

Review of FCC Report and Order

“Reducing Barriers to Network Improvements and Service Changes” (WC Docket No 25-209)
“Accelerating Network Modernization” (WC Docket No 25-208)

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FCC Report and Order: <https://docs.fcc.gov/public/attachments/FCC-26-19A1.pdf>

Background: The changes here apply to both “consumer” (loop side) and “carrier” (trunk side) use of TDM-based services (i.e. copper POTS lines, but also TDM trunks between carriers which use copper lines carrying digital T-carrier data). TDM is a circuit-switched technology, unlike VoIP, which is packet-switched. All traditional POTS lines are encoded using TDM at the central office switch, so POTS is considered a TDM service.

Single Paragraph High-Level Changes for Consumers: The main impact to consumers is that FCC will streamline copper retirement for POTS and DSL. The FCC has decided that if any of a number of “alternatives” is available, including only wireless, that is sufficient for copper retirement, which will be automatically approved. Telcos do not need prove that everyone is covered by an alternative available service. The burden is now on consumers now to prove otherwise, and to file a timely objection with the FCC, in which case it won’t be streamlined, but there is still no guarantee that the FCC will do anything.

Additionally, the FCC will move to preempt state laws, such as COLR requirements, if they conflict with the FCC’s agenda. Please see my analysis of this section for specific legal arguments in play.

The report and order was adopted March 26, 2026. The FCC is still reviewing the *IP Interconnection* proceeding, although there is a lot of crossover between these.

Verbiage from the report and order is in italics and cited by paragraph number. Any emphasis (bolding) is mine. Please note that while I offer some thoughts, and have some background in telecommunications, I am not a lawyer and none of this is legal advice.

EXCERPTS FROM REPORT AND ORDER, WITH ANALYSIS

General Goals & Methodology

We do so by cutting through the red tape that has both required providers to keep aging copper lines in place and effectively prevented them from investing in the modern infrastructure that Americans want and deserve (1)

*The 19th century technology of copper-based networks capable of provisioning basic voice service and limited data bandwidth is no longer sufficient to meet the bandwidth-hungry needs of modern communications and thus has been rendered obsolete by more advanced networks. **These new networks also offer reliability benefits over copper wires, which are less resilient than other technologies** (19) and are increasingly vulnerable to thefts that lead to emergency discontinuances and disruption for end users. [9]*

Citation 19: The FCC sites that wireless is faster to restore because portable cell towers can be erected and that copper is more vulnerable to weather conditions. Fiber is more durable and more future-proof.

Bizarrely, this citation also references that “wireless connectivity requires... providing power only to the transmission site... to serve all the households in the service area regardless of if they have power on their premises”. But, this is not true, since mobile phones themselves require power/battery, and this argument actually instead applies to copper landlines powered by the CO! In other words, this citation contradicts the FCC’s own argument.

Citation 20: Copper retirement is increasingly being done due to copper theft.

Public Notices

We first eliminate the filing requirements associated with our rules implementing section 251(c)(5) ’s network change disclosure mandate. [5]

Here’s what the network change disclosure mandate is: “The 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.”

*We adopt our proposal in the Network and Services Modernization Notice to encourage rapid deployment of high-speed, more resilient infrastructure by eliminating all filing requirements in the Commission’s network change disclosure rules and the Commission’s process of issuing public notices for short-term network changes and copper retirements and the associated objection process for interconnected service providers. **Incumbent LECs will continue to be required to post public notice of planned network changes through industry fora, industry publications, or on the carrier’s publicly accessible Internet site without the obligation to file duplicative information with the Commission.** To ensure clear notice specifically to interconnecting carriers, **incumbent LECs must continue to (1) provide direct notice of copper retirements and short-term network changes to directly interconnected telephone exchange service providers, 911 service providers,³⁴ and directly interconnecting local exchange service providers that support essential functions within 911 networks, including delivering 911 traffic to selective routers for transmission to public safety answering points (PSAPs),³⁵ and (2) provide public notice and communicate directly with interconnected telephone exchange service providers about network changes resulting from force majeure events and other events outside of the incumbent LEC’s control.³⁶ We note that the action we take today **does not absolve incumbent LECs of their obligation under section 214(a) to obtain Commission authorization for a copper retirement or other network change as defined in section 51.325(a) of our rules³⁷ that also results in a service discontinuance [12]*****

This isn’t a huge deal, compared to the other stuff in this rulemaking. ILECs won’t need to notify the commission, but they still need to notify the public and other phone companies, and if they previously needed permission to do something, they still do.

*We find that adopting the change in filing and notice requirements proposed in the Network and Services Modernization Notice will not have any impact on the notices end users receive of planned network changes. **Neither section 251(c)(5) nor our implementing rules impose end-user notice obligations.⁴³ Rather, carriers provide such notices to end users as a matter of practice...** In response to our requests for comment in the Network and Services Modernization Notice on whether any public benefit exists from requiring incumbent LECs to file network change disclosures with the Commission⁴⁶ and whether publishing notices of network changes on carriers’ websites provides reasonable public notice of network*

changes,⁴⁷ commenters suggest the lack of objections submitted in response to Commission network change Public Notices indicates that filing network change disclosures has become a purely administrative task that does not provide any value. [14]

Okay, so the FCC doesn't think the public notices hold value to consumers, which is clearly false, since these are vital information. But from the previous section, public notice will still be provided by ILECs, so this really isn't a fish to fry.

