes this matter significantly from the cases USTelecom cites and is fatal to the Petition. Indeed, the only changes USTelecom identifies are speculative, including ''increase[d] delays'' and the prospect of having to seek pre-determinations from the Commission regarding what constitutes discontinuance. We conclude these concerns are overstated and that the *Declaratory* Ruling ultimately creates less work and eliminates confusion for providers in the midst of technology transitions by clarifying the circumstances in which an application is required.

195. As we have explained, USTelecom identified no previous Commission rules, interpretations, or adjudications from which the *Declaratory Ruling* deviates so substantively as to require resort to the rulemaking process. The *Declaratory Ruling* did nothing more than amplify the meaning of an existing rule. We reject USTelecom's assertion that the *Declaratory Ruling* was procedurally improper.

2. The Clarification Set Forth in the Declaratory Ruling Is Not Impermissibly Vague or Ambiguous

196. We also disagree with USTelecom's contention that the *Declaratory Ruling* is obscure. To the contrary, as explained below, the standard set forth in the *Declaratory Ruling* is straightforward, consistent with the statutory language, and consistent with Commission precedent. Additionally, for the reasons stated below, we find that USTelecom exaggerates carriers' supposed inability to identify the relevant products and services subject to Section 214.

197. *Role of Tariff Clear.* The *Declaratory Ruling* clarifies the non-dispositive role that a tariff plays in the functional test that it articulates. The *Declaratory Ruling* clearly states this standard: ''Thus, while a carrier's tariff definition of its own service is important evidence of the 'service provided,' . . . [a]lso relevant is what the 'community or part of a community' reasonably would view as the service provided by the carrier.'' The functional test in the *Declaratory Ruling* simply clarifies that if relevant evidence indicates the ''service provided'' includes features outside of the carrier's definition in the tariff, then these features are relevant to the evaluation of whether a ''service'' has been discontinued. It bears repeating that the *Declaratory Ruling* does not simply dispense with the provider's service description. Tariffs remain a relevant data point in the discontinuance analysis. The *Declaratory Ruling* does not mean ''every prior feature no matter how little-used or old-fashioned, must be maintained in perpetuity'' or that ''every functionality supported by a network is de facto a part of a carrier's 'service.' '' Finally, it does not, as USTelecom fears, mean that the community's perception ''trump[s] the language of a tariff including any limitations therein.'' To the contrary, the *Declaratory Ruling* only clarifies that a tariff is not the end of the inquiry; the community and its traditional reliance on a given functionality plays a relevant part in the analysis—along with the tariffs.

198. *Consistent With Section 214 Language.* The functional test articulated by the *Declaratory Ruling* directly stems from the terms of the statute. Congress' regard for the community is clear from Section 214's statutory language given that: (1) What triggers the prior approval provision of Section 214(a) is the discontinuance, reduction, or impairment of service ''*to a community or part of a community'';* and (2) the statute is designed to prevent harm to present and future ''*public convenience and necessity.''* Thus, rather than being solely fixated on the service provider's viewpoint, the statute itself is actually largely centered on impact on the public. While nothing in Section 214 indicates Congress intended ''service'' to mean ''as defined by the carrier,'' Congress' focus on community perception and effects is baked into the text of the statute. Therefore, the Commission's incorporation of consumer impact into the discontinuance analysis is entirely consistent with and necessary to accomplish the purposes of Section 214 and should not present a point of confusion for affected parties.

199. *Consistent With Past Commission Actions.* Furthermore, the *Declaratory Ruling's* commitment to incorporating community perception and community effects into its analysis is consistent with prior Commission actions. For example, regarding Section 214, the Commission has repeatedly stated: ''In determining the need for prior authority to discontinue, reduce, or impair service under Section 214(a), *the primary focus should be on the end*

service provided by a carrier to a community or part of a community, i.e., the using public.'' Additionally, the community-focused discontinuance analysis in Section 214 is supported by the Commission's approach to common carrier services in other contexts. There have been several incidents where the Commission looked beyond the scope of the service as defined by the carrier in its tariff to other possible uses; therefore, the *Declaratory Ruling's* focus on the community rather than just the tariff language is consistent with past Commission decisions. This precedent provides guidance to carriers on when an application must be filed.

200. *USTelecom Exaggerates Carriers' Inability To Identify Relevant Services and Devices.* USTelecom argues that it will be unable to determine which relevant services and devices constitute the ''service'' provided to consumers. However, as one commenter notes, the services identified in the *Declaratory Ruling* are the very services for which carriers frequently market and sell additional lines to customers. The *Declaratory Ruling* specifically details the kinds of concerns that gave rise to it, including loss of 9–1–1 location accuracy and inability to use existing home security, medical monitoring, fax machines, credit card billing, DVRs, and other services. Finally, as noted in the *Declaratory Ruling,* Section 68.110(b) of the Commission's rules currently requires carriers to provide notice to customers when changes in the providers' facilities, equipment, operations, or procedures ''can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider . . . or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance . . . to allow the customer an opportunity to maintain uninterrupted service.'' Carriers, including USTelecom's members, have access to a database of terminal equipment certified as compliant with part 68's requirement that terminal equipment not harm carriers' networks. Carriers are therefore well aware of many of the forms of terminal equipment in use by their customers on TDM networks. They also are well aware of the technical specifications of that equipment and whether changes to their facilities, etc. will affect the ability of that terminal equipment to effectively connect to the carriers' networks. Considering all of this, we do not find USTelecom's claims that carriers will be unable to navigate the thicket of devices they ''may not even know exist'' to be credible.

