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By Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, *Safeguarding and Securing the Open Internet* (WC Docket No. 23-320); *Restoring Internet Freedom* (WC Docket No. 17-108); *Bridging the Digital Divide for Low-Income Consumers* (WC Docket No. 17-287); *Lifeline and Link Up Reform and Modernization*, (WC Docket No. 11-42)

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), AT&T¹ files this notice of *ex parte* presentation in the above-named dockets.

On February 26, 2024, the undersigned along with Caroline Van Wie, Matthew Nodine, and Christopher Heimann, on behalf of AT&T, met with Commission staff including Trent Harkrader, Adam Copeland, Terri Natoli, Jodie May, Thomas Sullivan, Denise Coca, Gabrielle Kim, Svantje Swider, Jim Schlichting, and Kenneth Carlberg to discuss the NPRM's proposal to apply section 214 of the Communications Act to broadband internet access providers, should the Commission reclassify broadband internet access service as a "telecommunications service." In the meeting, AT&T addressed in detail why, if the Commission reclassifies broadband (which it should not do), it should forbear from applying section 214(a)-(d) as it did in connection with the 2015 Order.²

Imposing section 214 requirements on broadband would harm both broadband providers and consumers. Freedom of entry and exit is a hallmark of free markets. Conversely, regulation of entry and exit would inevitably undermine investment in broadband networks.³ Broadband

¹ AT&T Services Inc. files this notice on behalf of itself and its affiliates (collectively "AT&T").

² See Report and Order on Remand, Declaratory Ruling, and Order, Protecting and Promoting the Open Internet, 30 FCC Rcd 5601, ¶ 509 (2015) ("2015 Order") ("We also find section 10(a) met for purposes of forbearing from applying section 214 discontinuance approval requirements."); see also *id.* ¶ 512 (granting forbearance with respect to section 214(d)); see also AT&T Comments at 28 (explaining potential impact of section 214 discontinuance regulation on investment); USTelecom Comments at 99-103 (explaining why the Commission should forbear from section 214); USTelecom Reply Comments at 81-85 (same).

³ See, e.g., USTelecom Reply Comments at 82 n.366 (collecting comments).

investment is inherently risky, particularly where the business case is on the margin.⁴ Exit restrictions increase that risk and thereby deter investment, because such restrictions can force an ISP to continue incurring the costs of providing a service after it discovers that the service is unprofitable.⁵ Exit restrictions also force ISPs to continue to devote scarce capital to legacy services rather than newer technologies.⁶

Entry and exit regulation would also impose unnecessary administrative burdens.⁷ “Preparing Section 214 authorization applications is costly, and delays and uncertainty in application processing can also jeopardize financing and other time-sensitive business deals.”⁸ These obligations would especially burden smaller providers without extensive in-house legal staff.

Of particular concern, entry and exit regulation would imperil the business case for fixed wireless service. These new services rely on wireless providers’ mobile networks. Those providers must therefore constantly balance the evolving impact of their fixed wireless service on the quality of their mobile services. Fixed wireless and mobile services are both highly dynamic services, and the demands they place on wireless networks can change quickly and significantly. At the same time, critical mid-band spectrum needed to provide these 5G services is limited and costly.⁹ Any regulatory scheme that makes it more difficult for wireless providers to discontinue fixed broadband services would deter them from offering those services in the first place, lest they lose the flexibility to redeploy spectrum to serve their mobile customers.

The NPRM does not address these significant potential harms of applying section 214(d) to broadband for the first time. Nor does the NPRM even suggest a basis for reversing course on the *2015 Order’s* conclusion that “marketplace incentives” would more than adequately protect

⁴ AT&T Comments at 24.

⁵ USTelecom Comments at 102 & n.368; *see also, e.g.*, First Report and Order, *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities*, 85 FCC 2d 1, ¶ 147 (1980) (“If regulatory exit barriers are not lowered, carriers may be discouraged from entering high risk markets for fear that they may not be able to discontinue service in a reasonably short period of time if it proves unprofitable. Ease of exit is also a fundamental characteristic of a competitive market.”).