The FCC is not completely forbearing from section 2251(c)(5) at this time

*We do not take the alternative approach of forbearing from all public notice requirements imposed by section 251(c)(5) and our implementing rules because we find that **forbearance is not justified at this time.** (17)*

*Based on the record in this proceeding,⁶¹ we conclude that the **conditions for granting forbearance relief from all network change disclosure requirements do not exist at this time** and that any framework or guidance regarding interconnection with incumbent LEC networks during and after the transition to IP is more appropriately addressed in the context of the proposed forbearance from the incumbent LEC-specific interconnection and related obligations in the October 2025 IP Interconnection Notice. ⁶² The rule we adopt today eliminating network change disclosure filing requirements achieves the appropriate balance between providing reasonable public notice of planned network changes and relieving incumbent LECs of unnecessary regulatory burdens. [18]*

*We conclude that enforcement of the public notice requirements imposed by section 251(c)(5) and our implementing rules is **necessary to ensure incumbent LECs' practices are just and reasonable.** Forbearance from all requirements in section 251(c)(5) and our implementing rules would allow incumbent LECs to make network changes or copper retirements without public notice, which might affect interoperability with interconnecting providers and may result in unintended service disruptions.⁶⁴ Public notice of network changes generally and copper retirement notices specifically ensures that incumbent LECs' practices are "just and reasonable and are not unjustly or unreasonably discriminatory"⁶⁵ by requiring that interconnecting carriers receive timely notice regarding changes that may inhibit their ability to provide services to their end-user customers.⁶⁶ [19]*

*We find that **enforcement of the public notice requirements imposed by section 251(c)(5) and our implementing rules is necessary for the protection of consumers.** The requirement that incumbent LECs provide reasonable public notice of network changes is meant to alert interconnecting carriers to changes that might affect their interoperability with the incumbent LEC's network.⁶⁷ Lack of such notice and the opportunity to ensure interoperability might cause unintentional disruption of services, ultimately harming consumers [20]*

*We conclude that forbearance from the public notice requirements imposed by section 251(c)(5) and our implementing rules would not be consistent with the public interest.⁶⁹ As shown overwhelmingly in the record, **lack of notice at this time could significantly impact the provision of 911 services.**⁷⁰ While the transition to Next-Generation 911 (NG911) is progressing alongside broader IP modernization, the NG911 transition faces unique challenges and may not be complete for some time. (21)*

No problems with this. The FCC made the right call here.

Section 214 Discontinuation

We adopt our proposal to grant blanket authorization for carriers to grandfather any legacy voice service, data telecommunications services operating at speeds below 25/3 Mbps, and interconnected VoIP service provisioned over copper facilities. [22]

Yeah, this is talking about POTS and DSL here, not good.

This consolidated rule stipulates that an application to discontinue a currently offered retail voice service as part of a technology transition is eligible for streamlined processing if the applicant certifies that one or more of the following replacement services is available in every location throughout the affected service area:83 (1) a facilities-based interconnected VoIP service;84 (2) a facilities-based mobile wireless service; (3) a voice service offered pursuant to an obligation from one of the Commission's modernized high-cost support programs; (4) a voice service that has been available from the applicant throughout the affected service area for the previous six months and for which the carrier has at least a certain number of existing subscribers and which supports access to 911; or (5) a widely available alternative voice service that supports access to 911. [23]

Not good. The application is eligible for streamlined processing if only ONE of the requirements is met. Note that wireless service qualifies as an option.

We find that this rule will accelerate the application process while simultaneously protecting legacy service customers by ensuring that they have replacement service options available to them when their legacy service is discontinued [23]

Clearly, the FCC's bar for a "replacement service" has been made very low.

A discontinuance application can rely on the availability of multiple replacement services, particularly when the application encompasses multiple wire centers covering large geographic areas. We decline to adopt Public Knowledge's proposal to require applicants to identify the replacement service they are relying on for each subscriber address.91 Requiring such a level of granularity would impose an unreasonable burden on carriers and is not always necessary to confirm the availability of the replacement service(s) across the geographic area subject to discontinuance... We thus require carriers to identify the available replacement services using the smallest practicable geographic unit depending on the geographic areas implicated by the specific application at issue, which could consist of, among other things, census blocks, census block groups, or ZIP codes [25]

This is very bad. The FCC won't require carriers to prove every subscriber really has access to supposed alternatives; only at the macro level. Just because someone in a census block or ZIP code has access to a service doesn't mean everyone else does.

We conclude that, rather than allowing legacy voice services to be discontinued and replaced with inferior options, specifying explicit categories of adequate replacement services will implement a baseline of quality and availability for replacement services in the event of a discontinuance thus ensuring that no consumer receives replacement services that fall beneath a certain level of service. [29]

The FCC is adopting definitive criteria for "replacement services".