201. In sum, the standard for discontinuance review set forth in the *Declaratory Ruling* is clear, consistent with the Commission's past actions, and consistent with current provider obligations. We therefore reject USTelecom's claims about the supposed vagueness and inscrutability of the *Declaratory Ruling.*

IV. Procedural Matters

A. Ex Parte Presentations

202. This proceeding shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Paperwork Reduction Act Analysis

203. The *Report and Order* contains new and 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 are 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), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we require incumbent LECs to: (1) Include in their copper retirement notices to interconnecting carriers the information currently required by Section 51.327(a) and a description of any changes in prices, terms, or conditions that will accompany the planned changes; (2) provide direct notice of planned copper retirements to interconnecting entities within the affected service area at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer being used to serve customers in the affected service area, in which case notice must be provided at least 90 days prior to the planned implementation date; (3) provide notice of planned copper retirements to the public utility commission and to the governor of the state in which the network change is proposed, to the Tribal entity with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense, with such notice to be provided at least 180 days prior to the planned implementation date, but only 90 days prior to the planned implementation date when the facilities to be retired are no longer being used to serve customers in the affected service area; (4) work in good faith with interconnecting entities to provide information necessary to assist them in accommodating planned copper retirements without disruption of service to their customers; (5) provide clear and conspicuous direct notice via electronic mail or postal mail to retail customers of planned copper retirements where the retail customer is within the service area of the retired copper and only where the retirement will result in the involuntary retirement of copper loops, with such notice to be

provided at least 180 days prior to the planned implementation date for non-residential retail customers and at least 90 days prior to the planned implementation date for residential retail customers; (6) include in notice to retail customers information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including (i) the information required by Section 51.327(a) other than Section 51.327(a)(5), (ii) a statement that the customer will still be able to purchase the existing service with the same functionalities and features, except that if the statement would be untrue, then the incumbent LEC must include a statement identifying any changes to the service(s) and the functionality and features thereof, and (iii) a neutral statement of the various service options that the incumbent LEC makes available to retail customers affected by the planned copper retirement; and (7) file a certificate of service within 90 days before a retirement certifying their compliance with the requirements imposed by our network change disclosure rules pertaining to copper retirement. We have assessed the effects of these requirements and find that any burden on small businesses will be minimal because: (1) The rules remain notice-based; (2) incumbent LECs already must provide direct notice of planned copper retirements to many interconnecting entities; (3) the method of transmission of the notice required by the rules matches previously existing requirements for notice to interconnecting telephone exchange service providers; (4) the expanded content requirement for notices to interconnecting entities is a narrow and targeted extension of the existing requirement to provide notice of the ''reasonably foreseeable impact of the planned changes'' already required by Section 51.327(a) of the Commission's rules; (5) incumbent LEC commenters, including small, rural LECs, assert that they already engage in significant outreach to their retail customers when implementing copper retirements; (6) the rules require incumbent LECs to include in their direct notices to retail customers one neutral statement of the various service options that the incumbent LEC makes available to retail customers affected by the planned copper retirement, with no other consumer education or outreach requirements; (7) limit the requirement of direct notice to retail customers within the service area of the retired copper and only where the retirement will result in the involuntary retirement of copper loops; and (8) the rules do not require direct notice to retail customers when the copper facilities being retired are no longer in use in the affected service area.

C. Congressional Review Act

204. The Commission will send a copy of this *Report & Order* and *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

D. Final Regulatory Flexibility Analysis

205. As required by the Regulatory Flexibility Act of 1980 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *NPRM.* The Commission sought written public comment on the possible significant economic impact on small entities regarding the proposals addressed in the *NPRM,* including comments on the IRFA. The Commission did not receive any comments on the *NPRM* IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is set forth below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

E. Need for, and Objectives of, the Final Rules

206. The fixed communications networks in this country are undergoing several technology transitions that are rapidly bringing innovative and improved services to consumers and the marketplace. As a nation, we are steadily moving from voice networks based on time-division multiplexed (TDM) services running on copper, to all-Internet Protocol (IP) multimedia networks running on a range of physical infrastructures. At the same time, the success of these technology transitions depends on the technologically-neutral preservation of longstanding principles embodied in the Communications Act, including those of competition and consumer protection. Towards that end, this Order adopts rules and policies to preserve our pro-consumer and pro-competition policies as communications facilities and services change. In addition to ensuring that interconnecting carriers and consumers are adequately informed when copper facilities are retired and that carriers comply with Section 214(a) and obtain Commission approval prior to discontinuing service used by carrier-customers as a wholesale input if the carrier's actions will discontinue, reduce, or impair service to a community or part of a community, this Order revises the Commission's Section 214 discontinuance rules to preserve competitive access to wholesale inputs during the pendency of our special access proceeding.

207. *Copper Retirement.* The *Order* finds that the pace of copper retirement has accelerated over the last few years and that this rapid pace of retirements, combined with the deterioration of copper networks that have not been formally retired, has necessitated changes to ensure that our rules governing copper retirement promote competition, which will in turn serve the public interest. Thus, the foreseeable and increasing impact that copper retirement is exerting on competition and consumers warrants revisions to the Commission's network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection. The *Order* revises these rules to require incumbent LECs planning copper retirements to provide direct notice to all entities within the affected service area that directly interconnect with their network and to include in their network change disclosures not only the information already required by Section 51.327(a) of the Commission's rules, but also a description of any changes in prices, terms, or conditions that will accompany the planned changes. Additionally, incumbent LECs must provide the notice to interconnecting entities—or each entity that directly interconnects with the incumbent LEC's network—at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer being used to serve customers in the affected service area. In instances where facilities are no longer in use, the Order instead adopts the baseline 90-day period of the Commission's prior rules as the applicable notice period. After the Commission receives notice of the planned copper retirement from the incumbent LEC, it will issue a public notice of the retirement. It is at that point that the 180-day period begins to run. We find that receipt of the additional information and the extended notice period adopted in the Order will allow interconnecting entities to work more closely with their customers to ensure minimal disruption to service as a result of any planned copper retirements. These rules will also help ensure that competitive LECs are fully informed about the impact that copper retirements will have on their businesses. We further believe that by retaining a time-limited notice-based process, we can better ensure that our rules strike a sensible balance between meeting the needs of interconnecting

carriers and allowing incumbent LECs to manage their networks.