⁶ USTelecom Comments at 103. The Commission itself has recognized this very concern. Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd 11128, ¶ 83 (2018) (“The record also makes clear that the Commission’s current section 214(a) discontinuance rules impose needless costs and delay on carriers that wish to transition from legacy services to next-generation, IP-based infrastructure and services. Even relatively short delays or periods of unpredictability can, in the aggregate, create significant hurdles for providers who seek to upgrade hundreds or thousands of lines across their service territory. As Verizon explains, excessive restrictions on the discontinuance of legacy services harm both consumers and competition alike ‘as they delay the ability of providers to shift resources from legacy voice services to the more modern offerings that consumers demand.’”) (footnotes omitted).

⁷ USTelecom Reply Comments at 83 & n.369.

⁸ *Id.* at 83.

⁹ AT&T Comments at 4-13 (filed in WT Docket No. 23-3219, RM-11966).

consumer interests without any need for section 214 oversight.¹⁰ Instead, in proposing not to forbear from section 214, the NPRM relies exclusively on national security concerns related to foreign entities.¹¹ As an initial matter, the NPRM cites no evidence that any such entities provide broadband in the United States.¹² But even if some do, the Commission has identified, at most, a basis for applying section 214 to *those foreign entities alone*. Any broader application of Section 214 to domestic providers would thus be arbitrary and capricious.¹³ The Commission can tailor forbearance so as not to impose, for the first time, restrictions on the ability of ISPs to freely exit unprofitable markets.

Finally, a handful of commenters encourage the Commission to apply section 214 to broadband to prevent ISPs from discontinuing service and leaving customers with no feasible broadband alternatives.¹⁴ But these commenters fail to explain why such oversight is at all necessary or consistent with the Commission's goal of encouraging deployment of advanced telecommunications capability to all Americans. Broadband providers have demonstrated their commitment to expanding broadband deployment wherever it is economic to do so, investing more than a trillion dollars over the past two decades.¹⁵ Broadband providers also have no incentive to discontinue broadband service except in areas where such service is uneconomic or outdated and no longer sufficient to meet the needs of users, as is the case for certain legacy DSL services for which equipment is no longer available. Preventing broadband providers from discontinuing those legacy services, services which do not meet the Commission's broadband definition, would divert resources that could be much better used to support newer technologies.

Indeed, these additional regulatory burdens could materially delay broadband providers' ability to transition their own customers to fiber and other higher-speed services or rationally react to competitive market entry, thus holding providers captive and wasting limited resources.

¹⁰ 2015 Order ¶ 512.

¹¹ NPRM ¶ 108.

¹² Cf. NPRM ¶¶ 27, 108 (discussing only justifications for using *international* section 214 requirements).

¹³ There is a long-standing and highly successful framework for CMRS forbearance from section 214 that addresses national security concerns without impairing investment and competition. See 2015 Order ¶ 422 (discussing CRMS framework). This same approach could be extended to broadband to the extent the Commission believes it needs to maintain section 214 with respect to international licenses. See Second Report and Order, *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1463-93, ¶¶ 124-219 (1994) (describing CMRS forbearance), *recon. dismissed in part and denied in part*, 15 FCC Rcd 5231 (2000); see also 47 C.F.R. § 20.15(b) ("Commercial mobile radio service providers are not required to: (3) Submit applications for new facilities or discontinuance of existing facilities (section 214 of the Communications Act).")

¹⁴ See Communications Workers of America Comments at 7; Free Press Comments at 59-60 & n.137.

¹⁵ See <https://www.ustelecom.org/research/2022-broadband-capex/#:~:text=Investment%20Up%2019%25%20Year%20Over,high%2Dspeed%20connectivity%20for%20all>.

Particularly given the near ubiquitous availability of better quality mobile and fixed wireless broadband services,¹⁶ these parties' claims regarding the purported need for Commission oversight of discontinuance of outdated and uneconomic broadband services does not justify applying section 214 to broadband for the first time in its history.

Should you have any questions about this submission, please contact me at 202-279-0012.

Sincerely,

/s/ Henry G. Hultquist

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¹⁶ See generally USTelecom Comments at 39-45.

