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

In the Matter of	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
	)	

ORDER ON CLARIFICATION

Adopted: March 20, 2025 **Released: March 20, 2025**

By the Chief, Wireline Competition Bureau

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, clarifies the applicability of the specified testing methodology and parameters adopted by the Commission in the *2016 Technology Transitions Order*[1] for meeting the streamlining criteria established for technology transition discontinuance applications filed under section 214(a) of the Communications Act of 1934, as amended (the Act).[2] This clarification is consistent with the Commission's intent in the *2016 Technology Transitions Order* to ensure clear, certain, and efficient processes that expedite and "build a bridge" for the transition from legacy voice services to more advanced alternatives for consumers.[3]

II. BACKGROUND

2. Section 214(a) of the Act provides that a carrier may not discontinue, reduce, or impair a telecommunications service without Commission authorization.[4] In evaluating whether to grant such authorization, the Commission must determine whether the discontinuance would adversely impact the public interest.[5] All applicants seeking to discontinue a service on a streamlined basis are required to file a section 214 application in accordance with the Commission's rules governing notice, opportunity for comment, review, and processing requirements.[6] Such applications are automatically granted on a specified date unless the Bureau has notified the

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[1] *Technology Transitions et al.*, WC Docket No. 13-5 et al., Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8321-22, paras. 106-09, 8367-71, Appx. B (Technical Appendix) (2016) (*2016 Technology Transitions Order*).

[2] 47 U.S.C. § 214(a).

[3] *2016 Technology Transitions Order*, 31 FCC Rcd at 8283, para. 3.

[4] 47 U.S.C. § 214(a). Unless otherwise noted, this Order uses the term "discontinue" or "discontinuance" as a shorthand for the statutory language "discontinue, reduce, or impair."

[5] 47 U.S.C. § 214(a) (providing 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").

[6] 47 CFR § 63.71(a)-(b).

applicant that the grant will not be automatically effective.[7] The Bureau, which routinely reviews section 214(a) discontinuance applications under delegated authority,[8] has "considerable discretion" in determining whether to grant a discontinuance authorization based on the application and any record developed in connection with it.[9] The Bureau will generally authorize the discontinuance "unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience is otherwise adversely affected."[10]

3. In the *2016 Technology Transitions Order*, the Commission adopted an updated approach for section 214 applications involving technology transitions.[11] It concluded that the public interest requires that applications seeking to discontinue a legacy TDM-based voice service as part of a transition to a new technology, whether Internet protocol (IP), wireless, or another type, indicate that a technology transition is implicated.[12] The Commission determined that one factor, the adequacy of the replacement service, has "heightened importance" in the context of technology transitions.[13] It thus established the Adequate Replacement Test, which requires that technology transition discontinuance applications, to be eligible for streamlined treatment and

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[7] 47 CFR § 63.71(f)(1). Under such streamlined processing, a discontinuance application is automatically granted on the 31st day (for non-dominant carriers) or the 60th day (for dominant carriers) after the Bureau accepts the application for filing. *Id.* The Bureau has the discretion to remove an application from streamlined processing "when the public interest demands a more searching review." *2016 Technology Transitions Order*, 31 FCC Rcd at 8300, para. 51, 8303, para. 61.

[8] *See* 47 CFR §§ 0.91, 0.291.

[9] *2016 Technology Transitions Order*, 31 FCC Rcd at 8303, para. 61. The Commission first adopted the section 63.71 streamlined process for discontinuance applications for services provided by non-dominant carriers in 1980. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 F.C.C.2d 1, 34, paras. 143-47 (1980) (*1980 Streamlining Order*). In adopting reduced content requirements for section 63.71 applications, the Commission concluded that as long as the carrier provides 30 days' prior notice to its customers and "no showing is made that a reasonable substitute service is not available," these applications would automatically grant 30 days after filing, with the ability of a customer to petition the Commission to deny the application. *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 F.C.C.2d 308, 347, para. 71 (1979) (*1979 Streamlining Notice*); *1980 Streamlining Order*, 85 F.C.C.2d, 34, para. 145 (noting that the content of section 63.71 as adopted "is substantially the same as that proposed" in the *1979 Streamlining Notice*). The Commission reasoned that, despite the disruptive effect a discontinuance can have on a customer, the new rule "offer[ed] customers a fair degree of protection by requiring carriers to notify all customers of discontinuance plans and by providing customers with an opportunity to inform the Commission of resultant hardships." *1980 Streamlining Order*, 85 F.C.C.2d at 34, para. 146.

[10] *See* 47 CFR § 63.71(a)(5)(i)-(ii). In evaluating whether "the public convenience and necessity is otherwise adversely affected" by the discontinuance, the Commission has long applied a five-factor balancing test. This test analyzes: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) increased charges for alternative services; and (5) the existence, availability, and adequacy of alternatives. *2016 Technology Transitions Order*, 31 FCC Rcd at 8304, para. 62; *Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, Memorandum Opinion and Order, 8 FCC Rcd 2589, 2600, para. 54 (1993), *remanded on other grounds*, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

[11] The Commission defines a "technology transition" as "any change in service that would result in the replacement of a wireline TDM-based voice service with a service using a different technology or medium for transmission to the end user, whether internet Protocol (IP), wireless, or another type." 47 CFR § 63.60(i).