208. In light of the extended notice period adopted in the *Order,* we discard the objection procedures. However, we find that incumbent LECs should be required to act in good faith to provide additional information to interconnecting entities upon request when such information is necessary to accommodate the copper retirement without disruption of service to the interconnecting entity's customers. When an entity that directly interconnects with an incumbent LEC's network requests that the incumbent LEC provide additional information where necessary to allow the interconnecting entity to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers, we require incumbent LECs to work with such requesting interconnecting entities in good faith to provide such additional information. This good faith communication requirement will ensure that interconnecting entities still may obtain the information they need in order to accommodate the planned copper retirement without disruption of service to their customers that they would have been entitled to seek through the objection procedures. We further believe that this requirement strikes an appropriate balance between the needs of interconnecting carriers for sufficient information to allow for a seamless transition and the need to not impose overly burdensome notice requirements on incumbent LECs.

209. The *Order* also revises Section 51.331 of our rules by deleting paragraph (c), which provides that competing service providers may object to planned copper retirements by using the procedures set forth in Section 51.333(c). The *Order* further revises Section 51.333 to remove those provisions and phrases applicable to copper retirement. We find that consolidation of all notice requirements and rights of competing providers pertaining to copper retirements in one comprehensive rule provides clarity to industry and customers alike when seeking to inform themselves of their respective rights and obligations.

210. The *Order* modifies our network change disclosure rules to require direct notice to retail customers of planned copper retirements. Copper retirements often affect consumers, and consumers need to understand how they will be affected. We believe that the network change disclosure rules adopted in the Order will help to safeguard the most vulnerable populations of consumers against any confusion and will ensure that they are informed about how they will be impacted by any copper retirements. Thus, under the updated rules adopted in the Order, incumbent LECs will be required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s), but only where the copper to the customer's premises is to be removed (*e.g.,* where a customer is required to receive service via fiber-to-the-premises). We believe limiting the notice requirement to retirements involving involuntary replacement of copper to the customer's premises limits notice to circumstances in which customers are most likely to be affected, thereby avoiding confusion and minimizing the costs of compliance. We find that modifying the proposed class of recipients in this way will make it easier for incumbent LECs to comply with their notice obligations by removing the need for them to make an independent determination regarding whether particular customers will require new or modified CPE or whether particular customers will be negatively impacted by the planned network change. We believe that the adopted rule will provide customers with sufficient clarity and will ensure that none are inadvertently excluded from the pool of recipients. The modified rule extends copper retirement notice requirements not just to consumers, but also to non-residential end users such as businesses and anchor institutions.

211. The *NPRM* proposed requiring that copper retirement notices to retail customers provide sufficient information to enable the customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including the information required by Section 51.327(a), as well as statements notifying customers that they can still purchase existing services and that they have a right to comment, and advising them regarding timing and the Commission's process. In this Order, we modify the proposal in the *NPRM* in four ways. First, we adopt the additional requirement that the mandatory statements in the notice must be made in a clear and conspicuous manner. As stated above, the record reflects that a number of consumers are confused when copper retirements occur, so clear and conspicuous provision of information will help to remedy that issue. To provide additional guidance, we clarify that a statement is ''clear and conspicuous'' if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition, the statement may not contradict or be inconsistent with any other information with which it is presented; if a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner; and hyperlinks included as part of the message must be clearly labeled or described. We adopt this detailed definition of ''clear and conspicuous'' to provide guidance to help ensure that customers will understand the required notice and to provide certainty to industry about our requirements. And to streamline the filing and reduce the burden on incumbent LECs, we decline to require that the notice include: (1) Information required by Section 51.327(a)(5), because that primarily requires provision of technical specifications that are unlikely to be of use to most retail customers; (2) a statement regarding the customer's right to comment on the planned network change, because, as discussed below, we decline to include in the updated rule we adopt today a provision regarding the opportunity to comment on planned network changes; and (3) a statement that ''[t]his notice of planned network change will become effective'' a certain number of days after the Federal Communications Commission (FCC) releases a public notice of the planned change on its Web site'' because this statement is likely to be unnecessarily confusing and because 47 CFR 51.327(a)(3), which we incorporate as to customer copper retirement notices, already requires disclosure of the implementation date of the planned changes.

212. The *Order* further requires LECs to include in copper retirement notices to retail customers a neutral statement of the various service options that the LEC makes available to retail customers affected by the planned copper retirement and that incumbent LECs are not subject to any additional obligations. There is a risk that without a clear, neutral message explaining what copper retirement does and does not mean, some consumers will easily fall prey to marketing that relies on confusion about the ability to keep existing services. The *Order* also requires that the notice be free of any statement attempting to encourage a customer to purchase a service other

than the service to which the customer currently subscribes. However, this last prohibition applies only to copper retirement notices provided pursuant to the Commission's network change disclosure rules and not to any other communication. This neutral statement requirement and limited prohibition will better enable retail consumers to make informed choices regarding their services and will give them the necessary tools to determine what services to purchase without swaying them towards new or different offerings.

213. The rules adopted in the Order allow incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. This requirement should be sufficient to ensure that retail customers receive notice, without imposing unnecessary additional burdens on carriers. The rules adopted in the *Order* also require that incumbent LECs provide notice to non-residential retail customers at least 180 days prior to the planned implementation date. This should allow non-residential retail customers sufficient time to evaluate the impact of the planned network change on the service they would continue to receive and whether they need to seek out alternatives. Moreover, the rules require that incumbent LECs provide residential retail customers at least ninety-days' notice of planned copper retirements. We conclude that this notice period is appropriate for residential retail customers, to whom earlier notice may be confusing and potentially forgotten over a long period of time.

