

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

In the Matter of	)	
	)	
Ensuring Customer Premises Equipment	)	
Backup Power for Continuity of	)	PS Docket No. 14-174
Communications	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement of	)	
Copper Loops by Incumbent Local	)	RM-11358
Exchange Carriers	)	
	)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers	)	
	)	
AT&T Corporation Petition for Rulemaking	)	
To Reform Regulation of Incumbent Local	)	RM-10593
Exchange Carrier Rates for Interstate	)	
Special Access Services	)	

**COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC**

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## SUMMARY

Cincinnati Bell Telephone Company LLC (“CBT”) offers comments on a number of the proposals made by the Commission in this NPRM. These comments are made with the background that telecommunications networks are undergoing a transformation from legacy TDM-based copper networks to IP-based fiber networks, a trend that is necessary to meet the Commission’s own stated goal of making broadband service widely available to America.

On the subject of backup power, CBT opposes the establishment of any mandates to provide battery backup to all customers. This subject should be left to the market to solve. Customers have options to obtain battery backup, and the small minority of customers who wish to have that feature should bear the cost. Imposing universal backup power requirements on carriers is not justified under any cost benefit analysis and would impair the ability of carriers to invest in new networks.

On the subject of copper retirement, CBT supports the continuation of the notice only process for retiring copper. There is little need for new rules in this field. If anything, ILECs should have more freedom to retire copper, including retiring it place without physical removal. There is no need to adopt new customer notice rules, as the very nature of converting from copper to fiber networks will dictate that carriers work with the affected customers to install service and there is no need for regulatory mandates. Most importantly, the Commission should not interfere with the ability of carriers to bring new services to the attention of the very customers to whom they are bringing that new capability.

Finally, the Commission should not impose onerous requirements on the section 214 service discontinuance process. Rather, it should recognize that times are changing and that the vast new benefits and services being introduced by network transformation outweigh the desire of a few to cling to the past.

## I. INTRODUCTION

In its Notice of Proposed Rulemaking and Declaratory Ruling (“NPRM”), released November 25, 2014, the Commission invited comment on a variety of topics related to ongoing network transformations from traditional copper networks to future fiber-optic based networks. Cincinnati Bell Telephone Company LLC (“CBT”) is a mid-sized incumbent local exchange company operating in parts of Ohio, Kentucky and Indiana and is experiencing many of the issues raised in the NPRM. CBT offers comments from its perspective on a number of these topics.

Although the Commission recognizes that technology is changing and the transition from circuit-switched copper networks to IP networks that utilize copper, co-axial cable, wireless and fiber are bringing innovative and improved services to the marketplace,<sup>1</sup> many of the proposals it has put forth in the NPRM would serve to stymie this technological revolution. Moreover, the proposals in the NPRM are at odds with the Commission’s goal of expanding broadband deployment. CBT understands the Commission’s mission to protect the fundamental values embodied in the Communications Act, but the Commission should adopt a more practical approach to implementation of those values that evolves as the technology evolves. To do otherwise will slow investment in broadband networks and deny consumers the benefits that come with this investment.

Telecommunications networks have been transitioning from copper to fiber facilities and from digital to IP switches for over a decade. The transition began with the upgrade of interoffice facilities and private line services from copper to fiber, followed by the deployment of IP switches and fiber feeder facilities. More recently, carriers have been deploying fiber further into the distribution network – for many carriers, all the way to the customer premises – in order

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<sup>1</sup> NPRM, ¶1.

to deliver the services that consumers and businesses are demanding. This transition benefits the nation in many ways. It enables carriers to provide the broadband services consumers want and that Congress and the FCC have determined are vital to the country. It is instrumental to the economic well-being of the country as companies invest billions of capital dollars to upgrade networks and, in turn, create jobs in manufacturing, construction, installation and sales, etc. CBT alone plans to spend \$350 million over the next two years to expand its Fioptics<sup>2</sup> service to almost 80 percent of its region, which covers a radius of approximately 25 miles around Cincinnati, Ohio. This expansion is directly contributing to job growth in the region, with CBT announcing a six percent increase in staffing levels last fall. The new jobs encompass field installation, sales, engineering, network operations, IT and finance positions. As the Commission has recognized, “[a]ccess to robust broadband service is a necessity in today’s world for jobs, education, civic engagement and economic competitiveness.”<sup>3</sup> In addition, the transition to fiber networks has benefitted consumers by increasing the competitive options available to them for voice, Internet, video and entertainment services.

