

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES ON NOTICE OF PROPOSED RULEMAKING AND
DECLARATORY RULING**

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY.....	1
II. CPE BACKUP POWER.....	8
III. COPPER RETIREMENT.....	11
A. Defining copper retirement	12
B. Addressing ILEC inadequate maintenance of copper	12
C. Approval of copper retirement	15
D. Improvements to the process.....	16
E. Upselling and consumer education	17
F. Notice to retail customers.....	18
G. Content of notice	19
H. Expansion of Right to Comment	19
I. Certification	21
J. Competition: Expansion of Notice Requirements.....	21
K. Sale of Copper Facilities That Would Otherwise Be Retired	21
IV. SECTION 214 DISCONTINUANCE	22
A. Adequate substitutes for discontinued service	23
B. Wholesale services.....	25
C. “Special” access	26
V. CONCLUSION	27

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ADVOCATES ON NOTICE OF PROPOSED RULEMAKING AND DECLARATORY RULING**

I. INTRODUCTION AND SUMMARY

Our national public telecommunications system is undergoing a profound transformation. If the transition to a network based on Internet protocol (“IP”), rather than time division multiplexing (“TDM”) is to be successful, the Federal Communications Commission (“FCC” or “Commission”) (and state public utility commissions) must act to ensure that the technological transformation preserves robust, reliable, affordable universal service. As demonstrated by the developments that gave rise to the Notice of Proposed Rulemaking and Declaratory Ruling (collectively, “NPRM”)¹ and the evidence provided by consumer advocates,² the public interest is at risk. NASUCA endorses the Commission's belief that the transition must follow the “principles embodied in the Communications Act that have long defined the

¹ FCC 14-185 (rel. November 25, 2014).

² See Letter from Public Knowledge, et al., to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, GN Docket No. 09-51, et al., at 2-3 (filed May 12, 2014) (Public Knowledge et al. May 12, 2014 Letter).

relationship between those who build and operate networks and those who use them. These principles include competition, consumer protection, universal service, and public safety and national security.”³

The NPRM identifies three areas — back-up power, copper retirement, and discontinuance of service — that are crucial for protecting the enduring values of the Act in the transition. Other areas — such as rural call completion, pole access, and quality of service, including network reliability and outage reporting — are also key to the enduring values and are being addressed in other dockets.⁴

The proposed rules are consistent with consumers’ interests. Back-up power requirements will help ensure that service will continue in a power outage. Reasonable copper network retirement policies will help ensure that the services still used by a majority of consumers, and competition for those services, will continue to be available. And expansion of the 47 U.S.C. § 214(a) discontinuance process will help prevent carriers’ business plans from overriding consumers’ need for quality services at affordable prices.

NASUCA fully supports the Commission’s determination to

- Ensure reliable back-up power for consumers of IP-based voice and data services across networks that provide residential fixed service that substitutes for and improves upon the kind of traditional telephony used by people to dial 911;
- Protect consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities (e.g., copper networks) and seek to discontinue legacy services (e.g., basic voice service); and
- Protect competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-sized business, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs.⁵

First, the Commission seeks comment on

steps the Commission could take to safeguard continuity of communications throughout a power outage, including the possible adoption of new rules in this area. Our approach would establish reasonable expectations in a technology-neutral fashion, and would apply to all fixed networks supplying this fundamental means of residential communication.⁶

³ Id.; see also id., ¶ 2, citing 911 Policy Statement and Notice of Proposed Rulemaking.

⁴ E.g., rural call completion (WC Docket 13-13, et al.); see NASUCA reply comments (filed June 11, 2013).

⁵ NPRM, ¶ 2. Competition should benefit residential customers as well.

⁶ Id., ¶ 3.

NASUCA supports most of the Commission-proposed steps and, based on the experience of consumers, provides additional recommendations.

Further, according to the Commission,

Preparing for wide-scale technology transitions that will affect consumers requires us to consider two separate, but often related, parts of our rules: (1) those governing changes in network *facilities*, and in particular, retirement of copper facilities; and (2) those governing the discontinuance, impairment, or reduction of legacy *services*, irrespective of the network facility used to deliver those services.

NASUCA agrees, but submits that copper retirement is not inevitable, as implied in the NPRM.⁷ There are areas of the country where fiber distribution plant to the home is economically infeasible, and wireless - including fixed wireless - is not an adequate replacement for copper-based landline service. Moreover, while IP and other successor protocols will eventually supplant TDM, this should only occur nationwide if and when IP-based substitutes are sufficiently robust and reliable to support nationwide service(s) consistent with the core values of the Communications Act. While some carriers, notably AT&T and Verizon, are said to be “ready to seek discontinuance of legacy services *en masse*...”,⁸ they cannot unilaterally discontinue legacy telecommunications services without approval from the Commission and many state commissions.

