

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Accelerating Wireline Broadband Deployment by)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)	

**REPLY COMMENTS OF THE FIBER BROADBAND ASSOCIATION ON THE
NOTICE OF PROPOSED RULEMAKING, NOTICE OF INQUIRY, AND REQUEST
FOR COMMENT**

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INTRODUCTION AND SUMMARY

The Fiber Broadband Association (“FBA” or “Association”)¹ hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission’s”) Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment in the above-captioned proceeding on actions the Commission can take to “accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment.”² These reply comments reiterate the FBA’s support for the proposal in the NPRM to “eliminat[e] the requirement that incumbent LECs provide direct notice of planned copper retirements to retail

¹ The FBA was formerly known as the Fiber to the Home Council Americas (the “FTTH Council”). The Association’s mission is to accelerate deployment of all-fiber access networks by demonstrating how fiber-enabled applications and solutions create value for service providers and their customers, promote economic development, and enhance quality of life. The Association’s members represent all areas of the broadband access industry, including telecommunications, computing, networking, system integration, engineering, and content-provider companies, as well as traditional service providers, utilities, and municipalities. As of today, the FBA has more than 250 entities as members. A complete list of FBA members can be found on the organization’s website: <https://www.fiberbroadband.org/>.

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, FCC 17-37 (rel. Apr. 21, 2017) (“NPRM”).

customers, both residential and non-residential.”³ As explained herein, the initial comments in response to the NPRM made clear that the retail customer notice requirement provides little, if any, benefit to consumers, while raising the costs to providers to transition from copper to fiber networks, thereby inhibiting the availability of superior service options for consumers.⁴ Therefore, the Commission should eliminate the Section 51.332 retail customer notice requirement for copper retirements. Alternatively, if the Commission is not prepared to eliminate the requirement at this time, it should modify the notice rule to establish a general requirement that service providers should provide retail customers with notices that, in their discretion, are reasonably calculated to provide useful and timely information to allow customers to make an informed decision regarding the network change.

I. THE PRESCRIPTIVE RETAIL CUSTOMER NOTIFICATION REQUIREMENT HAS NOT BENEFITED CONSUMERS AND HAS INCREASED THE COST TO TRANSITION FROM COPPER TO FIBER

In its initial comments, the FBA supported the proposal to eliminate the requirement that incumbent LECs provide direct notice of planned copper retirements to retail customers for the following reasons: (1) fiber-based broadband services are far superior to copper-based services; (2) there is no credible, systematic evidence that replacing copper with fiber produces any harm to consumers; and (3) repealing the “one-size-fits-all” retail customer notice requirements will

³ *Id.*, ¶ 64. The relevant sections of the rule for this purpose are Sections 51.332(b)(3), (c)(2), (d)(6)-(8), and (e)(3)-(4).

⁴ As Verizon noted in its opening comments, “[t]he Commission has properly encouraged deployment of fiber facilities for good reason: fiber provides a future-proof, reliable platform to meet consumers’ communications needs now and into the future. In comparison to legacy copper cable, fiber provides environmental and performance advantages, as it offers significantly greater bandwidth and is much less sensitive to distance limitations than is copper.” Comments of Verizon, WC Docket No. 17-84, 16-17 (filed June 15, 2017) (“Verizon Comments”).

reduce unnecessary copper retirement costs for providers, thereby facilitating the proliferation of all-fiber networks. Other commenters similarly supported eliminating this requirement.⁵

Several commenters, however, opposed eliminating the retail customer notice requirement, contending that customers need to “understand what is and is not happening during a copper retirement” in order to make informed choices about their service options.⁶ These commenters also argued that the retail customer notices provided pursuant to Section 51.332 have resulted in customers being better informed.⁷ The FBA disagrees with these arguments.