Our streamlined processing rules still require carriers to notify customers of their applications to discontinue service, which must be done no later than the date they file their applications, and provide information regarding replacement service options.¹⁰⁵ Thus, even in instances where a carrier may seek to avail itself of streamlined processing of its discontinuance application, any customers or other interested stakeholders with concerns—including about the technical and interoperability information for a specific replacement service—have the opportunity to file comments or objections to that application with the Commission.¹⁰⁶ Should the Bureau have any concerns about whether a particular request to discontinue service could adversely affect the public interest, it will remove the application from streamlined processing for closer review,¹⁰⁷ thus mitigating the risk that a replacement service of inferior quality or availability will be imposed upon consumers in the event of a discontinuance. [30]

Consumers can still object and proposals will not be streamlined. Of course, there is no guarantee that the FCC will side with the consumer in its review.

Under the rules adopted in 2016, the requirement that “replacement services [] be compatible with these devices” sunset in 2025.[30]

The FCC is no longer even requiring that replacement services be backwards compatible with things that previously worked with POTS.

We decline to impose on technology transitions discontinuance authorizations a condition that “the replacement service support G.711 codec handshake with RFC 2833 disabled on calls to telephone numbers serving life safety alarm monitoring receivers, end-to-end through all carrier handoffs,” as recommend by AICC. Introducing a new compatibility requirement for legacy devices, ten years after the 2016 Technology Transitions Order established a sunset date for compatibility for alarms using low-speed modem devices, would introduce unnecessary delay from the transition to modern, reliable services... However, we encourage carriers to ensure their IP networks are appropriately configured so as to prevent alarm signaling failures. [31]

I actually made a similar comment in my Reply Comments that out-of-band DTMF (such as RFC 2833) and perturb the phone call.

This is not good. The FCC will not require that phone calls work the way they used to, with exactly what was sent being received on the other hand. Other codecs and out of band may perturb the information in a phone call, and this is “okay”. The FCC says that legacy devices should no longer be expected to work with replacement services, and won’t hold that against them.

According to citation 110, there are 5 million alarm panels using dialer-based protocols and these may no longer work properly after the transition. What says the FCC? Screw them! Moving everything to IP is far more important than backwards-compatibility, even with life-saving equipment!

Facilities-based interconnected VoIP service. We find that facilities-based interconnected VoIP service is an adequate replacement for purposes of determining eligibility for streamlined processing. 11 [32]

This is generally VoIP service from your ILEC or cable company, as opposed to “over the top” VoIP over the Internet. An example of this would be regulated “POTS over fiber” service (like Verizon offers), or also the more common unregulated “FiOS Digital Voice” service that Verizon also offers. These services generally are high-quality, the same as POTS, for the most part. However, they may not offer access to all

the same functionality (unregulated services rarely allow for Feature Group D “Equal Access” to interexchange carriers).

As far as replacement services will go, this is the “best” option (not great, by any means, of course, but it only gets worse from here).

Facilities-based mobile wireless service. We find facilities-based 121 mobile wireless service operating at speeds of at least 5/1 Mbps, as reflected on the National Broadband Map, 122 to be an adequate replacement for purposes of eligibility for streamlined processing... we disagree with Public Knowledge’s argument that a facilities-based mobile wireless service is not a suitable replacement for a wireline voice service in the context of a section 214(a) discontinuance review. [34]

This is highly problematic, as the presence of only wireless coverage is enough for streamlined processing. However, note as before that consumers may still object and then it will not be streamlined (but the FCC still may not side with the consumer).

We decline to adopt additional verification requirements for the availability of mobile wireless service beyond the data reflected in the National Broadband Map, as suggested by some commenters

Affected customers faced with a planned technology transitions discontinuance relying on the availability of a facilities-based mobile wireless service, as well as other interested stakeholders such as public interest groups and state public utility commissions, may also file objections and seek to have the Bureau remove the application from streamlined processing for further review of the availability of mobile wireless service in the affected service area. Given the existence of these guardrails, we find it unnecessary and redundant to implement additional mobile-specific verification requirements as part of this current rulemaking [35]

Not only does the FCC hold that “wireless is enough”, but they won’t require strict proof that wireless coverage is even available! The only remedy is now the consumer must bear the burden and object to the streamlining.

*Carrier’s already available alternative voice service. We find that, where a carrier has already made available its own alternative voice service throughout the affected service area, the service is an adequate replacement for the service being discontinued in that area for purposes of eligibility for streamlined processing if that service has been available for at least the immediately preceding 60 days and the carrier certifies that based on the results of its own internal network testing routinely undertaken to measure performance in rolling out a new product or service, the service offers substantially similar levels of network performance and availability¹³⁷—for example, that it is provisioned over a network with speeds of at least 25/3 Mbps and that it offers **mouth-to-ear latency of no more than 200 ms** [37]*

The FCC holds that 200 ms latency is acceptable for phone calls – ouch!!!