214. The *Order* requires carriers to send notice of proposed copper retirements to state authorities (the governor and the state PUC), federally recognized Tribal nations within their Tribal lands, and the Secretary of the Department of Defense, and that this notice occur contemporaneously with notice to interconnecting entities. This rule will help ensure that states and Tribal governments are fully informed of copper retirements occurring within their respective borders. Given the increased cybersecurity risks posed by IP-based networks, the Department of Defense should also be kept informed of copper retirements.

215. The *Order* further requires that no later than ninety (90) days before the date that the notices of copper retirement are deemed approved, incumbent LECs must file a certification identifying the proposed changes, the name and address of each entity upon which written notification was served, and a copy of the written notice provided to affected retail customers, among other information. Monitoring compliance with the rules adopted in the *Order* would be difficult without incumbent LECs confirming that they have complied. Thus, requiring this information is necessary to ensure compliance with our rules and will assist greatly with enforcement.

216. Given the frequency and scope of copper network retirement, it is essential that industry participants and stakeholders alike have a clear understanding of what retirement entails so that the public is properly informed of network changes. To the end, the Order expands the definition of copper retirement to encompass the ''removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' Copper retirement also includes *de facto* retirement, *i.e.,* failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

217. *Service Discontinuance.* Section 214(a) of the Act mandates that the Commission ensure that the public is not adversely affected when carriers discontinue, reduce, or impair services on which communities rely. To that end, the *Order* clarifies that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. The *Order* also clarifies that a carrier should not discontinue a service used as a wholesale input until it is able to determine that there will be no discontinuance, reduction, or impairment of service to end users, including carrier-customers' end users, or until it obtains Commission approval. We find that this clarification is necessary to fortify the Commission's ability to fulfill its critical statutory role in overseeing service discontinuances under Section 214 of the Act. This clarification is thus designed to protect retail customers from the adverse impacts associated with discontinuances of service, and to ensure that service to communities will not be discontinued without advance notice to affected customers and Commission authorization. The *Order* clarifies that carriers must assess the impact of their actions on end user customers to prevent the discontinuance of service to a community without adequate public interest safeguards, including notice to affected customers and Commission consideration of the effect on the public convenience and necessity. This clarification is necessary to ensure that carriers meet their Section 214(a) obligations to obtain approval for a discontinuance. Absent such clarification, the Commission may not be informed prior to carriers' actions that discontinue, reduce, or impair service to retail end users, actions that potentially adversely affect the present or future public convenience and necessity. Moreover, without such clarification, carrier-customers and retail end users might not receive adequate notice or opportunity to object when such actions will discontinue service to carrier-customers' retail end users.

218. The *Order* also adopts an interim rule that incumbent LECs that seek Section 214 authority prior to the resolution of the special access proceeding to discontinue, reduce, or impair a TDM-based service that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions. The interim condition to which incumbent LECs must commit to obtain discontinuance authority for a TDM-based service will remain in place only until the Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when (1) it identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. The Commission will evaluate whether a carrier provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on the totality of the circumstances, and its evaluation includes specifically whether the carrier is complying with five specific questions articulated in the *Order.* The reasonably comparable wholesale access condition that we adopt applies to two categories of service: (1) Special access services at DS1 speed and above and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage.

219. Establishing the reasonably comparable wholesale access requirement is necessary to protect the competition that exists today for the provision of telecommunications services to small-and medium-sized

businesses, schools, libraries, and other enterprise customers. This requirement is carefully tailored to preserve incentives for investment for incumbent LECs while maintaining opportunities for competitive LECs to provide the services that customers demand on a limited-term basis until the Commission completes its evaluation of the special access market or markets for TDM and IP based services and adopts rules and policies to ensure services are available at just and reasonable rates, terms, and conditions. An interim rule that provides both providers and their wholesale customers with a balanced approach will facilitate transitions and preserve the benefits of competition during the pendency of the special access proceeding.

220. Service by competitive carriers that depend on wholesale inputs offers the benefits of additional competitive choice to an enormous number of small and medium-sized businesses, schools, government entities, healthcare facilities, libraries, and other enterprise customers. The *Order* takes these actions to preserve such competition and ensure that this competition continues to thrive as the ongoing technology transitions occur.

F. Summary of Significant Issues Raised by Public Comments To Response to the IRFA

221. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are addressed throughout the *Order.*

G. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

222. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by adopted rules. 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. 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.

223. The majority of the rules and policies adopted in the *Order* will affect obligations on incumbent LECs and, in some cases, competitive LECs. Other entities, however, that choose to object to network change notifications for copper retirement under our new rules may be economically impacted by the regulations adopted in this *Order.*

1. Total Small Businesses

224. A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. Affected small entities as defined by industry are as follows.

2. Wireline Providers

225. *Wired Telecommunications Carriers.* 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. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

226. *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 size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules adopted in the *Order.*

227. *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 size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the *Order*.

228. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

229. *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 size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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 and 186 have more than 1,500 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 the 72, seventy have 1,500 or fewer employees and two have more than 1,500 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 rules adopted pursuant to the *Order*.

230. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the

category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, 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 IXCs are small entities that may be affected by rules adopted pursuant to the Order.

231. *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 size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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 and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Report and Order*.

3. Wireline Providers

232. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

233. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

4. Cable Service Providers

234. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises 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 telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category that operated for the entire year. Of this total, 2,684 firms had annual receipts of under $10 million, and 504 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small and may be affected by rules adopted pursuant to the *Order*.

