

ALERT

FCC's Copper Retirement Rulings to Take Effect November 18

October 28, 2015

The Federal Communications Commission (Commission) has announced the effective date of certain rulings in its August 7, 2015 **Order** establishing new procedures for the retirement of copper facilities and the discontinuation of TDM (time division multiplexing) services. Specifically, the following rulings will take effect on November 18, 2015:

- A clarification that an incumbent carrier may only discontinue a service used as a wholesale input after it either (1) obtains the Commission's approval via the section 214 process or (2) determines that there will be no impairment of service to end users;
- An interim rule requiring incumbent carriers seeking section 214 authority to discontinue, reduce, or impair a TDM-based special access service or commercial wholesale platform service that is being used as a wholesale input by competitive carriers to provide those carriers with "reasonably comparable" wholesale access on "reasonably comparable" rates, terms, and conditions (47 C.F.R. § 63.71(c)); and
- The adoption of a "totality of the circumstances" test to determine what constitutes "reasonably comparable" wholesale access for the purposes of the interim rule.

Other aspects of the Commission's August 7, 2015 Order will take effect after Office of Management and Budget approval. Upon approval, the Commission will publish a document in the Federal Register announcing the effective date of these changes, which are as follows:

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Practice Areas

Telecom, Media & Technology

- A clarification that the definition of copper retirement includes *de facto* retirement, *i.e.* carriers allowing copper networks to deteriorate to the extent those networks are no longer reliable;
- A rule requiring incumbent carriers planning copper retirements to provide 180 days' public notice of those retirements to the Commission, with copies of the notice to interconnecting carriers, state authorities, the U.S. Department of Defense, and federally recognized Tribal Nations;
- A rule requiring incumbent carriers planning copper retirements to provide direct notice of planned retirements to residential retail customers at least 90 days in advance and non-residential retail customers at least 180 days in advance;
- A rule requiring incumbent carriers to provide interconnecting carriers with additional information upon request throughout the copper retirement process to accommodate any changes with no disruption of service to the interconnecting entity's end user customers; and
- A rule requiring incumbent carriers to file a certification with the Commission at least 90 days before a retirement that the carrier has complied with the notice and information requirements associated with the retirement.

A complete summary of the Commission's August 7, 2015 Order and Further Notice of Proposed Rulemaking is available [here](#).