Anyways, this basically says that if most people in your area already have an alternative service from that company, then that meets the bar. Not good.

Customers with concerns about the adequacy of the purportedly “widely available” alternative service, as well as other interested parties, can file comments or objections to an application for streamlined processing with the Commission, 150 and the Bureau has the discretion to remove the application from

streamlined processing for further review, including the ability to request supplemental information from the applicant.¹⁵¹ We further expressly delegate to the Bureau the authority to remove from streamlined processing an application relying on this category of replacement service if the service has little to no customers. Bureau staff may consider the extent to which the widely available service has been adopted outside the affected service area. We find that these safeguards address commenter concerns raised in the record¹⁵² and obviate the need for staff to conduct such time-consuming reviews of every application filed relying on this category of replacement service. [40]

Carriers are still required under our streamlined processing rules to notify their customers of their applications to discontinue service and provide information regarding replacement service options and the customers' ability to object to the proposed discontinuance, and we note that this broad requirement encompasses particular demographics raised in the record, such as customers in rural areas or older customers.¹⁷¹ While an application may be eligible for streamlined treatment under the rule we adopt today by the applicant demonstrating the availability of its own or another voice service throughout the affected area that may only be available on a bundled basis, **customers with concerns about the adequacy or affordability of a replacement service, as well as other interested parties, may file comments or objections to that carrier's discontinuance application with the Commission [46]**

Basically, the FCC will no longer protect consumers. It will rely on consumers to raise objections to the Bureau if they do not consider an alternative to be a viable replacement.

*We affirm the Bureau's finding in the Stand-Alone and Single-Service Waiver Order that **VoIP need not be offered on a stand-alone basis to be considered an adequate replacement¹⁵³** and thus decline to impose such a requirement in the consolidated technology transitions rule we adopt today. [41] We disagree with commenters who contend that consumers must retain access to standalone voice service separate from a bundled broadband service simply to obtain and maintain access to voice communications.¹⁶⁵ The fact that technologically advanced VoIP services may only be available in certain areas and from certain providers bundled with broadband, text messaging, or some other service should not preclude it being **considered an adequate replacement if the price the consumer would pay for the bundle is comparable to the price the consumer pays for the legacy voice service or is otherwise affordable.** [44]*

The FCC won't require "voice only" services to be available, as in the past. You may instead be forced to purchase some other kind of bundled service, such as a phone/Internet/TV combo package. The FCC also holds that the wide variety of "apps" and other data services obviates the need for standalone voice!

We require applicants to provide pricing information so that the Bureau can compare the price of the legacy voice service to post-promotional and non-sale pricing of any bundled options carriers might rely on as a replacement service in order to consider the likelihood of any unreasonable price increases for consumers [45]

This is unlikely to help consumers much, given the high existing cost of POTS service. Companies could charge just as much for a lower-reliability VoIP or other alternative service, bundled with other stuff the consumer does not want, and that would be just fine with the FCC, even though such services are generally offered at much lower cost today.

Emergency Communications

While some commenters are concerned that replacing plain old telephone service (POTS) provided over copper lines with IP-based service over fiber, wireless, or satellite networks could jeopardize communications during emergencies,¹⁷⁹ the experiences of rural commenters demonstrate that such concerns, while certainly well intentioned, may be misplaced [49]

So, based on a few comments from certain parties, the FCC completely disregards the comments from people that rely on POTS to reach 911 and emergency services.

Deteriorating copper is more susceptible to adverse weather events than fiber¹⁸¹ and requires more time to restore than alternative services like mobile wireless.¹⁸² And alternative voice services can still work during outages or emergencies.¹⁸³ For example, mobile wireless services are designed to work during cellular network outages through built-in redundancies such as cellular failover and satellite connectivity. [49]

Yeah, the FCC is actually arguing wireless is more reliable than POTS...

Additionally, interconnected VoIP service will continue to work during a power outage if Internet service is operational and the end user maintains a backup power supply.¹⁸⁵ And despite commenter arguments that phone service provisioned over copper lines always works during a power outage,¹⁸⁶ this is not true. Utility poles that carry copper can and do go down during severe weather events and natural disasters, cutting off both service and power to residents and businesses, while not all alternative services are vulnerable to the same type of disruption.¹⁸⁷ [49]

Yes, copper isn't perfect, but nothing else is either. This is a completely twisted argument. They are arguing that less reliable services are "reliable enough" or "more reliable" when they require backup power supplies, and turning around and arguing copper is "less reliable" simply because it is *possible* for it to fail (even though the others can too).

The FCC is deliberately misconstruing reality here. No sane person would arrive at this conclusion.