It is vitally important for the Commission to act now to set the ground rules for both copper retirement and discontinuance of TDM service. As the Commission points out, “for all of the adoption of different forms of last-mile technology, at the end of 2013, there remained some 38 million switched access lines in service to American households.”⁹ As the Commission further notes:

Verizon proposed to serve customers in parts of Fire Island with network facilities and services that differed in important ways from those available before Hurricane Sandy

⁷ See, e.g., NPRM, ¶ 6. But then there is Verizon’s claim that it can provide basic telephone service over fiber. GN Docket No. 14-28, et al, Verizon ex parte (January 20, 2015); see also GN Docket No. 13-5, Verizon ex parte (June 2, 2014), <http://apps.fcc.gov/ecfs/document/view?id=7521160923>.

⁸ NPRM, ¶ 5.

⁹ Id., ¶ 4, citing Local Telephone Competition: Status as of December 31, 2013, FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, at 3, Fig. 2 (Oct. 16, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1016/DOC-329975A1.pdf (Local Telephone Competition Report).

destroyed the legacy network. While that debate occurred in the context of an isolated occurrence, it foreshadowed issues with which the Commission will have to contend as carriers reach a point at which they will rationally seek to retire network facilities and discontinue TDM services on a wide-scale basis across the Nation. We have a duty to prepare for that day and provide guidance for consumers, enterprise and anchor customers, and industry alike, rather than merely react to it when large-scale plans to change networks and discontinue services start to impact the public.¹⁰

It is up to the Commission whether key facilities and services are retired or discontinued, not up to the ILECs. It is not mere guidance that consumers need; they also need protection from the vagaries of carriers' business plans.¹¹

However, it is important that copper retirement—particularly retirement on a wide scale¹²—include adequate notice to all of the incumbent network's customers, including competitive carriers. And, as the Commission proposes, retired copper should be sold. NASUCA has proposals that will promote such sales, and supports a requirement that sales be made at no more than net book value.

The incumbents retiring their networks have no legitimate expectation to be paid any more than net book value for the facilities they are abandoning.¹³ Net book value represents the balance remaining on the ILEC's books.¹⁴ Given the myriad issues surrounding these copper retirements, the retirements should not be a profit center for the incumbents.¹⁵ Nor should the incumbents be allowed to inflict

¹⁰ Id., ¶ 5, citing, e.g., Public Knowledge, *The Phone Network Transition: Lessons from Fire Island* (Mar. 7, 2014), <https://www.publicknowledge.org/news-blog/blogs/the-phone-network-transition-lessons-from-fire-island>; Jennifer Waters, *Prepare to Hang up the Phone, Forever* (Mar. 29, 2014), <http://online.wsj.com/articles/SB10001424052702303325204579465321638954500>.

¹¹ See <http://www.fiercetelecom.com/story/verizons-shammo-clarifies-remarks-about-net-neutrality-impact-companys-inve/2014-12-12>.

¹² The NASUCA Motions cited by the Commission put forth retirement of copper in an entire wire center as a threshold for detailed examination.

¹³ See *Southern Bell Telephone Company v. Public Service Commission of Missouri*, 262 U.S. 276, 290 (1923) (a shareholder has a legitimate expectation to a return on its investment only if the funds are actually expended to serve the utility's franchise obligations), as cited in Okamuro, Lillian T., "Acquisition Premium During a Technology Transition: Proposed Amendment to 47 C.F.R. § 63.71 under the FCC's *Technology Transition NPRM*," paper for Prof. Scott Hempling (Fall 2014), Georgetown University Law Center.

¹⁴ See <http://www.accountingtools.com/net-book-value>.

¹⁵ See Okamuro, *supra* footnote 13, at page 16.

uncertainty regarding the continuance of reliable service on the public through their business plans.¹⁶

That is where “the notice-only nature of the copper retirement process”¹⁷ is falling short today. The Commission states, as long as “no service is discontinued in this process (e.g., TDM basic voice), a carrier need only provide notice of its intent to retire the legacy facilities (e.g., copper loops).”¹⁸ But the Commission proposes “additional notice of planned copper retirements to affected retail customers, along with particular consumer protection measures, and to provide a formal process for public comment on such plans.”¹⁹ Public comment is of no value unless it can result in modification or rejection of the copper retirement. NASUCA urges the Commission to stand willing to reject or limit copper retirement filings that adversely impact the delivery of telecommunications services to the public.

