

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Technology Transitions)	GN Docket No. 13-5
)	
USTelecom Petition for Declaratory Ruling That)	WC Docket No. 13-3
Incumbent Local Exchange Carriers Are Non-)	
Dominant in the Provision of Switched Access)	
Services)	
)	
Policies and Rules Governing Retirement Of)	RM-11358
Copper Loops by Incumbent Local Exchange)	
Carriers)	

**REPLY TO OPPOSITION OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

Pursuant to section 1.429 of the Commission’s rules, the National Telecommunications and Information Administration (NTIA), on behalf of federal agency purchasers of telecommunications services, and as the President’s principal adviser on domestic and international telecommunications policies, respectfully replies to the Opposition filed in the above-captioned proceeding by the USTelecom.¹

USTelecom objects to NTIA’s request that the Commission reconsider or clarify portions of its *Second Report and Order* in the above-captioned proceeding because USTelecom asserts that NTIA’s proposals “could, if implemented, strike a significant blow against the progress of

¹ Opposition of USTelecom to Petition for Reconsideration or Clarification of the National Telecommunications and Information Administration, GN Docket No. 13-5 (filed Dec. 8, 2016) (Opposition), *available at* https://ecfsapi.fcc.gov/file/120831590030/Opposition%20to%20NTIA%20PFR_12.08.16_dgh.krs.pdf.

[the ongoing evolution of U.S. telecommunications networks] by making it more complicated, timely and costly” for carriers to replace legacy facilities and services with next-generation technologies.² USTelecom also contends that NTIA’s requested clarifications or alterations to the section 214 review framework adopted in that Order “are not necessary to safeguard federal government agencies” against the challenges that technology transitions present for them as customers and are “unwarranted because they create burdens for providers that are not outweighed by any practical benefits.”³

USTelecom’s claims are unfounded. Prompt Commission action on NTIA’s Petition will remove ambiguities and anomalies in the new framework for processing carrier applications to discontinue legacy voice services before it is fully in force. That will not only increase predictability for carriers and customers alike without delaying initiation of the framework, but will also reduce potential sources of dispute, litigation, and delay as the number of discontinuance applications increases. Thus, Commission action is more likely to make discontinuance reviews less complicated, timelier, and less costly – contrary to USTelecom’s contentions.

USTelecom’s claims that NTIA’s proposals will impose “unwarranted” burdens on carriers are either unsubstantiated or based on a misunderstanding of those proposals. More importantly, USTelecom is simply wrong to suggest that the modest added burdens for carriers outweigh the benefits for federal agencies and the public they serve. In fact, while NTIA fully supports the goals of the technology transition, its proposals are critical to enabling federal

² *Id.* at 1. See also Technology Transitions, et al., *Declaratory Ruling, Second Report and Order, and Order on Reconsideration*, ¶¶ 60-194, GN Dkt. No. 13-5, et al., FCC 16-90 (rel. July 15, 2016) (*Second Report*).

³ Opposition at 1-2.

agencies to continue fulfilling their statutory missions while the transition is taking place. As indicated in our Petition, the Commission has emphasized that the technology transition “must allow for the continuation of legacy TDM-based networks and services for . . . critical governmental systems until it is proven that other solutions can meet system requirements for the performance of safety of life and national security missions.”⁴ NTIA has previously detailed to the Commission the challenges that federal agencies will confront in trying to maintain critical services in the face of a network transition, as well as their vulnerability to unanticipated and accelerated network changes.⁵ USTelecom does not deny those concerns, nor does it dispute that adoption of NTIA’s proposals can help to ameliorate them. These benefits are significant, and as detailed more fully below, greatly outweigh the modest burden on carriers that might flow from NTIA’s proposals. As NTIA explained in its original filing, the Executive Branch strongly supports the ongoing technology transition, and the innovation and economic growth that can flow from it. The Petition reflects NTIA’s effort to ensure that the budgetary and resource challenges faced by the federal government do not slow down this transition.