Accessibility

With regard to telecommunications relay services (TRS) specifically, the Commission has recently initiated proceedings to modernize TRS to ensure that those services remain effective, accessible, and sustainable for the individuals who use them... We thus decline to adopt an accessibility-specific requirement as part of the service discontinuance review under section 214 in this Order. [50]

In the TRS Modernization Notice adopted in November 2025, the Commission, in light of technological advances and declining use of analog relay services, sought to ensure that "relay services remain effective, accessible, and sustainable for individuals who are deaf, hard of hearing, deafblind, or have speech disabilities, by proposing a series of reforms to transition users to Internet-based alternatives."¹⁹¹ We agree with Hamilton Relay that the TRS Modernization proceeding—which focuses on reforms designed to ensure that relay services remain effective, accessible, and sustainable as technology advances and networks transition—is the best venue in which to address any TRS issues related to technology transitions.¹⁹² However, we find that expanding IP-based services through streamlined technology transitions will work hand-in-hand with the TRS Modernization proceeding [52]

I honestly haven't reviewed the TRS proceeding as much, but this sounds like it could potentially be bad, i.e. traditional TRS may no longer be guaranteed to work, and "IP-based" TRS may be deemed adequate.

We recognize that there are some instances—as in the case of isolated rural facilities, critical access hospitals,¹⁹⁶ or customers with unique accessibility issues¹⁹⁷—in which discontinuances may require more time than is provided for by our streamlined processing to avoid stranding consumers without access to voice services. Any customers with concerns, as well as other interested parties, can file comments or objections to specific applications with the Commission.¹⁹⁹ Should the Bureau have any concerns about whether it is in the public interest to grant a particular request to discontinue service, it will remove the application from streamlined processing for further review,²⁰⁰ thus mitigating the risk that customers will be left without voice services in the wake of a discontinuance. In cases where a party submits plausible objections to a specific discontinuance application based on critical access needs,²⁰¹ the Bureau may determine that it is appropriate to remove the application from streamlined processing so that it may work with the discontinuing carrier to ensure that no at-risk customers are left stranded.²⁰ [54]

Customers with disabilities will need to file comments with the FCC to object or for accessibility accommodations.

Over the last five years, Bureau staff have removed only 11 discontinuance applications from streamlined processing, nine of which were in 2025 and were the result of a shutdown of certain agency operations due to a lapse in federal appropriations. In all 11 instances, staff released Public Notices granting all of those applications 51 days after such removal. [59]

So, you can object to the FCC, but it's unlikely they will oblige consumers in not granting an application in the end.

We decline to adopt any specific consumer outreach and education requirements in connection with the discontinuance rules we adopt today. [56]

The FCC is not going to do any outreach to inform consumers of these changes.

Grandfathering

*We revise our rules to **grant blanket section 214(a) authority for carriers to grandfather the following services to the extent they come within the purview of section 214(a): (1) any legacy voice service; (2) any lower-speed data telecommunications service; and (3) any interconnected VoIP service provisioned over copper wire.** [60]*

Any phone company can unilaterally grandfather any POTS, DSL, or other TDM-based service, without approval from the FCC. **THIS IS HUGE.** POTS could be grandfathered by any carrier tomorrow, i.e. no new copper lines.

We agree with commenters that eliminating unnecessary grandfathering requirements reduces carriers' burdens while not affecting existing subscribers, as current customers are entitled to keep the grandfathered service. [62]

This is not sufficient consumer protection, obviously. If you move, you cannot sign up for a grandfathered service. So, people that move may no longer be able to keep POTS services.

We retain a notification requirement because this relatively low burden on carriers will help ensure that customers learn as soon as possible that their service is likely to be discontinued at some point in the future, so they can make informed decisions about what services to purchase even before a discontinuance is imminent [63]

Carriers are at least still required to notify consumers if they are discontinuing their service (how outrageous and unbelievable would it be if they were not?) Of course, that's little comfort given the service may go away eventually either way.

And any customers that still subscribe to the grandfathered service when the carrier later seeks permanent discontinuance authority will have the ability to object and ask to have the application removed from streamlined processing. [63]

A theme is emerging here. It is going to be increasingly important for every consumer receiving these notices to immediately object to the FCC. However, that will only have the application removed from streamline processing. Still, we should all do what we can to slow this down and ensure that as many of these are NOT streamlined as possible.

When a wholesale provider discontinues a legacy voice service, the reseller in nearly all cases has no available alternative sources from which to obtain replacement TDM-based services to resell to its end-user customers.²⁷⁸ The only requirement needed to ensure that consumers are protected in such situations is notice from the reseller to its customers.²⁷⁹ We thus impose on any reseller availing itself of this forbearance relief the condition that it provide such notice to its affected customers as soon as practicable after the reseller receives notice from its wholesale provider of the planned technology transitions discontinuance that it will no longer be able to provide the relevant legacy voice service. [77]

There isn't much to argue with here. If a CLEC is reselling POTS and no longer will be able to due to a technology transition, there is nothing the CLEC can do about it. We should really be concerned with ILEC offerings anyways here, not CLECs.