[12] *2016 Technology Transitions Order*, 31 FCC Rcd at 8304-05, para. 64.

[13] *2016 Technology Transitions Order*, 31 FCC Rcd at 8304, para. 62.

automatic grant for their own replacement service,[14] satisfy three requirements: (1) demonstrate that an adequate replacement for their voice service exists "by either certifying or showing, based on the totality of the circumstances, that one or more replacement service(s) . . . offers substantially similar levels of network infrastructure and service quality"; (2) "show the replacement service complies with regulations regarding the availability and functionality of 911 service for consumers and public safety answering points"; and (3) "offers interoperability with key applications and functionalities."[15] With this three-prong Adequate Replacement Test, the Commission sought "to minimize uncertainty or confusion that could slow or even discourage technology transitions."[16]

4. In order to satisfy the first prong of the Adequate Replacement Test, the Commission explained in the *2016 Technology Transitions Order* that an applicant may demonstrate "a service is performing adequately enough to serve as a replacement for a legacy TDM service" through one of two options. The applicant can conduct performance testing that "demonstrates satisfaction of each of the benchmarks," or demonstrate, based on the totality of the circumstances, that the replacement service is on a network that "still provides substantially similar performance and availability."[17]

5. Applicants opting to conduct the performance testing contemplated by the first option must comply with the specified testing methodology and parameters set forth in the Technical Appendix to the *2016 Technology Transitions Order*.[18] Among many other requirements, an applicant relying on the Technical Appendix must engage in informal discussions with Commission staff in advance of filing a formal test plan; submit a Network Performance Test Plan to the Commission and posts it on the applicant's website at least 30 days prior to beginning testing;[19] post the results of its testing on its website; and, finally, include those results in the formal section 214 discontinuance application it must file upon completion of the 30-day testing period.[20] The "totality of the circumstances" option, on the other hand, also contemplates testing,[21] but "allows applicants to provide objective evidence to support their showing that the replacement service would offer substantially similar network performance and service availability" even if that evidence differs from the methodology and parameters set forth in the Technical Appendix.[22] The Commission recognized the need for flexibility, stating that "a comparison between a legacy voice service and its potential replacement is not an apples-to-apples comparison."[23]

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[14] Applicants relying on a third-party replacement service rather than their own replacement service are allowed to make a *prima facie* showing based on publicly available information that the third-party service is an adequate replacement. *2016 Technology Transitions Order*, 31 FCC Rcd at 8312, para. 86.

[15] 47 CFR § 63.602(b).

[16] *2016 Technology Transitions Order*, 31 FCC Rcd at 8307, para. 70.

[17] *2016 Technology Transitions Order*, 31 FCC Rcd at 8314, para. 91.

[18] *2016 Technology Transitions Order*, 31 FCC Rcd at 8316, para. 95, 8367-71, Appx. B.

[19] *2016 Technology Transitions Order*, 31 FCC Rcd at 8367, Appx. B, para. 3; *see also* Network Performance Test Plan of AT&T, WC Docket No. 24-220 (filed July 19, 2024) (Test Plan); *see also* AT&T, *Tariffs, Guidebooks and Service Guides*, https://cpr.att.com.

[20] Application at 22-27; *see also* AT&T, *Tariffs, Guidebooks and Service Guides*, https://cpr.att.com.

[21] *2016 Technology Transitions Order*, 31 FCC Rcd at 8314, para. 91

[22] *2016 Technology Transitions Order*, 31 FCC Rcd at 8319, para. 99.

[23] *2016 Technology Transitions Order*, 31 FCC Rcd at 8313, para. 90.

III. DISCUSSION

6. We clarify that a technology transition discontinuance applicant that elects to "show[], based on the totality of the circumstances,"[24] that a replacement service has substantially similar network performance and availability as the service being discontinued need not conduct the performance testing described in the *2016 Technology Transitions Order* and its Technical Appendix. By contrast, an applicant that elects to "certify[]"—rather than "show[]"[25]—that a replacement service has substantially similar network performance and availability must follow the testing described in the *2016 Technology Transitions Order* and its Technical Appendix. This clarification is consistent with the *2016 Technology Transitions Order*, which distinguishes between "performance testing" and "a demonstration based on the totality of the circumstances" and made clear that a technology transition discontinuance applicant could choose *either* approach.[26] This distinction makes sense only if the "performance testing" option in the *Order* corresponds to the "certif[ication]" option set forth in section 63.602(b), while the "demonstration based on the totality of the circumstances" option in the *Order* refers to the option to "show[], based on the totality of the circumstances," as specified in in section 63.602(b).[27]

7. We find this clarification is necessary in light of apparent confusion regarding the specific testing methodology and parameters permitted by the two separate options that carriers may use to satisfy the Adequate Replacement Test's first prong. We believe that confusion, in turn, has prevented carriers from pursuing technology transition discontinuances under the Adequate Replacement Test. In particular, in July 2024, almost eight years after the Adequate Replacement Test was adopted and six years after its effective date,[28] the Commission received the first technology transition discontinuance application to proceed under the Adequate Replacement Test relying on the applicant's own replacement service.[29] AT&T indicated in this application that it was relying on a totality of the circumstances showing to establish the adequacy of its replacement service, but also committed to the performance testing methodology and parameters established in the *2016 Technology Transitions Order* Technical Appendix.[30] Because AT&T committed to the Technical Appendix performance testing, it endeavored to comply with all the requirements of that Appendix, delaying the filing of its discontinuance application for several months. This extended timeline is inconsistent with a streamlined process, particularly when this particular performance testing was unnecessary under the totality of the circumstances approach.