⁵ See Comments of AT&T Services, Inc. on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84, 31 (filed June 15, 2017) (“AT&T Comments”); Comments of CenturyLink, WC Docket No. 17-84, 26 (filed June 15, 2017) (“CenturyLink Comments”); Comments of Frontier Communications Corporation, WC Docket No. 17-84, 23 (filed June 15, 2017) (“Frontier Comments”); Comments of R Street Institute, WC Docket No. 17-84, 15-16 (filed June 15, 2017) (“R Street Comments”). These commenters support the proposal to repeal Section 51.332 in its entirety and “return[] to a more streamlined version of the pre-2015 *Technology Transitions Order* requirements for handling copper retirements subject to Section 251(c)(5) of the Act.” *NPRM*, ¶ 58. The FBA submits that if the rule is repealed rather than modified, the Commission should make clear that states cannot subsequently impose their own retail customer notice obligation for planned copper retirements.

⁶ Comments of the Pennsylvania Public Utility Commission, WC Docket No. 17-84, 8 (filed June 15, 2017) (“PaPUC Comments”); *see also* Comments of the Communications Workers of America, WC Docket No. 17-84, 9-14 (filed June 15, 2017) (“CWA Comments”); Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, Maryland Office of People’s Counsel, New Jersey Division of Rate Counsel, Office of the Ohio Consumers’ Counsel, Pennsylvania Office of the Consumer Advocate, and The Utility Reform Network, WC Docket No. 17-84, 10-14 (filed June 15, 2017) (“NASUCA Comments”).

⁷ However, AARP concedes that “the benefits of adequate notice ensuring that consumers are properly informed, and have alternatives that offer functional equivalence may be more difficult to quantify.” Comments of AARP, WC Docket No. 17-84, 16 (filed June 15, 2017).

While “consumers benefit when they are informed about planned network changes that may affect their service,”⁸ the rule imposes significant costs and produces few, if any, benefits.

To begin with, the Commission’s notice requirement is more likely to harm consumers by causing confusion about the upcoming copper retirement. For example, the Maryland Office of People’s Counsel (“MD OPC”) cited customer complaints it received following Verizon’s copper retirement announcement in 2016 as the basis for maintaining the retail customer notice requirement.⁹ However, Verizon’s Vice President for Wireline Transformation explained that customer confusion about the copper retirement may have been caused in part because, although Verizon complied with Section 51.332’s requirement to notify customers of the copper *retirement* date, in Verizon’s experience “retail customers are more concerned about when they will be *migrated* to the newer technology than when the copper is actually *retired* (or taken off the poles),” and “[r]eceiving a notice six months or a year before [customers] will actually be

⁸ Comments Submitted on Behalf of the Public Utilities Commission of Ohio, WC Docket No. 17-84, 3 (filed June 14, 2017). *See also* CWA Comments at 11 (“Advance notice reduces customer confusion, gives consumers time to prepare for change, and ensures that legacy telephone customers are not left without vital voice and related services (such as medical alert and security alarm services) during and after a copper-to-fiber migration.”); Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 17-84, 11 (filed June 15, 2017) (“ITTA Comments”) (“To be clear, ITTA agrees that consumers and other retail customers need to understand how copper retirements may affect them. Customers should have clarity regarding the services available to them and understand the practical consequences of copper retirements.”).

⁹ According to the MD OPC, the complaints were the result of “non-compliant” notices to affected customers. Comments of the Maryland Office of People’s Counsel on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment on Broadband Deployment/Infrastructure Investment, WC Docket No. 17-84, 6 (filed June 15, 2017) (“MD OPC Comments”). Verizon and the MD OPC collaborated to revise and re-send the customer notices, a process which the MD OPC claims “would [not] have occurred without the FCC’s current notice regulations and the ability of an agency like Maryland OPC to bring customer service problems to the Maryland [Public Service Commission] for resolution.” *Id.*

migrated only creates more confusion, particularly when they will later receive a notice that tells them when they actually need to migrate their services.”¹⁰