*We find that enforcement of the requirements at issue are **necessary for the protection of consumers**. As illustrated in the record, **locations exist where fiber has not yet been deployed and where wireless service may not reach or be sufficiently robust to support reliable voice service.**²⁸⁸ By retaining the requirement that a **carrier must seek Commission authorization to discontinue the service** at issue, we ensure that customers and other interested parties, including state regulators, will have the opportunity to raise such concerns in objections to the discontinuance application [81]*

We adopt our proposal to revise section 63.71 of our rules to extend the 31-day automatic grant period applicable to applications to discontinue a service for which a carrier is non-dominant to all instances in which a domestic carrier submits a request to discontinue a service.... And because the Commission retains the authority to remove applications from streamlined processing, the public interest will still be protected as required by section 214(a) [85]

This is important to understand the distinction. The FCC is not allowing carriers to discontinue service without Commission permission (though in most cases, I expect this permission to be freely given). They are streamlining the process to "automatically grant" applications in cases where they deem "acceptable

alternatives” exist. As we know, some of these so-called “alternatives” may have serious issues, and now it will be up to consumers to object to the FCC.

Without the backstop of customer objections and Commission review of an application and those objections, the Commission would not be able to confirm the availability of an adequate replacement service for the affected customers, including in instances where a provider may be relying on “not-yet-deployed technologies,” particularly in less economically attractive locations [83]

So the FCC themselves acknowledge they are going to rely on consumers to let them know if a service is being discontinued without alternatives in place.

Some commenters suggest that the 31-day auto-grant period, which provides a 15-day window for customers and other interested parties to file objections,³⁰⁴ is not enough time for consumers to learn about adequate replacements and ensure there are no unintended consequences of the discontinuance, such as loss of 911 services.³⁰⁵ However, 31 days has proven to be sufficient for the public to review recent non-dominant carrier applications, including technology transitions discontinuance applications, and assess any changes or disruptions that may occur due to the discontinuance.³⁰⁶ And since 2013, the Commission has received, on average, only 12 dominant carrier discontinuance applications each year, with objections filed with respect to only approximately 10 percent of those applications and only three being removed from streamlined processing and subsequently granted. [86]

Although the FCC claims a framework is in place to protect consumers, theoretically, a bleak landscape exists here in practice. Consumers will only have a 2-week window in which to object to a discontinuation. And history shows the FCC rarely disagrees with carriers seeking to discontinue a service.

State Preemption

*As we do so, the record shows that certain state and local requirements have been unduly prolonging the use of legacy networks and actually preventing providers from building modern ones by **limiting the types of services that may qualify as adequate replacements** when carriers seek to discontinue legacy telecommunications services. Our action today addresses these state and local regulatory barriers to ensure the essential transition to an all-IP environment and the benefits it will bring to the people of this nation. **State and local statutes and regulations that force providers to continue devoting resources to maintaining deteriorating legacy networks and provisioning near-obsolete services to an ever-decreasing number of subscribers that conflict with the federal regulatory framework established here frustrate federal policies and goals.** Our rules must allow providers to focus on deploying next-generation networks provisioning the advanced communications services of today and tomorrow. (4)*

*Finally, we expressly find that **federal law preempts state and local requirements to the extent they needlessly constrain the deployment of modern, next-generation IP-based networks** by impeding providers’ ability to **discontinue providing interstate and jurisdictionally mixed legacy services and to retire outdated and deteriorating legacy networks.** Such requirements conflict with the section 214(c)’s **provision** that after a carrier obtains Commission authorization to discontinue a service, it need not obtain any additional authorizations before implementing that discontinuance of service.¹⁰ And **they conflict with the important federal policy of encouraging the IP transition** so that all Americans have access to its many benefits [7]*

We determine that, where the Commission has authorized discontinuance of interstate or jurisdictionally mixed legacy voice services, state requirements that make it impossible or impracticable for carriers to discontinue those services—and so in effect require carriers to continue providing interstate or jurisdictionally mixed telecommunications services—conflict with federal law, and the important federal policy represented by our modernized regulatory framework established in this Order for network changes and service discontinuances and are subject to preemption. [106]

Jurisdictional nature of legacy voice service. Legacy voice service is the transmission of voice communications, usually over copper wires, using circuit-switched technology known as “time-division multiplexing” (TDM).³⁷⁸ Legacy voice service generally includes what is sometimes colloquially described as “local telephone service,” although that term does not accurately reflect the jurisdictional nature of the service as a practical matter in today’s networks. Few, if any, networks today operate on a purely local or even intrastate level.³⁷⁹ Local exchange service and local toll service, while typically occurring within a single state, do in certain instances cross state lines.³⁸⁰ And the vast majority of consumers use the same provider for both their local and long distance service,³⁸¹ with some customers purchasing bundled access that includes local exchange service, local toll calling, and interstate long distance toll service.³⁸² However, these services are provisioned over the same network using the same technology.³⁸³ We acknowledge that, in the 2016 Technology Transitions Order, the Commission stated that “wholly intrastate services such as local telephone service are excluded from [the] reach” of the Commission’s section 214 discontinuance authority.³⁸⁴ Insofar as that statement might be understood to suggest that legacy voice service is a purely intrastate service, we find that the Commission in 2016 did not consider how state requirements might, on a practical level, prevent or conflict with the discontinuance of interstate or jurisdictionally mixed services.

This is going to be critical to analyze in grounds for a potential lawsuit.