As the Commission notes,

Currently, consumers may expect certain familiar data-based services, such as credit card readers, home alarms, and medical alert monitors to function in a particular way. Consumers of wireline telephony may also expect their plug-in phones to work during a power outage without any action on their part. However, networks other than copper and services not based on TDM may not support these functionalities, or not in the ways that consumers have come to expect.²⁰

The Commission’s point is a vital one. Transitions to advanced technologies must enhance, not sacrifice, reliability and functionality. NASUCA urges the Commission to insist, and to back up its insistence with adequate enforcement mechanisms, that transitioning and transitioned technologies maintain or enhance reliability and functionality.

Regarding carrier behavior, the Commission also

note[s] allegations in the record that in some cases carriers are allowing copper networks to deteriorate prior to retirement and/or are not being clear with consumers about the

¹⁶ See <http://arstechnica.com/business/2015/01/verizon-nears-the-end-of-fios-builds/>. The Commission states, “According to the competitive LECs, the uncertainty associated with the possible discontinuance of incumbent LECs’ legacy services and replacement with packet-based services creates competitive disadvantages and major concerns about the ability to serve present and new customers.” NPRM, ¶ 106. This uncertainty affects all segments of the industry and the market.

¹⁷ Id., ¶ 5.

¹⁸ Id. (footnote omitted).

¹⁹ Id.

²⁰ Id., ¶9.

options available to them as copper networks are retired. We seek comment on how these allegations, if true, affect consumers...²¹

The impact on consumers is shown in the filings by consumer advocates, including NASUCA, cited in the NPRM.²² Deliberately subjecting consumers to a deteriorating network is a fundamental violation of the Communications Act of 1934 and its successor legislation. The practice of deliberately allowing the copper network to deteriorate is also harmful to competition. It could present a major obstacle to meaningful efforts on the part of the Commission to encourage sale of the facilities to a viable operator. The Commission's "suggest[ed] rule changes—such as a definition of what constitutes 'copper retirement'"²³ will be judged on whether and how they "make such [illegal] practices less likely to occur."²⁴

The issue of facilities retirement is very important, especially in a transitioning network where multiple services ride on a variety of facilities. But NASUCA agrees that discontinuance of services is more important to consumers than the change of facilities. So, as the Commission states,

under section 214, a carrier typically could not remove interstate or foreign basic voice service from the marketplace without a public review process and affirmative Commission decision that the discontinuance will meet the statutory standard. This process allows the Commission to satisfy its obligation under the Act to protect the public interest and to minimize harm to consumers.²⁵

The Commission states that it is taking "two steps to ensure that the Commission fulfills its critical role in overseeing service discontinuances under section 214 of the Act..."²⁶ The first step is the Declaratory Ruling,²⁷ which "make[s] clear that where a carrier offers a service to the public, its service is

²¹ Id., ¶ 6.

²² Letter from Public Knowledge, et al., to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, GN Docket No. 09-51, et al., at 2-3 (filed May 12, 2014) (Public Knowledge et al. May 12, 2014 Letter); Renewed and Revised Motion of the National Association of State Utility Consumer Advocates for Stay and to Suspend 47 C.F.R. § 51.333, GN Docket No. 09-51, et al., Report No. NCD-2351, et al., at 2-6.

²³ NPRM, ¶ 6.

²⁴ Id.

²⁵ Id., citing 47 U.S.C. § 201 (internal footnote omitted).

²⁶ Id., ¶ 7.

²⁷ Id., ¶¶ 114-118.

defined in a functional manner, and not exclusively by reference to how the service is described in its tariff.”²⁸

The Commission’s second step is to consider improvements to the § 214(a) service discontinuance process.²⁹ As the Commission states, “Where consumers may depend upon a service offered by a carrier, there should be a public process to evaluate a proposed discontinuance of that service *before* it happens...”³⁰ The Commission seeks comment on whether to establish criteria that the Commission will use in evaluating applications to discontinue retail services pursuant to § 214.³¹ NASUCA agrees that “[e]veryone concerned would be best served by the Commission’s articulation of criteria now, rather than wading through a complicated morass of applications.”³²

Not all service discontinuances require a broad public process.³³ But at the very least, when an ILEC seeks to discontinue voice telephony there should be an open and inquiring process, consistent with the enduring values of federal law,³⁴ as discussed below.