If the Commission adopts the onerous requirements proposed in the NPRM, the negative consequences will be far-reaching. Carriers will scale back fiber deployment plans, which will slow job creation. The rules will also harm consumers, for example, through increased service prices to cover the cost of battery back-up. Moreover, fewer customers will have access to broadband if carriers curtail their expansion plans, there will be less competition and fewer new innovative services. The Commission appears poised to inflict these harms on the economy and the vast majority of consumers because a few consumers are resistant to the change from copper

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<sup>2</sup> Fioptics is the trademarked name of CBT’s suite of voice, Internet and video products offered to customers in areas where CBT has deployed fiber to the node or fiber-to-the-home (“FTTH”) architecture.

<sup>3</sup> *Broadband Availability in America*, Summary Report, released Jan. 30, 2015.

to fiber networks. CBT is not opposed to informing consumers about the differences between copper and fiber networks and the changes that will occur, but a number of the proposals put forth in the NPRM are ill-conceived and backward-thinking. The values the Commission espouses can endure in the future, but only if the Commission recognizes that these values must evolve as the technology used to provide 21<sup>st</sup> century services evolves.

## **II. BACK-UP POWER**

CBT is extremely concerned about the back-up power proposals on several fronts: (1) there is little customer demand for back-up power; (2) the cost of providing backup power would be considerable; and (3) remote monitoring is impractical and costly.

### **A. Mandatory Back-Up Power Requirements Should Not Be Imposed When Consumers Do Not Need Or Want It.**

The NPRM proposes that voice service providers, including facilities-based interconnected VoIP providers, be required to provide eight hours of back-up power for essential voice communications.<sup>4</sup> That requirement would presumably apply to all voice customers, regardless of whether or not the customer requests battery back-up.

Although CBT understands the Commission's desire to ensure that consumers have access to emergency services at all times, this proposal does not consider that the majority of consumers have other means of communicating when there are power outages and that consumers have demonstrated over the years that having an independently powered landline phone is neither essential nor a priority for the majority of consumers. Consumers have been migrating away from landline telephone service with line power since the advent of the cordless phone. While many consumers who purchased cordless phones may have maintained a hard-wired phone initially to ensure service during a power outage, with the emergence of voice

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<sup>4</sup> NPRM, ¶ 35.

service over cable networks and other VoIP and wireless services, it quickly became apparent that the majority of consumers do not value the independent power supply that accompanied traditional copper-based voice service.<sup>5</sup>

This became abundantly clear to CBT during the extended power outage that affected a large portion of CBT's serving area in the aftermath of Hurricane Ike in September 2008. More than 1.9 million Ohioans lost commercial power during that windstorm and it disrupted electric service to 83 percent of Duke Energy's 700,000 customers in Southwest Ohio for up to nine days.<sup>6</sup> After the storm, CBT, which had been steadily losing market share to cable and VoIP providers, promoted the advantage of its landline service during a power outage, expecting that the campaign would entice customers to switch back. The company saw little to no uptick as a result and landline loses continued at a steady pace despite the lack of backup power with alternative services. The marketing lesson from this real-life experience was that consumers do not place a great deal of value on backup power. Otherwise, the significant market penetration over the last decade or so by cable providers, who generally do not offer backup power in emergencies, would not have happened.

The majority of households in the country have at least one wireless phone with 41%<sup>7</sup> now served by wireless only, so most consumers have an alternative means of communication during power outages.<sup>8</sup> As a result, to impose the cost of providing battery back-up to all

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<sup>5</sup> Customers who use cordless phones with FTTH service will derive no benefit from battery backup because the handset, for which the service provider is not responsible, will still not operate without power.

<sup>6</sup> *Cincinnati Enquirer*, June 2, 2014.

<sup>7</sup> CTIA – The Wireless Association, CTIA's Wireless Industry Summary Report, Year End 2013 Results, 2014; *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2013*, National Center for Health Statistics, released July 2014.

