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

In the Matter of	)	
	)	
Reducing Barriers to Network Improvements and Service Changes	)	WC Docket No. 25-209
	)	
	)	
Accelerating Network Modernization	)	WC Docket No. 25-208

COMMENTS OF THE DIGITAL PROGRESS INSTITUTE

The Digital Progress Institute is a non-profit dedicated to the bipartisan, incremental reform of technology and telecommunications policies. We appreciate the opportunity the Federal Communications Commission has given us and other stakeholders to comment on its rulemaking to reduce barriers to network improvements and accelerate network modernization.[1] In these comments, DPI urges the Commission to entirely eliminate the legacy notice requirements imposed on one small and declining segment of the market (non-rural time-division-multiplexed incumbent local exchange services), to streamline the section 214 discontinuance process, to inject common sense into the emergency discontinuance process, to otherwise clean up the Commission's rules, and to make clear that it is ready to preempt state and local laws that bar the IP Transition.

First, the Commission should forbear from enforcing section 251(c)(5) of the Act and should repeal sections 51.319(c)(3)(iv), 51.325, 51.327, 51.329, 51.331, 51.333, and 51.335 of its rules to eliminate the special public-notice requirements imposed on incumbent LECs.

[1] *Reducing Barriers to Network Improvements and Service Changes; Accelerating Network Modernization*, WC Docket Nos. 25-209, 25-208, Notice of Proposed Rulemaking, FCC 25-37 (2025) ("*Notice*").

These rules, originally intended to protect consumers and ensure service continuity, now serve primarily to slow innovation and preserve the status quo. Absent the waivers granted by staff earlier this year, carriers would have to provide lengthy notice periods and face potential objections from state regulators, municipalities, and competitors before they could retire aging copper facilities—even when those facilities are no longer in active use or economically viable. And the substance of those rules is manifold, including special labelling requirements,[2] special notice requirements,[3] requirements for the Commission to separately provide notice,[4] 90-day waiting periods tied to that Commission public notice,[5] specialized objection procedures,[6] and specialized resolution procedures.[7] Frankly, the Act requires none of this; it only requires that incumbent LECs provide reasonable public notice of changes that impact interconnection.[8] At the least, the Commission should codify these waivers by eliminating these rules *in toto*, leaving incumbent LECs to comply with the bare statutory requirement.

But the Commission should go further and forbear from section 251(c)(5). That section is not necessary to ensure just and reasonable practices, not necessary to protect consumers, and not in the public interest. To start, as the *Notice* observes, Congress enacted section 251(c)(5) as "one of a number of market-opening provisions at a time when incumbent [local exchange

[2] 47 C.F.R. § 51.329(c)(1).

[3] 47 C.F.R. § 51.333(a)(1).

[4] 47 C.F.R. § 51.333(b).

[5] 47 C.F.R. § 51.333(b)(2).

[6] 47 C.F.R. § 51.333(c).

[7] 47 C.F.R. § 51.333(f).

[8] Communications Act § 251(c)(5) (Incumbent LECs shall "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.").

carriers] LECs held a virtual monopoly in the communications marketplace."[9] To state the obvious, the market of the 1990s is not the market of today. Back then, incumbent LECs "controlled 99.7% of the local telephone service market"—by 2020, they had "only 9% of all voice subscriptions across all technologies."[10] Competition is abundant, and incumbent LECs no longer have a special place in the market.

What is more, the market itself provides concrete evidence that this public-notice requirement is not necessary. After all, neither competitive LECs nor non-rural incumbent LECs nor interexchange carriers nor commercial mobile radio service carriers nor fixed VoIP operators nor nomadic VoIP operators nor Zoom nor any of the operators of our voice communications platforms are subject to this section. So while the *Notice* at points asks the public to opine on hypotheticals,[11] there is no such need here. Has the lack of a public-notice requirement (let alone the complicated scheme layered onto the statutory requirement by the Commission's rules) led to unjust and unreasonable practices by competitive LECs? Obviously not. Have consumers been harmed when interexchange carriers upgraded their networks without providing notice to the Commission? Of course not. Has it been in the public interest to allow commercial mobile radio service carriers the ability evolve from 1G to 2G to 3G to 4G to 5G without typing out a play-by-play for the Commission? Absolutely. Or to put it another way: If 91% of the voice

[9] *Notice*, para. 15.