ITTA further explained the shortcomings of the rule, noting that it “inhibit[s] carriers from telling customers, during a key contact point, about the advantages of the upgraded network, thereby perpetuating a state of angst among consumers who are negatively predisposed towards network changes,” and that customer confusion may be further compounded because “any attempt by the carrier to promote new features and functionalities enabled by the network upgrades must be rendered by separate messaging.”¹¹ Finally, AT&T observed that “when copper facilities are replaced by FTTH facilities, the retail customer is not only notified of the upgrade but is directly involved in the installation of the new optical network terminal on the customer’s premises. Requiring additional, detailed notice to customers under § 251(c)(5) is redundant and only leads to customer confusion.”¹²

Proponents of the notice requirements also contended that the Commission should retain the retail customer notice requirement because the transition from copper to fiber networks might potentially disrupt certain customer premises equipment connected to a copper network.¹³ However, at least one of those commenters acknowledged that “most services (such as medical alert and home security) are available over fiber facilities.”¹⁴ More importantly, service

¹⁰ Verizon Comments, Declaration of Kevin Smith at 4.

¹¹ ITTA Comments at 12-13.

¹² AT&T Comments at 33. *See also* CenturyLink Comments at 31-32.

¹³ *See* Comments of the Alarm Industry Communications Committee, WC Docket No. 17-84, 7 (filed June 15, 2017); CWA Comments at 11; Comments of the California Public Utilities Commission, WC Docket No. 17-84, 31-32 (filed June 15, 2017); NASUCA Comments at 13-14.

¹⁴ CWA Comments at 11.

providers take adequate steps to ensure that consumer devices that are dependent on communications networks continue to function after the switch to fiber.¹⁵ Therefore, eliminating the retail customer notice requirement would not have a material adverse impact on consumers.

In addition to potentially harming consumers by creating confusion about the copper retirement process, the retail customer notice requirement increases the costs to providers of the transition. Indeed, service providers already bear the cost of the network upgrade.¹⁶ But now, providers also must expend additional resources to comply with a cumbersome and unnecessary notice requirement. Frontier Communications, for example, explained in its comments that “[i]n the short time these rules have been in effect, Frontier has had to divert significant engineering, regulatory, and legal resources to compliance with these rules as it endeavors to improve its network.”¹⁷ CenturyLink also commented on the impact of the notice requirement, noting that “[r]ules that significantly delay CenturyLink’s ability to retire copper facilities that are no longer profitable to operate, or impede CenturyLink’s capacity to provision new or enhanced services on the replacement fiber network, will extend the ‘pay-back’ period (i.e., the number of years it will take CenturyLink to recoup its investment) for fiber deployments, thereby putting out of reach some fiber deployments that might otherwise occur.”¹⁸ Moreover, ITTA correctly posited

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- ¹⁵ See, e.g., Letter from Suzan D. Paiva, Verizon, to Mr. David J. Collins, Executive Secretary, Maryland Public Service Commission 4 (filed Feb. 1, 2017) (Verizon Maryland Letter) (explaining that when migrating individual customers from copper to fiber, the “technician will ensure that any devices using the telephone line (faxes, alarms, medical devices) are up and running on the fiber line while at the visit.”) (attached as Exhibit 3 to the MD OPC Comments).
- ¹⁶ See, e.g., Verizon Maryland Letter, Exhibit B (explaining in its customer notice of copper retirement that Verizon would transfer the customer’s voice services “from copper to fiber at no cost” to the customer).
- ¹⁷ Frontier Comments at 22-23.
- ¹⁸ CenturyLink Comments at 27.

that in many instances, these increased costs “are passed on to customers.”¹⁹ For all of these reasons, the FBA respectfully submits that the Commission should eliminate the retail customer notice provisions of Section 51.332.