<sup>8</sup> A USA Today survey "found that more than one-third of American homes (35.8 percent) had only wireless telephones during the first half of 2012 while 15.9 percent of all households had

consumers served by fiber-based and other facilities-based interconnected VoIP landlines is ill-conceived. A more reasonable approach would be to only require providers of voice service to offer battery back-up to consumers who request it. Then, consumers who find value in having a landline phone available during a commercial power outage can purchase that option. Most major providers already appear to offer this option without a regulatory mandate. CBT currently offers a battery back-up option for its FTTH Fioptics subscribers, although very few customers request it. Therefore, CBT would contend that redundant power/battery back-up should not be a ubiquitous mandatory product feature, but should be an optional feature that a consumer can opt to take or leave.

**B. The Cost of Providing Mandatory Back-Up Power Exceeds The Benefit.**

1. Cost of installing for existing customers

Although the NPRM does not explicitly state as such, presumably a mandate that providers must provide eight hours of battery back-up for voice customers would require providers to install battery back-up capacity for all existing subscribers. This would be a huge undertaking for providers and a burden on consumers who do not want or care about battery back-up for their service. The provider would have to contact every subscriber that does not already have battery back-up and schedule an appointment to install it. That effort alone would take a sizeable number of man hours and mailings to try to reach customers. For those customers that respond, it would require them to arrange to be home for the installation appointment. Because many customers may not care if they have battery back-up installed, CBT would anticipate a larger than normal number of no-shows when installers arrive for the installation.

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both landline and wireless telephones but received all or almost all calls on the wireless phones. This means 51.7% of U.S. homes don't have or didn't use their landlines in the first half of 2012. That's a 1.8 percent increase from the same period a year ago". (USA Today, December 27, 2012).

2. Fewer resources to use to expand broadband networks

Retrofitting existing service deployments for customers who do not care about battery back-up would divert service installers from new deployments, thus slowing the expansion of broadband services to customers who are asking for the advanced broadband and entertainment services that FTTH facilitates. As mentioned above, CBT has an aggressive plan to bring high capacity services to the majority of its serving area within the next two years. If it must use resources it has allotted for this deployment instead to install batteries for all existing customers, it will have no alternative but to scale back and delay its build-out plans. That is contrary to the goals the Commission is striving to accomplish in other proceedings to expand availability of broadband and would be at odds with section 706 of the Telecommunications Act, which directs the Commission to encourage the deployment of advanced services to all Americans.

3. Environmental cost

The environmental costs of battery disposal should also be factored into the analysis of this proposal. Back-up power for a typical fiber-optics service terminal requires a 12 volt lead acid battery in order to provide power for approximately eight hours. These batteries typically have a life-span of only about 3-4 years depending upon how often they are used. If all FTTH customers must have battery back-up, the quantity of batteries that will be required and which will ultimately be disposed will be significant. Although consumers are advised that batteries must be recycled, many are sure to end up in landfills.

**C. Requiring Remote Monitoring of Batteries Is Neither Necessary Nor Practical**

The NPRM asks whether providers should be required to monitor battery status and determine when a battery needs to be replaced.<sup>9</sup> There is no evidence that this issue is a pressing

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<sup>9</sup> NPRM, ¶ 37.

concern for customers, so the Commission may be searching for a regulatory solution to a problem that does not exist. But, it would be an enormous burden on providers. Remote monitoring would require CPE that supports that function. CBT has tested some remote monitoring units and found that the technology is not mature enough for efficient monitoring. These tests showed that many battery alarms were “ghost” alarms and baseless; attention to false alarms would interfere with the efficient operation of the Network Operations Center. Furthermore, adding remote monitoring capability to battery back-up units could add significant amounts to the cost of the units. Rather than imposing this cost on providers and/or consumers, CBT recommends that consumers who choose to have battery back-up units installed should be responsible for checking and replacing their own batteries, just like they do with batteries for their fire/smoke alarms and other consumer devices.

### **III. COPPER RETIREMENT**

#### **A. Uses of copper and “de facto” retirement:**

The Commission seeks comment on the actions that constitute “copper retirement” and whether “removing” and “disabling” constitute retirement and whether those terms should be defined differently.<sup>10</sup> The Commission also raises the issue of whether ILECs are failing to maintain copper networks that have not undergone the retirement procedure.<sup>11</sup> CBT would contend that there is little need for new rules in this area.