[10] *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, FCC 20-152, para. 22 (2020).

[11] *See, e.g.*, *Notice*, paras. 17 ("Would interconnected telephone exchange service providers be adversely affected by receiving no notice of short-term network changes or copper retirements?"), 18 ("Would consumers be harmed were we to forbear from section 251(c)(5)'s public notice requirement and the Commission's rules implementing that requirement?"), 19 ("If we were to forbear from section 215(c)(5)'s public notice requirement, could the Commission, through its own outreach, mitigate any potential harm to consumers?").

subscription market can operate without a section-251(c)(5)-public-notice requirement, there is no reason to think that the final 9% needs some special obligation.

What is more, the elimination of the section 251(c)(5) obligations would affirmatively promote competitive market conditions by streamlining the process of upgrading legacy networks to next-generation IP networks.[12] Section 251(c)(5)'s public-notice obligations are a bit like tariffs—a requirement for one competitor to make its plans known to others before it acts. And the Commission has long recognized that such disclosures are against the public interest when applied to non-dominant firms: They are "superfluous as a consumer protection device, since competition circumstances the prices and practices of these companies," and harmful to "price competition and service and marketing innovation."[13] In short, forbearing from section 251(c)(5) would empower these incumbent LECs to modernize their networks and compete.

Second, one of the most significant regulatory hurdles to completing the IP Transition lies in the FCC's discontinuance rules. In pertinent part, section 214 of the Act provides that "no carrier shall discontinue, reduce, or impair service to a community, or part of a community" without Commission approval.[14] To carry out that provision, the Commission has adopted a complicated scheme for discontinuances in rule 63.71, containing 52 subrules.[15] And those provisions require carriers to comb through their legacy service offerings and make repeated filings at the Commission to discontinue legacy services, slowing the IP Transition.

---

[12] Communications Act § 10(b) ("In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions . . . .").

[13] *Deregulation of Telecommunications Services*, Report and Order, 84 FCC.2d 445, 478-479 (1981).

[14] Communications Act § 214(a).

[15] 47 C.F.R. § 63.71.

It does not have to be this way. Section 214 of the Act also provides that no carrier may deploy new services without Commission approval,[16] and yet the Commission has granted blanket authority for the construction of new lines.[17] The Commission has also made clear that its approval is not required when a service has no customers in a community because in a such case, the carrier is not in fact providing service to that community.[18] And section 214 itself makes clear that "nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment . . . which will not impair the adequacy or quality of service provided."[19]

Given how simple the statutory requirements are—and the *Notice*'s own recognition that the Adequate Replacement Test and the Alternative Options Test have not lived up to their promises of accelerating the IP Transition or aiding American consumers—the Digital Progress Institute supports the Commission's proposal to "eliminate the technology transitions distinction entirely" and make all discontinuance applications eligible for streamlined processing.[20] To implement this, the Commission should repeal rules 63.60(i), 63.70(a)(6), 63.70(f)(2), 63.70(h), and 63.602. Furthermore, recognizing that no carrier is now dominant in the provision of voice or legacy data services, the Commission should amend rule 63.71(a)(5) to eliminate the distinction between non-dominant and dominant carriers and amend 63.71(f)(1) to apply to any application "filed by a domestic carrier," eliminate the second sentence about dominant carriers,

[16] Communications Act § 214(a).

[17] 47 C.F.R. § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.").

[18] 47 C.F.R. § 63.71(g).

[19] Communications Act § 214(a).

[20] *Notice*, para. 36.

and amend the final sentence to make clear that an application is "deemed filed" when it is posted on the Commission's website (i.e., in ECFS).[21]

In addition, the Commission should make clear that replacing one voice telephony service with another does not require any application, any notification, and any approval because it is not a "discontinuance." This idea is not new—the Commission effectively paved the way for the replacement of legacy TDM voice services with next-generation IP voice services in the context of the Universal Service Fund, when it amended its rules to define "voice telephony service" as the supported service, regardless of the underlying technology.[22] In other words, when a carrier continues to provide voice telephony service to its customers but switches from using copper to using modern technologies like fiber or wireless access, there is no need to notify the military or the Department of State or the governor nor seek the approval of the Commission or a State Commission. To implement such a change, the Commission should amend the definition of "discontinuance, reduction, or impairment of service" in rule 63.60(b) (a definition now redundant with the language of rule 63.62) to exclude "any installation, replacement, or other change in plant, operation, equipment, or technology if a carrier offering voice telephony service, as defined in rule 52.101, continues to offer such service after any such installation, replacement, or other change."