Clarification of “Legacy Voice Service”

In its Petition, NTIA urged the Commission to clarify a crucial component of its new service discontinuance review framework – the “legacy voice services” to which the framework applies. USTelecom denies the need for any clarification, asserting that the term is “self-

⁴ Petition for Reconsideration or Clarification of the National Telecommunications and Information Administration at 3, GN Dkt. No. 13-5 (filed Oct. 12, 2016) (NTIA Petition), available at

<https://ecfsapi.fcc.gov/file/1012477410931/NTIA%20Pet%20for%20Recon%20101216.pdf>.

⁵ *Id.* at 3-5, 12. See also Letter from Lawrence Strickling, NTIA, to Chairman Tom Wheeler, at 2-3, GN Dkt. No. 13- 5 (July 29, 2015), available at

<https://ecfsapi.fcc.gov/file/60001119091.pdf>.

explanatory.”⁶ NTIA’s Petition explained why that is not the case, at least with respect to two services of critical importance to federal agencies – T-1 and Integrated Service Digital Network circuits wholly or primarily used to carry voice traffic.⁷ USTelecom does not address that argument, let alone refute it. Indeed, if it believes that the meaning of “legacy voice service” is clear, USTelecom could have alleviated federal agency concerns by answering the questions in NTIA’s Petition. Because it did not do so, the questions remain for the Commission to answer.

USTelecom suggests that if a customer is unsure whether a particular carrier offering is a “legacy voice service,” it “is free to seek a declaratory ruling or other Commission guidance to that effect.”⁸ That, of course, is precisely what NTIA has done, yet USTelecom dismisses the request as unnecessary. USTelecom also states that “NTIA and any other party” can litigate the classification of a specific service “in the context of a particular discontinuance proceeding.”⁹ It does not explain why it is better to force parties – including the carriers themselves – to bear the risks of contesting an issue after the fact than it is for the Commission to eliminate potential sources of future disputes and delay from the beginning. It is also difficult to see how that approach furthers USTelecom’s avowed goal of more timely and less costly discontinuance of legacy services.¹⁰ Finally, USTelecom fails to acknowledge that it is the customers, not the carriers, that will be required to monitor and evaluate the numerous discontinuance requests filed by the carriers. In the case of the federal government, each discontinuance request will continue

⁶ Opposition at 3.

⁷ NTIA Petition at 6-7. USTelecom intimates that NTIA asked the Commission to “enumerate specific services” subsumed within “legacy voice service.” Opposition at 3. That is in no way a fair reading of NTIA’s Petition.

⁸ Opposition at 4.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 1.

to be evaluated for its impact across the entire government. To be prepared for that process, it is vital that there be clarity as to which services might be subject to expedited discontinuance.

Preserving Interoperability of Low-Speed Modem Devices

USTelecom objects to NTIA's request that the Commission expand the list of "low speed modem devices" that must remain interoperable after a carrier transitions from a legacy voice service to a new network offering.¹¹ The purpose of that proposal is not, as USTelecom intimates, to allow federal agencies to "avoid much needed upgrades of their end-user equipment" until after 2025.¹² NTIA fully agrees with USTelecom that in an ideal world, all customers – including those protected under the Commission's approach – would be able to update and upgrade their equipment as the underlying network changes.¹³ However, in the real world in which federal agencies must operate – which is characterized by uncertain appropriations, sometimes lengthy procurements, and the existence of multiple and geographically dispersed installations that make comprehensive upgrades difficult to plan and fund – that aspirational solution is often not feasible. As a result, federal agencies, like other customers, need some assurance that critical premises equipment will continue to work at least into the 2020s.

USTelecom does not suggest that NTIA's proposed approach is technically flawed or otherwise unworkable. It merely claims that the proposal would "saddle providers with having to know or predict every possible device its customers might put to use with its service, no

¹¹ See NTIA Petition at 7-10.

¹² Opposition at 4.

¹³ *Id.*

matter how specialized or obscure.”¹⁴ USTelecom overstates the effect of NTIA’s approach. The proposal rests on the fact that some of the five devices to which the Commission affords interoperability protections – notably fax machines – use standardized modems to collect or convey instructions and information over legacy services. If the Commission protects a fax machine that relies on a particular modem capability, there is no reason why it should not protect a different type of embedded end-user device that uses the same modem capability.