The current unbundling rules provide that an ILEC that has overbuilt fiber in an area, but not removed the copper cables, is not required to incur any expenses to ensure that the copper cable remains capable of transmitting signals prior to receiving a request for access to the copper

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<sup>10</sup> NPRM, ¶ 52.

<sup>11</sup> NPRM, ¶ 53.

loop, in which case it must restore the copper loop to serviceable condition.<sup>12</sup> There should be no requirement that ILECs keep such copper loops in serviceable condition when the customers are served over fiber and no one else has requested to use the facility. Certainly, copper cable that continues to be used for the provision of telecommunications service should be maintained to a standard that delivers appropriate service to customers and meets structural and safety standards. But, it would be a waste of resources to spend money on upkeep for a facility that has no immediate prospect of being used. If an actual request to use the facility is made, the ILEC has an obligation to make it serviceable.

CBT does not believe that the term “de facto retirement” is appropriate for the scenario described above, because the ILEC would be within the requirements of the unbundling rules. The facility was neither “retired” nor “de facto retired” as the ILEC remains responsible under the rules to restore the cable to useful status. However, the Commission should consider creating two different categories of retirement, a retirement with removal and a retirement without removal. Certainly, in the former case, if a copper cable is physically removed, the ILEC would have retired the cable and would have to follow the retirement rule. However, ILECs should have an option to retire copper cable in place without physically removing it.

There are several scenarios where a retirement in place may occur. A company may elect to cease using a copper cable to provide telecommunications service to subscribers, but may use that cable as a means of structural support for the placement of other telecommunications equipment or fiber cable. In many instances, it is too expensive to physically remove small gauge or small pair quantity copper cable that is no longer used for service because the cost to remove it would exceed its salvage value. New fiber optic cable can be overlashed onto these

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<sup>12</sup> 47 C.F.R. § 51.319(a)(iii)(B).

cables and their attendant strand. Further, some copper cable that is no longer used for provision of telecommunications service to subscribers, but which is not used as support structure, may be used only to provide line power to other equipment in the field. Even though these cables would not be used for the provision of end user telecommunications service, they may have other uses and would, therefore, not be removed or retired from the company's assets. However, the ILEC should have the option to apply the retirement rules to cables that remain in place and thereby avoid the possible future burden of having to restore the cable for telecommunications use. Such copper plant should not be considered as "in service" for telecommunications purposes or subject to the unbundling rules.

**B. Expansion of the Notice Requirement is Not Warranted**

The NPRM proposes that copper retirement notices provide a description of the expected impact of the planned changes, including any changes in prices, terms, or conditions that will accompany the planned changes.<sup>13</sup> In addition, the ILEC would be required to provide direct notification to each telephone exchange provider that interconnects with the ILEC's network. Cincinnati Bell believes that this provision is unnecessary and overly burdensome.

The existing notification process provides enough information for interconnected carriers to determine whether they might be impacted or not. It would be impossible for the ILEC to know what type of alternative arrangements might suit any impacted carriers. There could be a broad array of available prices, terms and conditions available depending on the needs of each individual customer. It would be extremely burdensome to the ILEC to attempt to provide the information and confusing to the customer to interpret the information. Since these interconnected carriers are the ILEC's clients, it is only a matter of good business sense for the ILEC's internal account management team to individually contact these clients to assist them in

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<sup>13</sup> NPRM, ¶ 57.

finding appropriate alternative arrangements. Additional regulation directing how this contact must be made simply adds complexity to the process where it is not needed.

The Commission should not require direct notice to every interconnecting carrier of every retirement notice. CBT has scores of interconnection agreements with CLECs, many of whom never became active or have only limited interconnection activity. Many CLECs have been subject to various mergers and acquisitions but have failed to maintain current contact information. To require an ILEC to certify that it has directly contacted all of these parties may be an impossible burden to meet. Further, even if an interconnected carrier is actively connected to an ILEC network, if it does not currently have a service that rides a copper cable planned for retirement, there is no reason to specifically notify that carrier of the retirement. A carrier interested in expanding its service into new areas can obtain enough information about the ILEC network through current processes for the interconnector to determine if the impending retirement may impact future deployment plans and would be incented to contact the ILEC with questions. To impose an affirmative duty on the ILEC to contact every interconnector is unduly burdensome.