ILEC voice telephony should not be discontinued unless there is a guaranteed provider of reliable service that meets the criteria for universal voice telephone service, provides at least equivalent functionality and is reliable during emergencies and extended power outages. The functionalities and reliability of wireless services are not at this time equivalent to those of wireline services.³⁵

Further, discontinuance should not take place unless facilities for wholesale customers continue to be available. Thus NASUCA supports the Commission’s conclusion that “to receive authority to

²⁸ Id., ¶ 5.

²⁹ The Commission addressed § 214(e) in the December 18, 2014 Report and Order (FCC 14-190) in WC Docket No. 10-90, et al.

³⁰ NPRM, ¶ 5 (emphasis added).

³¹ Id.

³² Id.

³³ Public notice should continue to be a requirement for all services.

³⁴ FCC 14-5, ¶ 9.

³⁵ See *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, ¶¶ 51-60 (2010) (*Qwest Phoenix Forbearance Order*).

discontinue, reduce, or impair a legacy service that is used as a wholesale input by competitive providers, an incumbent LEC must commit to providing competitive carriers equivalent wholesale access on equivalent rates, terms, and conditions.”³⁶ Customers need protection, and they need competition; neither one alone will suffice to preserve the enduring values of the Act.³⁷

II. CPE BACKUP POWER

As the Commission states,

Consumers receiving voice telephone service over legacy copper networks have traditionally relied on power provided from the central office to sustain service during power outages. Moreover, even in a prolonged outage lasting days or weeks, central offices typically have backup power capabilities that can ensure continuous voice service over copper to residences for the duration of the outage. Hence, consumers have been able to count on the continued availability of telephone service in harsh weather conditions and other emergencies when they are most vulnerable.³⁸

The Commission correctly discusses the importance of customer premises equipment (“CPE”) back-up power to consumer expectations of safety.³⁹ Given those expectations, the Commission should not rely only on “market-based solutions.”⁴⁰ Few “providers compete on the basis of their ability to provide reliable and continuous service during commercial power outages...”⁴¹ It is unlikely that there will be “proposals that would address our concerns without the need to adopt regulatory requirements.”⁴²

³⁶ NPRM, ¶6.

³⁷ FCC 14-5, ¶ 9.

³⁸ NPRM, ¶ 11 (footnote omitted).

³⁹ See *id.*, ¶¶ 12, 31, 43. NASUCA’s 2013 resolution summarizes consumer concerns. See <http://nasuca.org/2013-02-calling-for-the-development-of-national-and-state-policies-to-ensure-reliable-wireline-and-wireless-communications-during-a-power-outage/>. See also the NASUCA-sponsored paper by Dr. Trevor Roycroft, <http://nasuca.org/nwp/wp-content/uploads/2013/11/01-13-2014-NASUCA-2-of-2.pdf>.

⁴⁰ NPRM, ¶ 47.

⁴¹ *Id.*

⁴² *Id.*, ¶ 48.

Little has changed since the California Public Utilities Commission issued its 2008 Report on back-up power⁴³ □ except the crucial fact that more customers rely now on “network alternatives,” including fiber, coaxial cable and wireless, none of which will typically function in a power outage without a backup power source.⁴⁴ The safety of these customers needs to be assured. NASUCA supports the FCC’s proposal to address “CPE backup power for residential voice services across different technologies” with “a framework that would establish reasonable expectations for when providers should bear responsibility for the provision of CPE backup power during a power outage.”⁴⁵

NASUCA also supports the Commission’s proposal that “potential requirements would apply to ... fixed voice services, such as interconnected VoIP, that are not line-powered by the provider.”⁴⁶ The FCC’s proposed restriction of the requirements to “facilities-based” services, however, might allow a reseller to evade the back-up power requirement. All providers of voice services should be responsible for ensuring adequate back-up power.⁴⁷ If there are “en masse” actions by the carriers, as the Commission predicts,⁴⁸ requiring providers to supply customers with initial backup power capability would indeed introduce economies of scale.⁴⁹

The Commission defines “adequate” back-up “as sufficient power for minimally essential communications, including 911 calls and the receipt of emergency alerts and warnings.”⁵⁰ That is a difficult thing to define; if there is error here it should be on the upside (allowing more power) rather than

⁴³ <http://www.cpuc.ca.gov/NR/rdonlyres/3196E853-F0F8-4CCC-ADB5-1C1870CFCCA6/0/FinalAnalysisReportMay92008.pdf>; see also D.10-01-026 (mandated information on back-up power requirements for these services to function during power outages for customers migrated to FiOS or Voice Link)..