235. *Cable Companies and Systems.* The Commission has also 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 shows that there are 660 cable operators in the country. Of this total, all but eleven cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

5. All Other Telecommunications

236. The Census Bureau defines this industry as including ''establishments 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 this category; that size standard is $32.5 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,346 firms had annual receipts of under $25 million and 37 firms had annual receipts of $25 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

H. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

237. The *Order* proposes a number of rules and policies that will affect reporting, recordkeeping, and other compliance requirements.

238. *Copper Retirement.* The *Order* revises our network change rules to require incumbent LECS planning copper retirements to include in their network change disclosures not only the information already required by Section 51.327(a) of the Commission's rules, but also a description of any changes in prices, terms, or conditions that will accompany the planned changes. Additionally, these providers must provide direct notice to interconnecting entities within the affected service area at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer

being used to serve customers in the affected service area. In instances where facilities are no longer in use, the *Order* adopts a 90-day period as the applicable notice period.

239. The *Order* also requires that an entity that directly interconnects with an incumbent LEC's network may request that the incumbent LEC provide additional information where necessary to allow the interconnecting entity to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers. Incumbent LECs are required to work with such requesting interconnecting entities in good faith to provide such additional information.

240. The *Order* further modifies our network change disclosure rules to require direct notice to retail customers of planned copper retirements. Under the updated rules adopted in the *Order,* incumbent LECs will be required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s). The modified rule extends copper retirement notice requirements not just to consumers, but also to non-residential end users such as businesses and anchor institutions.

241. The *Order* requires that copper retirement notices to retail customers provide sufficient information to enable the customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including the information required by Section 51.327(a)—with the exception of the information required by Section 51.327(a)(5)—as well as statements notifying customers that they can still purchase existing services.

242. The *Order* further requires LECs to include in copper retirement notices to retail customers a neutral statement of the various service options that the LEC makes available to retail customers affected by the planned copper retirement. The *Order* also requires that the notice be free of any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes. However, this last prohibition applies only to copper retirement notices provided pursuant to the Commission's network change disclosure rules and not to any other communication. The rules adopted in the Order allow incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement.

243. The *Order* also requires carriers to send notice of proposed copper retirements to state authorities (the state governor and PUC) and the Secretary of the Department of Defense, as well as affected Tribal entities.

244. In tandem with their public notice, incumbent LECs must file a certification identifying the proposed changes, the name and address of each entity upon which written notification was served, and a copy of the written notice provided to affected retail customers, among other information.

245. The *Order* also expands the definition of copper retirement to encompass the ''removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' Copper retirement also includes de facto retirement, *i.e.,* failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

246. *Service Discontinuance.* The *Order* clarifies that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. The Order also clarifies that a carrier should not discontinue a service used as a wholesale input until it is able to determine that there will be no discontinuance, reduction, or impairment of service to end users, including carrier-customers' end users, or until it obtains Commission approval.

247. The *Order* clarifies that carriers must assess the impact of their actions on end user customers to prevent the discontinuance of service to a community without adequate public interest safeguards, including notice to affected customers and Commission consideration of the effect on the public convenience and necessity. Specifically, carriers must undertake a meaningful evaluation of the impact of actions that will discontinue, reduce, or impair services used as wholesale inputs, using all information available, including information obtained from carrier-customers, and assess the impact of these actions on end user customers, including carrier-customers' end users. If their actions will discontinue service to any such end users, Commission approval is required.

I. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

248. The *Order* also adopts an interim rule that incumbent LECs that seek Section 214 authority prior to the resolution of the special access proceeding to discontinue, reduce, or impair a TDM-based service that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions. The interim condition to which incumbent LECs must commit to obtain discontinuance authority for a TDM-based service will remain in place only until the Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when: (1) It identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. The Commission will evaluate whether a carrier provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on the totality of the circumstances, and its evaluation includes specifically whether the carrier is complying with five specific questions articulated in the Order. The reasonably comparable wholesale access condition that we adopt applies to two categories of service: (1) Special access services at DS1 speed and above and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage.

249. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

250. The Commission is aware that some of the rules adopted in this Order will impact small entities by imposing costs and administrative burdens. For this reason, in reaching its final conclusions and taking action in this proceeding, the Commission has taken a number of measures to minimize or eliminate the costs and burdens generated by compliance with the adopted regulations.

251. Although the *Order* adopted new requirements for the copper retirement notice process, the Commission declined to require that the descriptions of the potential impact of the planning changes be specific to each interconnecting carrier to whom an incumbent LEC must give notice. Such a requirement would impose an unreasonable burden on incumbent LECs, as would the requirement that copper retirement notices include information regarding impacted circuits and wholesale alternatives, another alternative step that we considered before eventually discarding. The requirements in new Section 51.332 of our rules are sufficient protection to interconnecting carriers without the need for further regulation. The Commission also declined to adopt a particular required format for copper retirement notices, since such a specified format runs the risk of not covering all aspects of each provider's copper retirement plans.

252. In light of the extended notice period adopted in the *Order,* the Commission eliminated the objection procedures. The *Order* also consolidates all notice requirements and rights of competing providers pertaining to copper retirements within one comprehensive rule in order to provide clarity to small entities when seeking to inform themselves of their rights and obligations.

253. Although we considered a proposal that, for a network change to qualify as a copper retirement as opposed to a service discontinuance, a carrier must present the same standardized interface to the end user as it did when it used copper, we ultimately concluded that this requirement was unnecessary. We find that this proposal would go far beyond the mandate of Section 68.110(b) of the Commission's rules, which speaks to the effect of changes in facilities, equipment, operations, or procedures on customer's terminal equipment.