NTIA appreciates that expanding the list of protected devices risks increasing burdens on carriers. However, the Commission can restrict the class of protected modems to dial-up devices supporting transmissions speeds of 56 kbps or less and that comply with the International Telecommunication Union’s V-series. All such devices would be entitled to interoperability protection when used on a standalone basis. On the other hand, there would be only a presumption that peripheral devices using the capabilities of such modems would be entitled to such protection.¹⁵ USTelecom’s characterization of NTIA’s approach as “obstructionist and overly burdensome” is unpersuasive.

We agree with USTelecom that the further proceeding to be conducted by the Commission’s Office of Engineering and Technology (OET) could be a useful way for federal agencies and other customers to preserve interoperability for devices that are not on the Commission’s initial list. The OET process, however, will not begin until several months after the new discontinuance review framework goes into effect, and additions to the list of protected devices will likely not be determined until many months thereafter. As a result, there may be a significant gap in time between when carriers begin receiving streamlined processing of legacy

¹⁴ *Id.*

¹⁵ NTIA Petition at 9-10.

voice discontinuance applications and when additional devices receive interoperability protection. As importantly, the Commission has specified only a limited number of criteria for OET to use in determining whether to grant interoperability protection to a new device, and it is not clear that those criteria fully accommodate the specialized needs of federal agencies.¹⁶ Consequently, as stated in NTIA's Petition, the OET process may be an incomplete substitute for expansion of the initial list of protected devices.¹⁷

Testing Requirements for Small Carriers

USTelecom also objects to NTIA's recommendations concerning testing requirements for small telephone companies, although it is not entirely clear why. NTIA agrees that the Commission should take reasonable steps to reduce testing and other burdens on small carriers.¹⁸ It also shares USTelecom's belief that small carriers may address testing concerns with their customers before any discontinuance application is filed.¹⁹ As noted in NTIA's Petition, however, to ensure continuation of mission-critical federal agency functions, it is essential that any change in communications facilities and services – even by a small carrier – be made only with appropriate testing.²⁰ Although NTIA therefore requested that the Commission retain some testing obligations for small carriers, it indicated that carriers could satisfy those obligations by relying on the testing performed with respect to substantially similar services by successful discontinuance applicants. That approach appropriately balances the desire to reduce burdens on

¹⁶ See *Second Report and Order* ¶¶ 162-65.

¹⁷ NTIA Petition at 8 n.16.

¹⁸ *Id.* at 11.

¹⁹ Compare *id.* at 11 with Opposition at 5.

²⁰ NTIA Petition at 11.

small carriers with the need to assure that a network transition does not impair mission-critical federal agency operations.

Encouraging Communication Between Carriers and Federal Agencies

NTIA's Petition urged the Commission to use its public interest review of service discontinuance applications to encourage greater communications between carriers and federal agencies about, for example, the direction and pace of proposed network changes, to help agencies maintain critical operations without interruption. USTelecom opposes that proposal, although it appears to misunderstand NTIA's request. NTIA agrees with USTelecom that carriers generally have a financial incentive to maintain good communication with their government customers. It simply wishes to ensure so far as possible that those incentives produce concrete and thorough discussions with federal agencies about upcoming network changes well in advance of the filing of a discontinuance application, and that the Commission be made aware of the scope of the discussions

This does not require – and NTIA did not propose – “any specific changes to the current notice process,” as USTelecom asserts²¹ Indeed, NTIA did not recommend imposing any specific obligations on carriers; instead, it merely urged the Commission to require carriers in their discontinuance applications to document the steps they have taken – if any – to inform affected federal customers of impending network and service changes, and to describe what actions they have taken or what plans they have made – if any – to ensure the continuity of mission-critical agency communications networks, systems, and services.²² The Commission could use that information to assess an agency's claim of a continuing need for a particular

²¹ Opposition at 6.

²² NTIA Petition at 14.


facility or service, one of the core issues that it uses to determine whether grant of a discontinuance application involving that service or facility would be in the public interest. USTelecom nowhere shows that that proposal is unreasonable or overly burdensome for carriers.

Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission expeditiously grant NTIA's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Milton Brown, hereby certify that on December 19, 2016, I caused a copy of the foregoing *Reply to Opposition of the National Telecommunications and Information* to be served by electronic mail to the following:

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