⁴⁴ NPRM, ¶ 12.

⁴⁵ Id., ¶ 13.

⁴⁶ Id., ¶ 33.

⁴⁷ This makes the discussion of “fixed wireless” (id.) not crucial.

⁴⁸ See NPRM, ¶ 5.

⁴⁹ Id., ¶ 41.

⁵⁰ Id., ¶ 34.

the downside.⁵¹ Equally, if not more importantly, the “other modes of communication”⁵² should be construed broadly, with a forward-looking view, so as to maximize consumer safety.

The responsibility for CPE back-up power is currently shared by providers and customers, with customers responsible for rational use during an emergency, and carriers responsible for facilities that can be used. The FCC cannot regulate customers; it can, however, directly regulate the carriers.

In regulating the carriers, the Commission proposes “that providers should assume responsibility for provisioning backup power that is capable of powering their customers’ CPE during the first eight hours of an outage.”⁵³ This is consistent with the CPUC Report’s findings.⁵⁴ NASUCA notes that the CPUC report was issued in September, 2008 and it is quite possible that more efficient back-up power options that would allow for a longer period of support during a power outage are now available. NASUCA agrees with the Commission that “a longer time period—such as the twenty-four hours afforded by Verizon’s devices—could provide consumers with sufficient time to attend to other time-sensitive matters that may arise during the course of a natural disaster or other emergency.”⁵⁵ The FCC acknowledges that under its proposal, “after the first eight hours of an outage, the burden to maintain continuity of power for CPE no longer would be on the provider ... but would be allowed to would fall [sic] on the consumer.”⁵⁶

The Commission asks, “[H]ow can we minimize the costs of compliance while maximizing the benefits?”⁵⁷ Unfortunately, contrary to the Commission’s proposal, it would be unreasonable “if every provider of facilities-based non-line-powered fixed voice services were to make available [only] one piece of CPE that can be powered for at least 8 hours using commercially available batteries (such as D-

⁵¹ Technical efficiencies (*id.*, ¶ 34) will reduce costs to the carriers.

⁵² *Id.*, ¶ 34.

⁵³ *Id.*, ¶ 35.

⁵⁴ See footnote 439, *supra*, at 5-6.

⁵⁵ NPRM, ¶ 35.

⁵⁶ *Id.*, ¶ 38.

⁵⁷ *Id.*, ¶ 42.

cells....”⁵⁸

Likewise, an FCC power back-up rule without a comprehensive consumer education plan⁵⁹ would be of limited value. The Commission stressed consumer education in the Transition Trials Order.⁶⁰ The Commission should “require providers to develop and implement consumer education plans regarding the availability of CPE backup power.”⁶¹

III. COPPER RETIREMENT

The FCC states, “We do not believe that our copper retirement process sufficiently protects our core values given the increase in frequency and volume of copper retirements and the concurrently growing impact on consumers and competition.”⁶² The FCC’s “current regulations governing copper retirement by incumbent LECs were issued a decade ago, when fiber loop deployment was still in its infancy and large-scale retirement of copper networks was far in the future.”⁶³ The copper retirement process may have been adequate when adopted, but not today. As the NPRM recognizes,

The Commission’s task is to protect consumers and promote competition while taking account of the need of incumbent LECs to manage their networks effectively and efficiently. Protecting consumers, promoting competition, and continuing to incentivize fiber deployment are fully compatible goals....⁶⁴

In that context, part of the current problem is the Commission’s decade-old decision (in the Triennial Review Order) to not require affirmative regulatory approval before an incumbent LEC can retire copper loop facilities.⁶⁵ The Commission found in 2003 that “such a requirement is not necessary

⁵⁸ Id.

⁵⁹ Id., ¶ 39.

⁶⁰ GN Docket No. 13-5, et al., FCC 14-5 (rel. January 31, 2014) (“Transition Trials Order”), ¶¶ 70-72; see also id., Appx. B, ¶ 46.

⁶¹ NPRM, ¶ 39.

⁶² Id., ¶ 14.

⁶³ Id., ¶ 16.

⁶⁴ Id., ¶ 15.