**C. Requiring Copper Retirement Notice to Retail Customers is Unnecessary and Confusing to Customers**

The NPRM proposes that carriers be required to send copper retirement notices to retail customers who will receive new or modified CPE or who will be negatively impacted by the planned network change.<sup>14</sup> CBT would contend that “affected customers” should be limited to those who must take some action in response to a network change, or whose service is affected due to a change in price, service feature or function, or equipment. Customers who are not

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<sup>14</sup> NPRM, ¶ 61-62.

required to do anything and whose service would continue without change should not be considered affected and should not be subject to a notice requirement.

Even for those customers who are affected by a network change because of the necessity to access their premises to install different terminal equipment, there is no reason for the Commission to mandate the notice that carriers provide to these customers. By the very nature of the changes the carrier must do so, otherwise their customers' service cannot be installed and will not work. If a carrier is deploying FTTH, it must obtain access to the customer's premises to complete the upgrade and connect the customer's existing CPE to the optical network terminal. There is no way the carrier can do this without contacting the customer to schedule an installation appointment. CBT anticipates that carriers will employ multiple methods of outreach to consumers since different customers respond to different approaches. Direct mail might get some customers attention while electronic mail may work for others. In some cases, door-to-door contact may be required. In any case, the carrier will necessarily try whatever means are required to reach its customers in order to schedule the appointment necessary to transfer their service to the new facilities. It is irrational to think that a carrier would install fiber loops in a neighborhood and simply turn off service to its customers without reaching out to them. What would be the purpose of deploying fiber if the company has no customers left at the end of the process?

If the copper retirement is transparent to the customer (*i.e.*, no work on the customer premises is necessary and all CPE is compatible), there would be no value in notifying the customers. In fact, notice to customers in such circumstances could be confusing to the consumers. In a fiber-to-the-curb deployment where distribution facilities are upgraded and copper retired, the customer has to take no action and there would be no point in sending them an

“official” copper retirement notice. Carriers have been upgrading their networks for years and as long as the customer’s service is not adversely impacted, there is no reason to notify the customer of the upgrade.

If the carrier will no longer provide a particular service after the copper retirement, the existing discontinuation of service rules would apply and the customers would receive notice accordingly. To require both a copper retirement notice and a section 214 notice would be redundant and confusing to consumers.

**D. The Commission Should Not Prohibit or Restrict “Upselling” In Areas Where Copper is Being Retired**

Carriers are transforming their networks from copper-based TDM systems to fiber-based IP networks in order to provide consumers with the advanced services they are demanding and that the Commission has declared are critical for consumers to have – broadband Internet access. Carriers are not going to invest billions of dollars to install fiber only facilities just to offer consumers the same services they have today. Nor does it make sense to require carriers making the investment in fiber to maintain their old copper networks for a minority of customers who may not be interested in the advanced services that fiber can provide.

A prohibition on upselling to consumers as proposed in rule 51.332(c)(4) would negatively impact both consumers and carriers. The majority of consumers are anxious to take advantage of the new services that FTTH deployments make possible. If carriers are not allowed to tell people about the new services that are available over the upgraded network, presumably until after the customers’ existing services have been converted to the new facilities, it will significantly increase costs and delay deployment of broadband Internet access. First, consumers and carriers will be burdened with having to schedule multiple installation appointments. If consumers are not informed about the new services the fiber installation makes possible (*e.g.*,

increased broadband speeds, new voice service capabilities, the availability of an alternative to the cable company's video offerings), then the initial installation appointment will be solely to move the customer's existing services from copper to fiber. Under the proposed rules, presumably only after that installation is complete can the carrier begin to market new services to the customer. Customers who wish to purchase these new services will then have to schedule a separate installation appointment. It is already difficult for many consumers to rearrange their schedules to be home for service appointments and this proposal will add to that burden. In addition, it will significantly increase carrier costs by forcing them to make two installation trips to the same customer when one would be sufficient. Undoubtedly, these costs will be passed on to consumers.