8. The Commission has noted that "[b]y providing additional opportunities to streamline the discontinuance process for legacy voice services, with appropriate limitations to protect consumers and the public interest, we allow carriers, including small carriers, to more quickly redirect resources to next-generation networks, and the public to receive the benefit of those new

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[24] 47 CFR § 63.602(b).

[25] *See id.*

[26] *2016 Technology Transitions Order* para. 91.

[27] *Compare 2016 Technology Transitions Order* para. 91, *with* 47 CFR § 63.602(b).

[28] *Technology Transitions et al.*, GN Docket No. 13-5 et al., Final Rule; Announcement of Effective Date, 83 Fed. Reg. 36467 (2018).

[29] *Comments Invited on AT&T's Section 214 Application to Grandfather and Discontinue Legacy Voice Service as Part of a Technology Transition*, WC Docket No. 24-220, Public Notice, DA 24-1158 (WCB Nov. 20, 2024) (accepting AT&T's application for filing and establishing an automatic grant date of December 21, 2024).

[30] *See generally* Section 63.71 Application of AT&T Services, Inc. on behalf of its affiliate Southwestern Bell Telephone Company, LLC, d/b/a AT&T Oklahoma (AT&T); Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Grandfather and to Discontinue the Provision of Service, WC Docket No. 24-220 (submitted Nov. 1, 2024) (ART Application).

networks."[31] Indeed, the Commission's intent in adopting the Adequate Replacement Test was to "eliminate uncertainty that could potentially impede the industry from a prompt transition to newer technologies."[32] Unfortunately, this has not been the result. Instead, there has been a significant delay in carriers availing themselves of the technology transitions streamlined discontinuance process for their own replacement services, to the detriment of consumers who have been slower to receive next-generation services than the Commission expected. Indeed, other carriers are not as likely to avail themselves of the Adequate Replacement Test if they believe, incorrectly, that they must go through the same lengthy performance testing process that AT&T went through with its application. As a result, the resources they might otherwise direct towards the development and deployment of advanced communications services will remain tied up elsewhere, and the transition to more advanced communications services will be delayed.

9. The Adequate Replacement Test does not categorically mandate compliance with the more burdensome and lengthy testing process that is specified in the Technical Appendix to show that a service meets the network performance criteria. Indeed the Commission explained in adopting the test that "[t]here are two ways of demonstrating adequacy."[33] The Adequate Replacement Test permits providers to choose whether to commit to performance testing consistent with the Technical Appendix to the *2016 Technology Transitions Order* or, instead, to show, under the totality of the circumstances, that the service it claims will be an adequate replacement either meets the network performance and other criteria specified in the rules or nonetheless provides substantially similar performance and availability.[34] The latter showing would be based on some other type of testing, for example, results of internal network testing routinely undertaken to measure performance in rolling out a new product or service. But to be clear, testing under the totality of the circumstances is not subject to the specified testing parameters and requirements set forth in the Technical Appendix. Otherwise, the explicit language in the rule requiring the applicant to demonstrate "by *either* certifying *or* showing"[35] that the replacement service meets the specified criteria would collapse the option of "showing" into the option of "certifying," resulting in no option at all and rendering part of the regulation meaningless (which is inconsistent with the canon against surplusage).

10. We thus clarify that a carrier seeking Commission authorization to discontinue a legacy voice service pursuant to the Adequate Replacement Test's totality of the circumstances with respect to its own replacement service need only show, based on the results of the carrier's routine internal testing or other types of network testing, that "the network still provides substantially similar performance and availability" as the service being discontinued.[36]

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 214, and pursuant to sections 0.91, 0.291, 1.2, 63.71, and 63.602 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.2, 63.71, and 63.602, that this Order IS ADOPTED.

12. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

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[31] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WC Docket No. 17-84, 33 FCC Rcd 5660, 5674, para. 32 (2018).

[32] *2016 Technology Transitions Order*, 31 FCC Rcd at 8305, 8307, paras. 64, 70.

[33] *2016 Technology Transitions Order*, 31 FCC Rcd at 8314, para. 91

[34] *2016 Technology Transitions Order*, 31 FCC Rcd at 8313, para. 90.

[35] 47 CFR § 63.602(b).

[36] *2016 Technology Transitions Order*, 31 FCC Rcd at 8314, para. 91.

FEDERAL COMMUNICATIONS COMMISSION

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