⁶⁵ Id., ¶ 16, citing *Triennial Review Order*, 18 FCC Rcd at 17146, ¶ 281.

at this time because our existing rules, with minor modifications, serve as adequate safeguards.”⁶⁶ Times have changed, as the FCC recognizes.⁶⁷ There is no longer any justification for the fact “that [while] incumbent LEC decisions related to copper retirement can have a significant impact on consumers...Part 51 rules are silent on this important issue.”⁶⁸

The Commission’s acknowledgment of “the importance of copper facilities as a means for competitors to provide advanced telecommunications capability to businesses, schools, libraries, hospitals, other enterprise customers, and consumers with disabilities”⁶⁹ merely scratches the surface of the importance of these facilities. Competitors can and do use those facilities to serve a broad base of customers, including residences.

A. Defining copper retirement

NASUCA supports both the Commission’s intent to adopt a definition of this key term and the Commission’s proposed definitions: “copper facilities included within the concept of ‘retirement’ should include copper loops, subloops, and the feeder portion of the loop,”⁷⁰ with copper retirement defined as the “removing or disabling of” copper loops, subloops, and the feeder portion of loops.⁷¹

B. Addressing ILEC inadequate maintenance of copper

As the Commission notes, “Public Knowledge and other consumer advocacy groups summarized and submitted multiple filings asking state public service commissions to pause copper retirements and to investigate service-related issues with existing copper networks.”⁷² NASUCA and several NASUCA offices joined with Public Knowledge and others in submitting these filings to the FCC. As stated above, the “allegations that in some cases incumbent LECs are failing to maintain their copper networks that

⁶⁶ NPRM, ¶ 16 (footnotes omitted, emphasis added).

⁶⁷ Id., ¶17-19.

⁶⁸ Id., ¶ 19.

⁶⁹ Id., ¶ 22.

⁷⁰ Id., 51.

⁷¹ Id., ¶ 52.

⁷² Id., ¶ 19, citing NASUCA Motion at 2-6.

have not undergone the Commission's existing copper retirement procedures"⁷³ were supported in the filings, and are part of the record here.

The NPRM asks if incumbent LECs are "in some circumstances neglecting copper plant to the point where it is no longer reliable usable" and requests parties to provide "specific examples and facts concerning the consequences to customers, competition and public safety."⁷⁴ The filings submitted by the consumer advocacy groups contain numerous specific examples and facts regarding Verizon's efforts to cease offering wireline service in parts of New York and New Jersey; evidence of *de facto* retirement by Verizon submitted by NASUCA offices in formal proceedings before commissions in Maryland, the District of Columbia, California and New York; and further evidence of *de facto* retirement shown by complaints from customers in Illinois and New York regarding both AT&T and Verizon.⁷⁵ NASUCA now provides further, very recent examples from California, included as Attachment 1 to these comments. These are gleaned from customer complaints reported to NASUCA member The Utility Reform Network ("TURN") and reports of significant long-term outages in both Mendocino County and Los Angeles covered in the local press. In summary, following a December, 2014 storm, AT&T declared a state of emergency for all of California. Many AT&T customers in Mendocino County experienced telephone service outages for periods of up to a month or more due to AT&T's failure to promptly restore service. For some customers, service was impaired prior to the storm. AT&T customers in the Los Angeles area also reported outages lasting several days and difficulty obtaining restored service. These problems are consistent with a recent California Public Utilities Commission (CPUC) staff report which found that AT&T and Verizon never met CPUC out of service repair interval requirements during the 2010-2013 time period.⁷⁶ The evidence in the CPUC staff report and the problems described in Attachment 1

⁷³ NPRM, ¶44.

⁷⁴ *Id.*

⁷⁵ *See*, Letter from Public Knowledge, et al., to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, GN Docket No. 09-51, et al., at 2-3 (filed May 12, 2014) (Public Knowledge et al. May 12, 2014 Letter).

⁷⁶ *See* <http://www.fiercetelecom.com/story/verizons-shammo-clarifies-remarks-about-net-neutrality-impact-companys-inve/2014-12-12>.

indicate that AT&T and Verizon are not adequately maintaining their plant and are using deteriorating plant as a means of migrating customers to other, more expensive services.

Other evidence supports the recent California experience. For example, Verizon appears to have substantially misallocated its network costs, with revenues benefitting wireless and broadband services while costs were pushed on to wireline service.⁷⁷ This presented the opportunity for Verizon to focus resources on the more profitable (in part because of the misallocation), less-regulated services. Any sale of the retired assets should thus not be on “commercial terms,”⁷⁸ which would allow Verizon to take further advantage of the misallocation.