254. We similarly declined to require incumbent LECs to provide competitive providers with an annual forecast of copper retirements. This type of information can constitute some of an incumbent LEC's most competitively sensitive information, and such an advance disclosure requirement may risk putting them at a competitive disadvantage. Moreover, the information contained in a forecast can change over time as circumstances change, and we are thus skeptical of the value of such a requirement. We also declined to adopt a requirement that incumbent LECs establish and maintain a publicly available and searchable database of all their copper plant. It is not clear based on the record that such a database would be feasible or cost-effective, and such a requirement could impose an expensive and potentially duplicative burden.

255. The *Order* also modified the notice to retail customers rules proposed in the NPRM in order to minimize the burden they impose on incumbent LECs, primarily by eliminating a requirement that incumbent LECs undertake consumer education efforts in connection with planned copper retirements, among several other requirements proposed as part of the *NPRM.* Under the rules adopted by the *Order,* incumbent LECs are required to provide only one neutral statement to consumers and will not be subject to any additional obligations with regards to the notice to retail customers requirement.

256. While the *NPRM* proposed requiring direct notice to all retail customers affected by the planned network change, the rules adopted in the *Order* require incumbent LECs to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s). We believe that modifying the class of recipients in this way will make it easier for incumbent LECs to comply with their notice obligations by removing the need for them to make an independent determination regarding whether particular customers will require new or modified CPE or whether particular customers will be negatively impacted by the planned network change.

257. While incumbent LECs are required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s), this notice need not include the information required by Section 51.327(a)(5) of our rules, nor a provision regarding the opportunity for customers to comment on planned network changes. Section 51.327(a)(5) requires provision of technical specifications that are unlikely to be of use to most retail customers. Aside from the neutral statement requirement, we decline to adopt any further content requirements with regards to the direct notice of planned copper retirements. We do not believe it is necessary or appropriate to require more than this in the context of a copper retirement that does not rise to the level of a discontinuance, reduction, or impairment of service for which a carrier would need to seek Commission authorization.

258. The *Order* allows incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. We find that this requirement should be sufficient to ensure that retail customers receive such notice without imposing unnecessary additional burdens on carriers. And because we retain the notice-based process for copper retirement network change disclosures, we find that there is little reason to require incumbent LECs to allow customers to reply directly to any email notices.

259. We decline to adopt a rural exemption to the notice rule. While the rules necessarily impose some burden on carriers, that burden is not greater for rural LECs. We also decline to impose different notice requirements for network upgrades, network downgrades, and the complete abandonment of facilities. We do not believe such differentiation is necessary, and would impose a greater burden on incumbent LECs. We also refuse to require proof of notice to be acknowledged by individual customers before allowing changes. Such a requirement would unfairly penalize incumbent LECs for the failure of their customers to act.

260. We also decline to adopt a proposal to revise the network change disclosure rules to provide the public with the opportunity to comment on planned network changes. We find that avenues to communicate with the Commission are sufficient and formalizing a right to comment is not needed. And while the *Order* requires notice of copper retirements to be given to state authorities and the Department of Defense, as well as Tribal entities with proposed copper retirements within their borders, it declines to adopt this same notice requirement for other network change notifications. There is a lack of sufficient support in the record to support such a requirement, which would place an increased regulatory burden on incumbent LECs and other small entities.

261. We decline to establish a process for situations where a network is damaged after a natural disaster and a carrier decides to permanently replace that network with a new technology. The discontinuance and network change notification requirements proposed in the FNPRM and adopted in the *Order* are responsive to this concern without the need for additional regulation. Additionally, such a process would require incumbent LEC submission of service metrics with the Commission that are beyond the scope of this proceeding.

262. The *Order* also reduces the regulatory burden on small entities by

declining to mandate the sale of copper facilities that an incumbent LEC intends to retire and/or establish for ourselves a supervisory role in the sale process (although the sale of such facilities is encouraged). Commission oversight of sales could be intrusive, costly, and a potential barrier to technology transitions.

263. While the *Order* requires carriers to undertake a meaningful evaluation of the impact of actions that will discontinue, reduce, or impair services used as wholesale inputs and to obtain Commission approval if their actions will discontinue service to end users, Commission approval is not required for a planned discontinuance, reduction, or impairment of service (1) when the action will not discontinue, reduce, or impair service to a community or part of a community, or (2) for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

264. The *Order* declines to adopt requirements to ensure that carriers have properly rebutted the proposed presumption, including a requirement that the carrier submit documentation or a certification to the Commission identifying and providing the basis for its conclusion that the carrier has adequately rebutted the presumption, among other proposed obligations. The burdens of such an obligation would exceed the benefits. Thus, the adopted rules and policies will be less burdensome for carriers than the proposed rebuttable presumption, and we allow carriers to determine through their own internal processes whether Commission approval of their actions is necessary. We have also sought to minimize burdens and cost by not requiring carriers to submit information to the Commission when they determine that a Section 214 application is not needed because their actions do not discontinue, reduce, or impair service to the community or part of the community.

265. We further decline to adopt an irrebuttable presumption that discontinuance of a wholesale service necessarily results in a discontinuance, reduction, or impairment to end users. Such an approach would be highly burdensome for carriers. We also decline to adopt a presumption in favor of approving discontinuance of a retail service if at least one competitive alternative is available. We see no reason to deviate from our longstanding and clearly articulated criteria by which we evaluate Section 214(a) applications, which already take into account whether alternatives are available.

266. To ensure clarity and assist small entities with regulatory compliance, we codify the reasonably comparable wholesale access condition adopted in the *Order* in a new subsection to Section 63.71 of our rules.