The FCC in 2016, *itself acknowledged* that local telephone service was “wholly intrastate”, and intrastate matters are left to the states, while interstate matters are left to the FCC.

The FCC then goes on to say that in 2016, of course, it did not anticipate how state requirements over local phone service might prevent/conflict with the discontinuation of interstate or jurisdictionally mixed services.

*Federal discontinuance authority under section 214. Section 214 authorizes the Commission to determine when interstate or jurisdictionally mixed telecommunications services may be discontinued. The Commission has recognized that **Congress enacted section 214 to “protect Americans’ continued access to the nation’s communications networks while also preserving carriers’ ability to upgrade their services without the interruption of federal micromanaging.”**³⁸⁵ **Section 214 thus does not guarantee that a particular service, such as legacy voice service, remains available to consumers or that consumers can purchase a particular service from a particular carrier. Rather, section 214 seeks to ensure that consumers retain access to vital communications services, regardless of the identity of the service provider.**³⁸⁶ Under section 214(a), except on a temporary or emergency basis, “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community,” without first “obtain[ing] from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby,”³⁸⁷ And section 214(c) allows the Commission to tailor the scope of the discontinuance it authorizes “as in its judgment the public convenience and necessity may*

require.”³⁸⁸ Once the Commission authorizes discontinuance, a carrier may discontinue the covered service “without securing [other] approval.”³⁸⁹ **Section 214 thus creates an exclusively federal discontinuance regime for interstate or jurisdictionally mixed telecommunications services.** [108]

Section 214 provides states with a limited role in the federal discontinuance regime, but that role does not provide states with additional authority over services for which a provider has obtained Commission approval for discontinuance. Section 214(b) requires a carrier to notify each state in which the carrier proposes to construct, acquire, or operate a line or proposes to discontinue, reduce, or impair a service, and grants those states “the right . . . to be heard.”³⁹³ **This provision allows states to object to any federal discontinuance application prior to any Commission authorization.**³⁹⁴ **But it is the Commission that has sole jurisdiction to decide whether a carrier’s proposed discontinuance adversely affects the public convenience and necessity and whether it should be approved or rejected.**³⁹⁵ In section 214(c), **Congress gave both states and state public utility commissions (PUCs) the right to bring a federal court action to enjoin any discontinuance of service that occurs “contrary to the provisions of” section 214.**³⁹⁶ This provision allows states to bring suit in federal court to enjoin discontinuance if discontinuing a service would be in violation of, or without, a Commission authorization.³⁹⁷ **But section 214(c) does not grant states the right to obtain federal court injunctions against discontinuances that are lawfully granted by the Commission. Accordingly, neither section 214(b) nor section 214(c) provides states with the power to decide whether a carrier may discontinue interstate or jurisdictionally mixed service, or empowers states to impose requirements that frustrate or add extra conditions to Commission decisions allowing discontinuance. Instead, Congress provided that, after obtaining the Commission’s approval, carriers could “without securing approval other than such certificate . . . proceed with the discontinuance . . . of service.”**³⁹⁸ [110]

We find that section 253(b) of the Act similarly does not provide states with additional authority over services for which a provider has obtained discontinuance approval at the federal level. Section 253(b) provides a safe harbor from preemption under section 253(a) when states “impose, on a competitively neutral basis . . . , requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”³⁹⁹ **Two commenters argue that section 253(b) thus preserves several COLR obligations.**⁴⁰⁰ **To the extent these commenters suggest that section 253(b) gives states discontinuance authority over interstate services or jurisdictionally mixed services, we disagree.** While section 253(b) does offer states a safe harbor from the reach of the Commission’s section 253 preemption authority, the safe harbor is limited on its face to the provisions of section 253 itself. As stated in section 253(b), “[n]othing in this section”—i.e., in section 253—“shall affect the ability of states” to exercise the rights enumerated therein.⁴⁰¹ We find the safe harbor for the states in section 253 does not confer authority over services that have received federal approval for discontinuance under section 214. [111]

As explained below, once the Commission has authorized a carrier to discontinue an interstate or jurisdictionally mixed telecommunications service, **states may not enforce any law, regulation, or other requirement that on its face or in practical terms requires the carrier to continue providing the interstate or jurisdictionally mixed service the Commission has authorized the carrier to discontinue. States may not, consistent with federal law, impose any additional conditions on the Commission’s authorization of discontinuance, including conditions that purport to be technology neutral,**⁴⁰² but

that have the practical effect of requiring the carrier to continue providing an interstate or jurisdictionally mixed telecommunications service. [112]

A key contention here is what local POTS service is a “jurisdictionally mixed service”. I think this is one area where there is a reasonable argument that it is not, and thus states do have authority here because POTS is neither interstate or jurisdictionally mixed service, in most if not all cases. The FCC may well plausibly make the argument that it is and we would need to defend against that.