The NPRM seeks comment whether and how the Commission should revise its rules to address inadequate maintenance. NASUCA supports the Commission’s proposal to “define retirement to include *de facto* retirement, i.e., failure to maintain copper that is the functional equivalent of removal or disabling....”⁷⁹ This rule is important to protect the ability of customers to choose the type of service that offers the reliability and functions that they desire.⁸⁰

The NPRM asks how it would determine if an ILEC’s treatment of its copper facilities fits the definition and poses the question of whether it should consider service complaints. Complaints from both retail and wholesale customers submitted to the Commission and state regulatory agencies would provide important information about whether an ILEC has failed to adequately maintain copper networks. As demonstrated by the Consumer Advocates’ filing, valuable information can be obtained from state proceedings examining service quality issues. Additionally, in situations where there is good reason to believe that networks are not being adequately maintained, the Commission should consider a formal

⁷⁷ See PULP/New Networks report, <http://utilityproject.org/2014/05/15/new-report-raises-questions-about-regulation-of-verizon-services/>.

⁷⁸ See Section E., *infra*.

⁷⁹ *Id.*

⁸⁰ See <http://www.fiercetelecom.com/story/verizons-shammo-clarifies-remarks-about-net-neutrality-impact-companys-inve/2014-12-12>.

examination of ILEC networks, possibly in collaboration with states. Beginning in 2008, the Delaware Public Service Commission examined the adequacy of Verizon's service,⁸¹ and a similar examination of both AT&T and Verizon's networks was ordered by the California Public Utilities Commission.⁸²

A recent National Regulatory Research Institute report⁸³ shows that, due to changes in state law, many states are no longer able to “address the consumer protection concerns raised by some incumbent LECs’ alleged failure to maintain copper facilities....”⁸⁴ Thus states have been limited in their abilities to consider service complaints, or to address misallocation of costs. The FCC must recognize that it has a unique responsibility to all Americans, based on federal law. Thus, NASUCA supports the Commission’s (tentative) conclusion “that the foreseeable and increasing impact that copper retirement is having on competition and consumers warrants revisions to our network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection.”⁸⁵

C. Approval of copper retirement

The Commission fears “that an approval requirement would undesirably harm incentives for fiber deployment....”⁸⁶ The owners of the copper are ILECs, some of whom have been slow to put in fiber. Moreover, there are areas of the country where fiber to the home is not economically viable and where ILECs have no intention of deploying fiber. For example, AT&T has not deployed fiber to the home as part of its U-Verse architecture⁸⁷ and Verizon has deployed its FiOS network only in selected cities, while

⁸¹ State of Delaware, The Public Service Commission, In the Matter of the Investigation on the Motion of the Commission into the Adequacy of Basic Telecommunications Services Provided by Verizon Delaware, PSC Docket No. 08-194.

⁸² Before the Public Utilities Commission of the State of California, Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, R. 11-12-001, D. 13-02-023, February 28, 2013, Findings of Fact No. 1, Ordering Para. 1.

⁸³ Sherry Lichtenberg, “Telecommunications Legislation 2014: Completing the Process,” National Regulatory Research Institute Report No. 14-07 (June 2014).

⁸⁴ NPRM, ¶ 54.

⁸⁵ Id., ¶ 55.

⁸⁶ Id., ¶ 56.

⁸⁷ See <http://www.fiercetelecom.com/story/will-atts-grand-ftth-plan-live-its-promise/2014-04-24>.

stating its intent to not construct fiber facilities in other metropolitan areas.⁸⁸ Instead, both AT&T and Verizon have stated in investor briefings that they intend to migrate copper-based wireline customers to wireless networks.⁸⁹ It is well documented that these wireless services lack both the functionality and the robust reliability during power outages that is provided by properly maintained wireline networks.⁹⁰

Thus, the Commission should not reach a blanket conclusion about potential disincentives of improved copper retirement rules. The Commission should not allow these ILECs — most of whom have vast resources — to dictate national policy, particularly in situations where their business plans would result in customers being forced to use services that lack the functions and reliability of legacy telephone service.