II. AT A MINIMUM, THE COMMISSION SHOULD MODIFY THE RETAIL CUSTOMER NOTICE RULE TO GIVE SERVICE PROVIDERS FLEXIBILITY WHEN NOTIFYING CUSTOMERS OF A COPPER RETIREMENT

Despite the numerous flaws in the Section 51.332 retail customer notice requirement, several commenters acknowledged that providing advance notice of a copper retirement can be beneficial to both customers and service providers. ITTA, for example, explained that “[t]here are certain circumstances where notice to retail customers is beneficial, such as when copper retirement requires the provider to replace or install CPE on a customer’s premises or eliminate line power.”²⁰ CenturyLink similarly noted “[t]here is no easier way to lose a retail customer, for example, than to dig up their rose garden (to bury a fiber optic cable) or temporarily disconnect their service (to install enhanced electronics at their home), without giving them advance notice. Indeed, carriers generally cannot access a customer’s private property without first obtaining permission to enter and scheduling an appointment to do the work.”²¹ Thus, some commenters urged that “[i]f the Commission decides to retain a direct notice requirement to retail customers ... the Commission should recognize that providers need flexibility in determining how to most effectively communication with their customers.”²²

¹⁹ ITTA Comments at 13.

²⁰ *Id.* at 11.

²¹ CenturyLink Comments at 32.

²² Verizon Comments at 21. *See also* ITTA Comments at 10-11; Comments of the USTelecom Association, WC Docket No. 17-84, 24 (filed June 15, 2015) (noting that in the case of non-residential customers such as wholesale customers and interconnecting carriers, providers “typically have long-term contractual agreements that often include

The FBA maintains that eliminating the retail customer notice requirement is the preferred way to “allow providers greater flexibility in the copper retirement process and to reduce associated regulatory burdens, to facilitate more rapid deployment of next-generation networks.”²³ CenturyLink, for example, effectively supported FBA’s position when it explained that “prior to the mandates in the *2015 Technology Transitions Order*, CenturyLink established a multi-step process to provide notice of network upgrades to affected consumers, *i.e.*, those to whose residence or property CenturyLink will need access or who will need a new modem or other CPE.”²⁴ CenturyLink’s pre-2015 customer notice process may have included any or all of the following types of outreach – none of which included sales pitches or marketing – to ensure that customers were aware of an upcoming copper retirement, and if necessary, to schedule an appointment to access the customer’s premises: postcards, letters, phone calls, door hangers, and in-person visits from technicians.²⁵ These customized efforts apparently were successful, as CenturyLink found that “[v]irtually all customers are thrilled with the prospect of faster broadband speeds and a robust alternative to services provided by cable competitors.”²⁶

However, if the Commission is not prepared to eliminate the retail customer notice requirement at this time, the FBA supports Verizon’s request that “[r]ather than micromanaging

customer-specific termination provisions and the like.” These contractual provisions underscore the need for flexible and tailored communications to customers about copper retirements.).

²³ NPRM, ¶ 56.

²⁴ CenturyLink Comments at 32.

²⁵ *Id.* at 32-33.

²⁶ *Id.* CenturyLink’s customer experience reflects the general “preference [among consumers] for newer broadband services over legacy copper-based services.” R Street Comments at 15.

the content of the retail customer notices, the Commission should, at most, establish a general principle that notices be reasonably calculated to provide useful and timely information to allow customers to make an informed decision regarding the network change.”²⁷ As ITTA explained in its initial comments, “[t]he majority of consumers are anxious to take advantage of the new services that FTTH deployments make possible.”²⁸ Implementing a flexible retail customer notice standard would allow providers to meet this consumer demand by “focus[ing] on building fiber-based infrastructure and avoid[ing] repairing antiquated copper systems and becoming mired with bureaucratic hurdles that continue to obstruct effective broadband deployment.”²⁹

²⁷ Verizon Comments at 22. *See also* ITTA Comments at 11 (“If the Commission maintains a retail customer notification requirement for planned copper retirements, ITTA recommends that they be general rather than maintaining the heavy-handed retail customer notification requirements currently found in Section 51.332.”).

²⁸ *Id.* at 12.

²⁹ Comments of the Power & Communication Contractors Association, WC Docket No. 17-84, 1 (filed June 15, 2017).

CONCLUSION

For all of the above-stated reasons, the FBA respectfully requests that the Commission eliminate the retail customer notice requirement for copper retirements, or alternatively, modify Section 51.332 to allow a more flexible notice approach that would best serve the interests of both customers and service providers, and facilitate investment in broadband networks and infrastructure.

Respectfully Submitted,

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