*It is well established that, under the “impossibility exception” to state jurisdiction, the Commission may preempt state law when (1) it is impossible or impracticable to regulate the intrastate aspects of a service without affecting interstate communications and (2) the Commission determines that such regulation would interfere with federal regulatory objectives.*⁴⁰⁴ More generally, under the U.S. Constitution, federal law is the “supreme Law of the Land.”⁴⁰⁵ As relevant here, state law is subject to conflict preemption if it “prevent[s] or frustrate[s] the accomplishment of a federal objective,”⁴⁰⁶ and Commission actions taken under statutory authority will preempt state law.⁴⁰⁷ The doctrine of “conflict preemption—true to its name—[applies] when the operation of federal and state law clash in a way that makes ‘compliance with both state and federal law . . . impossible,’ or when ‘state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”⁴⁰⁸ [113]

Point #1 will be easier for us. I do not believe it is impossible or impractical to regulate the intrastate aspects of POTS service, given it is purely an intrastate service in most cases, with interstate services falling under the “interexchange” services a provider or other providers may offer (i.e. interstate long distance service). Local service is thus not a bona fide interstate service, simply because the interconnected VoIP replacements / alternatives to POTS service may function by *their* nature as jurisdictionally mixed.

Point #2 is more troubling. There is a good argument the FCC could make that state requirements to keep purely intrastate services conflict with its federal regulatory objective of completing the IP transition. In other words, the FCC’s own agenda to phase out legacy TDM copper services would thus be the basis for its preemption of state requirements. Potentially, we could take issue either with the determination or the objectives themselves.

*We determine that certain state and local statutes, regulations, and requirements are subject to federal preemption. We sought comment in the Network and Services Modernization Notice on state or local requirements that would inhibit or impede the transition to next-generation networks and services, and asked whether such requirements would conflict with this critical goal by, for example, compelling carriers to continue providing legacy voice service or preventing carriers from discontinuing service.*⁴⁰⁹ ***The record indicates that some states have adopted requirements that carriers assert operate to prevent them from discontinuing legacy voice service—whether as a matter of law or in practical effect.***⁴¹⁰ *The record also includes assertions that certain state or local statutes, regulations, or requirements have the effect of preventing carriers from seeking to retire deteriorating legacy networks and discontinuing outdated TDM-based services taken by ever-fewer customers for undetermined periods of time, leaving these providers unable to redirect time and resources away from the development and deployment of next-generation networks and technologies.*⁴¹¹ *We agree with USTelecom that, where the Commission has exercised its section 214 discontinuance authority over interstate and/or jurisdictionally mixed services to allow a carrier to discontinue legacy voice service, state requirements that operate to require the carrier*

*to continue providing those services conflict with federal law. Such state or local statutes, regulations, or legal requirements effectively “negate the Commission’s exercise of its lawful authority because regulation of the interstate aspects of the matter cannot be severed from regulation of the intrastate aspects.”*⁴¹² *We conclude that if state and local requirements prevent a provider from discontinuing the interstate portion of a legacy voice service for which the Commission has already granted discontinuance authorization pursuant to section 214, then the requirements negate a valid federal regulatory objective because the interstate impacts of the state or local requirements cannot be unbundled from the intrastate aspects of those requirements.*⁴¹³ *We stress that states lack authority to regulate interstate services. And, moreover, where the Commission has lawfully exercised its section 214 authority to allow discontinuance of a service within its regulatory sphere, section 214(c) expressly provides that carriers do not require any other “approval” to discontinue the covered service, including any state commission or Commission approval that might otherwise be required under section 214(e)(4) for relinquishment of the carrier’s ETC status, if there is another ETC throughout the relevant service area.*⁴¹⁴ *We determine here that any such state requirements, to the degree they regulate services shown to be jurisdictionally mixed, are subject to preemption pursuant to both the impossibility exception and general principles of conflict preemption.*⁴¹ [114]

Here the FCC is more specific in its legal argument. The basis for refuting the FCC would be that state requirements preventing discontinuation of POTS do not, in fact, prevent them from discontinuing the *interstate* portion of their legacy voice services. Right now, the FCC is taking an all or nothing approach. While the FCC does have the authority for interstate services, our argument would be that local exchange service, as purely intrastate, does allow states to make conditions governing local exchange service where it currently exists and is currently intrastate.

In other words, we cannot and should not dispute the FCC’s authority over interstate services. We must prove that local exchange POTS service is not interstate and not jurisdictionally mixed, and that it can be cleanly separated from the interstate and jurisdictionally mixed portions of the service.

*It is beyond the scope of this proceeding to evaluate individual state requirements in their particulars, or to determine whether they conflict with federal law. We accordingly do not, in this Order, make any preemption determination as to any specific state or local law or requirement. **If, however, the Commission has authorized a carrier to discontinue legacy voice service and any state requirement conflicts with that authorization, or if a carrier wants to seek Commission discontinuance authorization for a legacy voice service but that carrier believes that a state requirement prevents it from doing so, the carrier may opt to seek a determination from the Commission that the state requirement is preempted.*** [115]

So, AT&T and California are not called out specifically, but it seems very likely that this provides a basis and firm footing for AT&T to seek FCC preemption of California’s COLR requirements, and the same is true of other carriers and states.