267. Although we considered obligating carriers to provide ''equivalent'' wholesale access on ''equivalent'' rates, terms, and conditions, we ultimately found it preferable to impose a more flexible ''reasonably comparable'' standard. We also imposed a time limit on the requirement that we adopted. This flexible standard and time-limited approach minimizes the regulatory burden on incumbent LECs while advancing the Commission's goal of preserving competition and promoting technology transitions. We also declined to adopt as mandatory requirements any of the six objective requirements for which we sought comment in the *NPRM.* Rather, we adopt a flexible ''totality of the circumstances'' approach that takes into account versions of five of these six factors as questions but does not prescribe hard rules. We adopt this balanced approach to provide parties necessary flexibility.

268. Although the *NPRM* sought comment on whether, as a part of a wholesale access condition, to prohibit price hikes from being effectuated via significant changes to charges for network to network interface (NNI) or any other rate elements, lock-up provisions, early termination fees (ETFs), special construction charges, or any other measure, we decline to adopt such a prohibition in the *Order.* We find that the steps taken are sufficient without necessitating adoption of this further restriction. We also decline to adopt any rate publication requirement. We do not find sufficient evidence to impose publication obligations on incumbent LECs. Moreover, this requirement would go beyond merely preserving competition to create an obligation that does not presently exist for TDM services that are discontinued, and would therefore be contrary to the overall framework and purpose of our wholesale access obligation. The *Order* also declines to adopt additional requirements to the reasonably comparable wholesale access condition, specifically a certification requirement proposed by some commenters, since it is unclear the timing of such certification and requiring certification is inherently backward-looking, *i.e.,* is best suited to confirming that an entity has already complied with a regulatory obligation. We find that the conditions we adopt to govern the discontinuance process is better suited to ensuring forward-looking, ongoing compliance on an interim basis. We see no need at this juncture to adopt additional methods to ensure compliance when doing so would impose costs on small entities without any attendant clear benefit. The Order declines to impose any audits or specific metric requirements on incumbent or competitive LECs for the same reasons.

J. Report to Congress

269. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

270. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201, 214, 251, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 214, 251, 303(r), this Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking *are adopted.*

271. *It is further ordered* that parts 51 and 63 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 under the Paperwork Reduction Act *shall be effective* after announcement in the **Federal Register** of Office of Management and Budget approval of the rules, and on the effective date announced therein.

272. *It is further ordered* that this Report and Order and Order on Reconsideration *shall be* effective 30 days after publication in the **Federal Register**, except for 47 CFR 51.325(a)(4) and (e), 51.332, and 51.333(b) and (c), which contain information collection requirements that have not been approved by OMB. Additionally, the removal of 47 CFR 51.331(c) and 51.333(f), resulting in the removal of information collection requirements previously approved by OMB, has not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

273. *It is further ordered* that the Petition for Reconsideration filed by the United States Telecom Association *is denied*.

274. *It is further ordered* that the Motion of the California Public Utilities Commission for Acceptance of Late-Filed Comments *is granted*.

275. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order* and *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

276. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, and this Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications, Communications common carriers, Defense communications, Telecommunications, Telephone.

47 CFR Part 63

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

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 51 and 63 as follows:

PART 51—INTERCONNECTION

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

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 2. Section 51.325 is amended by revising paragraph (a)(4) and adding paragraph (e) to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

(4) Will result in the retirement of copper, as defined in § 51.332.

* * * * *

(e) Notices of network changes involving the retirement of copper, as defined in § 51.332, are subject only to the requirements set forth in this section and §§ 51.329(c), 51.332, and 51.335.

§ 51.331 [Amended]

■ 3. Section 51.331 is amended by removing paragraph (c).

■ 4. Add § 51.332 to read as follows:

§ 51.332 Notice of network changes: Copper retirement.

(a) *Definition.* For purposes of this section, the retirement of copper is defined as:

(1) Removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops;

(2) The replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in § 51.319(a)(3); or

(3) The failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

(b) *Methods for providing public notice.* In providing the required notice to the public of network changes under this section, an incumbent LEC must comply with the following requirements:

(1) The incumbent LEC must file a notice with the Commission.

(2) The incumbent LEC must provide each entity within the affected service area that directly interconnects with the incumbent LEC's network with a copy of the notice filed with the Commission pursuant to paragraph (b)(1) of this section.

(3) If the copper retirement will result in the retirement of copper loops to the premises, the incumbent LEC must directly provide notice through electronic mail or postal mail to all retail customers within the affected service area who have not consented to the retirement; *except* that the incumbent LEC is not required to provide notice of the copper retirement to retail customers where:

(i) The copper facilities being retired under the terms of paragraph (a) of this section are no longer in use in the affected service area; or

(ii) The retirement of facilities pursuant to paragraph (a)(3) of this section is undertaken to resolve a service quality concern raised by the customer to the incumbent LEC.

(iii) The contents of any such notice must comply with the requirements of paragraph (c)(2) of this section.

(iv) Notice to each retail customer to whom notice is required shall be in writing unless the Commission authorizes in advance, for good cause shown, another form of notice. If an incumbent LEC uses email to provide notice to retail customers, it must comply with the following requirements in addition to the requirements generally applicable to the notice:

(A) The incumbent LEC must have previously obtained express, verifiable, prior approval from retail customers to send notices via email regarding their service in general, or planned network changes in particular;

(B) Email notices that are returned to the carrier as undeliverable must be sent to the retail customer in another form before carriers may consider the retail customer to have received notice; and

(C) An incumbent LEC must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email.

(4) The incumbent LEC shall notify and submit a copy of its notice pursuant to paragraph (b)(1) of this section to the public utility commission and to the Governor of the State in which the network change is proposed, to the Tribal entity with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301.

(c) *Content of notice*—(1) *Non-retail.* The notices required by paragraphs (b)(1), (2), and (4) of this section must set forth the information required by § 51.327. In addition, the notices required by paragraphs (b)(1), (2), and (4) of this section must include a description of any changes in prices, terms, or conditions that will accompany the planned changes.