Second, it will also significantly slow the speed at which carriers can expand their fiber networks – every trip to the same customer means fewer new installations. At the same time the Commission has found that broadband is not being deployed quickly enough in the United States and that the speeds available to consumers are insufficient to meet the demands of homes and businesses,<sup>15</sup> it has put forth this unduly restrictive proposal which will ensure that carriers scale back fiber deployment plans that would be necessary and instrumental to meet the Commission's broadband goals.

Third, the Commission's effort to preserve copper networks for CLECs who do not want to invest in fiber facilities and a small minority of consumers who are not interested in advanced services will reduce the competitive options available overall to consumers. The fiber networks that incumbent carriers are deploying give consumers competitive alternatives not just for phone and Internet, but finally for video services. CLECs' efforts to preserve old copper networks do

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<sup>15</sup> *Broadband Availability in America*, Summary Report, released Jan. 30, 2015.

not advance the interests of end users, particularly residential consumers. If ILECs are forced to preserve their copper networks, which seems to be a major purpose of this proceeding, they will not invest in the fiber networks that will bring competitive options to consumers for the advanced services that consumers want and that Section 706 encourages.

Finally, a rule that would restrict what telephone companies may discuss with their customers would be unlawful because communication with a telephone company's customers is commercial speech protected by the First Amendment.<sup>16</sup> In *Central Hudson*, the Supreme Court established a test to determine whether regulation of commercial speech by a utility is constitutional. Commercial speech includes "speech proposing a commercial transaction."<sup>17</sup> Truthful, non-misleading statements are protected commercial speech. To regulate such protected commercial speech, the governmental interest advanced by the regulation must be substantial, the regulation must directly advance the governmental interest, and the regulation of speech must be no more extensive than necessary to serve the governmental interest.

The Commission has not provided any substantial reason for adoption of a "no upselling" rule. This proposed rule is being advanced due to a "concern" that customers might be confused by upselling in the course of a facilities upgrade. The Commission's proposed requirement of a "neutral statement" of the various choices available is an improper content restriction of commercial speech. It is one thing to prohibit misleading communications, but quite another to actually dictate that commercial speech be "neutral" and not propose particular types of transactions. The Commission has not articulated a legitimate reason for a speech content rule

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<sup>16</sup> *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557 (1980); *U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10<sup>th</sup> Cir. 1999).

<sup>17</sup> *Central Hudson*, 447 U.S. at 562.

and has not explained how the proposed rule is no broader than is necessary to address the legitimate government interest, so the rule fails the *Central Hudson* test for constitutionality.

Because the proposed rule seems generally intended to serve as a consumer protection measure, one could speculate that is the Commission's perceived government interest in regulating commercial speech to telephone customers who are receiving fiber upgrades. But that is far too general of a reason when there is no showing that all "upselling" is misleading. If the concern over the content of marketing messages is that they *may* be misleading, there are adequate safeguards elsewhere in the law requiring that companies not mislead customers. The Commission has offered no explanation for how the "neutral content" rule advances any legitimate consumer protection interest or how it is narrowly designed to solve that specific problem without being so broad as to also prohibit constitutionally protected commercial speech. Prohibiting telephone companies from marketing to their existing customers with truthful information about their products does not advance any consumer protection interest. Consumer welfare is increased when consumers have more (not less) information and more (not fewer) product choices so that they have a better opportunity to make intelligent decisions about the services they purchase.

The proposed rule is also anticompetitive. A rule prohibiting only ILECs from upselling during a network upgrade is one-sided and prohibits only one group of companies from engaging in such marketing activities. Cable companies competing with ILECs, for example, would not be prohibited from upselling to ILEC customers in areas undergoing a fiber upgrade during a time when ILECs themselves could not. Competition is not served by putting a gag on one group of competitors to the direct advantage of another. If competition is to be advanced, *all* competitors must be free to talk with the customer. Competition is advanced by increasing the

dissemination of information about competitive choices, not restricting choices and information. The purpose of competition is so that the consumer can obtain the best deal, which will not happen if some competitors are prohibited from making proposals. Restricting the current carrier's ability to speak to its customers at a critical point in time places the protection of individual firms *from* competition ahead of the advancement of consumer welfare by *increasing* competition. Such restrictions are unconstitutional limitations on commercial speech.