Third, the Commission should move forward with its proposals to inject common sense into the emergency discontinuance process.[23] Some have argued the Commission's rules require that when TDM equipment is lost to flooding or destroyed in an earthquake or copper loops are

[21] *See Notice*, paras. 85-89.

[22] 47 C.F.R. § 52.101(a); *see also Notice*, para. 32.

[23] *Notice*, para. 97.

stolen, the carrier must replace them with the same legacy technology with the same limitations absent explicit approval from the Commission to modernize the network. That's especially problematic in areas where other voice service operators are already offering service—it means the reconstruction of a redundant, outdated network rather than investing that capital in the networks that American consumers want and need.[24] Again, any modern technology meeting that can make "voice telephony service" available would be an improvement, let alone a sufficient replacement.

Fourth, the Commission should authorize all carriers to grandfather and ultimately discontinue legacy voice and lower-speed data services without filing any application. As the *Notice* explains, blanket authorization for the grandfathering of such services will dramatically streamline the process for carriers to move their customers off of legacy infrastructure and onto modern, IP networks.[25] What is more, the Commission should expand the category of lower-speed data services to include DS3s or their equivalent[26]—when most consumers have access to speeds of 100 Mbps or even 1 Gbps, there's no reason to think that legacy circuits of 45 Mbps are irreplaceable.

However, rather than replace rule 63.71(k)-(l) with a statement that a carrier need not file an application in these circumstances[27] or forbear from 214 requirements for these services,[28] the Commission should take a page out of its past and issue a blanket authorization. After all, section 214 of the Act applies equally to the construction of new lines as it does the

[24] *See Notice*, para. 98.

[25] *Notice*, paras. 69, 71-76.

[26] *Notice*, para. 70.

[27] *Notice*, para. 69.

[28] *Notice*, para. 78.

discontinuance of service, and the Commission complied with the statute through a single line.[29] The Commission should adopt a similar blanket authorization here.

Fifth, the Commission should adopt its proposals to eliminate outdated discontinuance rules, such as those governing public toll stations, telephone exchanges at military establishments, newspaper publication of notices, trunk lines, and traffic interchange, and public coast stations.[30]

Finally, the Commission seeks comment on "any state or local requirements that would conflict with the Commission's goals of accelerating this transition by, for example, compelling carriers to continue providing legacy voice service or preventing carriers from discontinuing such service."[31] The Commission is right to seek such comment as some states and localities have leveraged existing obligations to slow the IP Transition.

For example, some states have required eligible telecommunications carriers and carriers of last resort to maintain and invest in the legacy network. When carriers have attempted to relinquish those designations in response, states have refused the request. As to eligible telecommunications carrier designations, the Act is clear: A state commission "*shall* permit an eligible telecommunications carrier to relinquish its designation as such as a carrier *in any area* served by more than one eligible telecommunications carrier."[32] The Commission should reiterate that the statute means what it says. More broadly, the Commission should make clear

[29] 47 C.F.R. § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.").

[30] *Notice*, paras. 102-24.

[31] *Notice*, para. 125.

[32] Communications Act § 214(e)(4) (emphases added).

that it stands ready to preempt any state requirements that prohibit the replacement of legacy copper with modern fiber and wireless networks.

* * *

The case for a faster and more decisive IP Transition is not just about technology—it is about competition, innovation, and the welfare of the American public. Every dollar spent propping up obsolete TDM infrastructure is a dollar not invested in next-generation networks. Every regulatory delay in retiring copper or discontinuing outdated services is a missed opportunity to improve service quality, reduce costs, and extend broadband access to more American families and veterans.

With this *Notice*, the Commission is on the right path to accelerate the IP Transition. The Digital Progress Institute fully supports this rulemaking, and we respectfully request the Commission take these comments into account as it moves towards adopting rules.

Respectfully submitted,

/s/ Joel Thayer
Joel Thayer
President
The Digital Progress Institute
1255 Union Street NE
Seventh Floor
Washington, D.C. 20002

September 29, 2025