(2) *Retail.* (i) The notice to retail customers required by paragraph (b)(3) of this section must provide sufficient information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including but not limited to the following provided in a manner that is clear and conspicuous to the average consumer:

(A) The information required by § 51.327(a)(1) through (4) and (a)(6);

(B) A statement that the retail customer will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases from the incumbent LEC, *except that* if this statement would be inaccurate, the incumbent LEC must include a statement identifying any changes to the service(s) and the functionality and features thereof; and

(C) A neutral statement of the services available to the retail customers from the incumbent LEC, which shall include a toll-free number for a customer service help line, a URL for a related Web page on the provider's Web site with relevant information, contact information for the Federal Communications Commission including the URL for the Federal Communications Commission's consumer complaint portal, and contact information for the relevant state public utility commission.

(ii) If any portion of a notice is translated into another language, then all portions of the notice must be translated into that language.

(iii) An incumbent LEC may not include in the notice required by paragraph (b)(3) of this section any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.

(iv) For purposes of this section, a statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition:

(A) The statement may not contradict or be inconsistent with any other information with which it is presented.

(B) If a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner.

(C) Hyperlinks included as part of the message must be clearly labeled or described.

(d) *Certification.* No later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section, an incumbent LEC must file with the Commission a certification that is executed by an officer or other authorized representative of the applicant and meets the requirements of § 1.16 of this chapter. This certification shall include:

(1) A statement that identifies the proposed changes;

(2) A statement that notice has been given in compliance with paragraph (b)(1) of this section;

(3) A statement that the incumbent LEC timely served a copy of its notice filed pursuant to paragraph (b)(1) of this section upon each entity within the affected service area that directly interconnects with the incumbent LEC's network;

(4) The name and address of each entity referred to in paragraph (d)(3) of this section upon which written notice was served;

(5) A statement that the incumbent LEC timely notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense in compliance with paragraph (b)(4) of this section;

(6) If customer notice is required by paragraph (b)(3) of this section, a statement that the incumbent LEC timely served the customer notice required by paragraph (b)(3) of this section upon all retail customers to whom notice is required;

(7) If a customer notice is required by paragraph (b)(3) of this section, a copy of the written notice provided to retail customers;

(8) A statement that the incumbent LEC has complied with the notification requirements of § 68.110(b) of this chapter or that the notification requirements of § 68.110(b) do not apply;

(9) A statement that the incumbent LEC has complied with the good faith communication requirements of paragraph (g) of this section and that it will continue to do so until implementation of the planned copper retirement is complete; and

(10) The docket number and NCD number assigned by the Commission to the incumbent LEC's notice provided pursuant to paragraph (b)(1) of this section.

(e) *Timing of notice.* (1) Except pursuant to paragraph (e)(2) of this section, an incumbent LEC must provide the notices required by paragraphs (b)(2) and (4) of this section no later than the same date on which it files the notice required by paragraph (b)(1) of this section.

(2) Where the copper facilities being retired under the terms of paragraph (a) of this section are no longer being used to serve any customers, whether wholesale or retail, in the affected service area, an incumbent LEC must provide the notices required by paragraphs (b)(2) and (4) of this section no later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section.

(3) An incumbent LEC must provide any notice required by paragraph (b)(3) of this section to all non-residential customers to whom notice must be provided no later than the same date on which it files the notice required by paragraph (b)(1) of this section.

(4) An incumbent LEC must provide any notice required by paragraph (b)(3) of this section to all residential customers to whom notice must be provided no later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section.

(f) *Implementation date.* The Commission will release a public notice of filings of the notice of copper retirement pursuant to paragraph (b)(1) of this section. The public notice will set forth the docket number and NCD number assigned by the Commission to the incumbent LEC's notice. The notices of copper retirement required by paragraph (b) of this section shall be deemed approved on the 180th day after the release of the Commission's public notice of the filing.

(g) *Good faith requirement.* An entity within the affected service area that directly interconnects with the incumbent LEC's network may request that the incumbent LEC provide additional information to allow the interconnecting entity where necessary to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers. Incumbent LECs must work with such requesting interconnecting entities in good faith to provide such additional information.

■ 5. Section 51.333 is amended by revising the section heading and paragraphs (b) and (c) and removing paragraph (f) to read as follows:

§ 51.333 Notice of network changes: Short term notice, objections thereto.

* * * * *

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices. The public notice will set forth the docket number assigned by the Commission to the incumbent LEC's notice. The effective date of the network changes referenced in those filings shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(c) *Objection procedures for short term notice.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

''I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection.''

* * * * *

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

■ 6. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 7. Amend § 63.71 by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), and adding paragraph (c) to read as follows:

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

* * * * *

(c)(1) If an incumbent LEC, as that term is defined in § 51.5 of this chapter, obtains authority to discontinue, reduce, or impair a time-division multiplexing (TDM) service listed in this paragraph (c)(1) and if the incumbent LEC offers an Internet Protocol (IP) service in the same geographic market(s) as the TDM service following the discontinuance, reduction, or impairment of such TDM service, then as a condition on such authority, the incumbent LEC shall provide any requesting telecommunications carrier wholesale access reasonably comparable to the level of wholesale access it previously provided on reasonably comparable rates, terms, and conditions. This condition shall expire when all of the following have occurred:

(i) The Commission identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable;

(ii) The Commission provides notice such rules are effective in the **Federal Register**; and (iii) Such rules and/or policies become effective.

(2) The requirements of this paragraph apply to:

(i) A special access service that is used as a wholesale input by one or more telecommunications carriers; and

(ii) A service that is used as a wholesale input by one or more telecommunications carriers to provide end users with voice service and that includes last-mile service, local circuit switching, and shared transport.

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