**E. There Is No Need For Rules Addressing the Sale of Copper Facilities**

CBT has no objection to offering retired assets, whether they be equipment or cable plant, for sale to any legitimate purchaser, should it be it a salvage vendor, reseller or a CLEC. However, there is no need for the Commission to promulgate rules to address this. Once copper assets are “off the books,” they should be completely unregulated. There is nothing prohibiting any prospective purchaser from inquiring about the sale or salvage of these assets. Any reasonable company would not and should not ignore a reasonable bid for retired network assets, but it should also be allowed the latitude to select the bid from prospective purchasers that offers it the best overall value (*e.g.*, a purchaser who wishes to purchase – for whatever purpose – a bundle or lot of assets as opposed to a high bidder on a single asset). There is simply no reason for the Commission to adopt rules around what is already a fully functioning market driven process.

**IV. SECTION 214 DISCONTINUATION OF SERVICE**

**A. The Commission Should Not Extend the Section 214 Discontinuance of Service Requirements to Wholesale Services**

The NPRM suggests that the Commission adopt a rebuttable presumption that the discontinuance, reduction or impairment of a wholesale service will adversely impact “a

community or part of a community” and, therefore, that section 214(a) approval is necessary.<sup>18</sup> Retail services are not necessarily affected by changes in wholesale service. The same service may be available as a retail offering independent of the wholesale version of the service, so there is no basis for presuming that there will be any effect on service to a community or part of a community. The Commission proposed to make the presumption rebuttable under certain circumstances. However, a rule that would require ILECs to make a filing proving that they are not discontinuing, reducing or impairing service to a community creates an improper reverse burden of proof requirement for ILECs. Section 214 only requires an application in cases where there is a negative change to service in a community. The Commission would be going beyond its statutory authority to require regulatory filings to prove that something is not happening in order to justify not making a section 214 filing. Such a rule would only create additional and unnecessary regulatory burdens. If a carrier violates section 214 by affecting service without getting the required approval, that carrier acts at its own jeopardy.

The Commission has long followed the *Western Union*<sup>19</sup> decision in addressing discontinuance of wholesale services used by other carriers. ILECs should not be placed in the position of having to prove that they are not affecting the availability of a service in a community in order to have to avoid making section 214 filings because ILECs do not necessarily know how their wholesale customers are using the services they purchase from the ILEC. Such a requirement would in effect extend the section 214 process to all wholesale services, when it is only intended to apply to retail impacts.

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<sup>18</sup> NPRM, ¶ 103.

<sup>19</sup> *Western Union Tel. Co. Petition for Order to Require the Bell System to Continue to Provide Group/Super group Facilities*, FCC 79-726, Memorandum Opinion and Order, 74 FCC 2d 293, 296, para. 7 (1979).

**B. Elimination of Term Discount Plans Is Not A Discontinuance of Service Governed by Section 214**

There is no basis for the Commission to find that the elimination of a term discount plan is a discontinuance of service. As long as the service is still available, albeit at a different rate, the service has not been discontinued, the price has simply been changed. The elimination of a term discount plan should be treated no differently than any other price change. Applicable pricing rules, if any, would apply, but section 214 should not. For services that are tariffed, ILECs must file the requisite tariff changes. For non-tariffed services, the ILEC, CLEC or other provider would have to comply with any contractual requirements applicable to a price increase. The elimination of a term discount plan does not impact existing customers until the expiration of their current contract term, at which point they would move to month-to-month rates or such other term plans that remain in place.

If the Commission determines that the elimination of a term discount plan requires approval under section 214, theoretically all rate changes could require section 214 approval. This is not justified by the plain language of the statute and would lead to an overwhelming number of 214 applications being filed. The burden and waste of resources this would place on carriers and the Commission cannot be justified when there is no evidence that the current price change processes are not working.

**V. CONCLUSION**

The Commission should not adopt any new rules that would impede or impair the ability of ILECs to invest in new network capabilities and to make broadband services widely available. It is now clear that the future will be IP-based service over fiber facilities and that legacy TDM-based copper networks are on the way out. The Commission must recognize this and not competitively disadvantage ILECs by forcing them to continue supporting legacy copper

networks only because they were once the industry norm. If the goals of section 706 and wide availability of broadband service are to be realized, ILECs must be freed to make the appropriate investments and to transition to the future. Therefore, CBT urges the Commission to modify its rule proposals as advocated in these comments.

Respectfully submitted,

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