D. Improvements to the process⁹¹

Given the profound ramifications of this transition, NASUCA could not agree more that “[c]onsumers and other retail customers need to understand what is and is not happening during a copper retirement, and they need to understand their choices about service.”⁹² The NPRM correctly observes that “copper retirement has the potential to reduce a retail customer’s choice....”⁹³ More specifically, copper retirement has the potential to reduce the ability of customers to choose a service that supports valued

⁸⁸ See <http://www.baltimoresun.com/news/maryland/baltimore-county/towson/ph-tt-towson-no-verizon-fios-0716-20140715-story.html>. ; and *First Phase Of Verizon FiOS Build Coming To An End, Company will now focus on improving uptake in existing markets*, DSL Reports.com, January 2, 2010 <http://www.dslreports.com/shownews/106349>

⁸⁹ See, for example, *Communications Daily*, May 13, 2013, p. 10, Interview with Thomas Maguire, Verizon Senior Vice President for National Operations Support; *AT&T’s Plan for the Future: No Landlines, Less Regulation*, Wall Street Journal, April 10, 2014, <http://www.wsj.com/articles/SB10001424052702304834704579403090132882148> ; and *AT&T Wants to Cut the Cord on Your Landline Phone*, Daily Finance, November 13, 2012, <http://www.dailyfinance.com/2012/11/13/att-landline-phone-cord-cutting/>

⁹⁰ See, for example, *Before the Federal Communications Commission, 214 Applications of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-149, Comp. Pol. File No. 1112, WC Docket No. 13-150, Comp. Pol. File No. 1115, Initial Comments of the New Jersey Division of Rate Counsel, National Association of State Utility Consumer Advocates and The Utility Reform Network, at 14-17.

⁹¹ The Commission discusses protection for competitors first, then for consumers. NASUCA addresses consumers first.

⁹² *Id.*, ¶ 60.

⁹³ *Id.*

functions and is reliable during prolonged power outages. These are beneficial aspects of telephone service that should not be discarded at the sole discretion of an ILEC.

E. Upselling and consumer education

The Commission acknowledges that “Public Knowledge and NASUCA have expressed concerns that incumbent LECs may take advantage of copper retirements to “upsell” subscribers—i.e., try to convince customers to purchase more profitable bundles of services in interactions that ostensibly are intended to prepare the customer for a change in *facilities* only (e.g., copper to fiber).”⁹⁴ Upselling occurs and is reasonably foreseeable when retaining the customer (with the more profitable service) is better for the carrier than giving up the customer altogether. With these transitional copper retirements, most of the time upselling would make sense to the carrier. The harms to consumers include confusion about the best options available and being coerced into subscribing to a more expensive and possibly less reliable service.⁹⁵

That is why the notice to customers affected by copper retirement should identify alternative “services reasonably comparable to those to which the retail customer presently subscribes,”⁹⁶ addressed in part by the Declaratory Ruling. But the customer notice alone will not provide adequate protection, unless the ILECs are discouraged from upselling. Whether that will take more than a single Commission pronouncement remains to be seen.⁹⁷

Similarly, the “allegations that in some cases, incumbent LECs are misleading retail customers into believing that they may no longer continue to receive legacy services (e.g., POTS) or ... that incumbent LECs are failing to advise retail customers that their legacy service remains available over fiber”⁹⁸ were made and supported in the Consumer Groups’ letter and the attachments, including evidence

⁹⁴ Id., ¶ 71 (emphasis in original), citing, *e.g.*, NASUCA Motion at 4; Public Knowledge et al. May 12, 2014 Letter at 2.

⁹⁵ NPRM, ¶ 71.

⁹⁶ Id., ¶ 73.

⁹⁷ If refunds can be calculated, excess payments by misled customers should be returned. As with other Commission orders, forfeiture would be an appropriate penalty for violators. See *id.*, ¶ 76.

⁹⁸ Id.

submitted in multiple state regulatory proceedings.⁹⁹ These deceptive practices deprive consumers of informed choice, contrary to the enduring values of the Act.

F. Notice to retail customers.

The Commission states:

Under the proposed rule, an incumbent LEC would be required to directly notify all retail customers affected by the planned network change through electronic or postal mail unless the Commission authorizes in advance, for good cause shown, another form of notice.¹⁰⁰

NASUCA supports this proposal. It “strike[s] the correct balance between the benefits to retail customers of notification and the costs of providing the notification.”¹⁰¹

But the proposal’s focus on those customers who “will need new or modified CPE”¹⁰² as those who are “affected” is far too narrow. As the transition proceeds, customers who face potential copper retirement should also be informed that they may face discontinuance of service. Copper retirement greatly enhances (almost to a certainty in some communities) an ILEC’s ability to seek to discontinue wireline service.

Notably, Verizon’s recent copper retirement notices are put into context by its claim to provide basic telephone service over its fiber facilities.¹⁰³ Yet a basic service customer who is “locked in” to a current Verizon service package has only one choice. Likewise, an ILEC customer whose copper is retired as part of the ILEC’s plan for service withdrawal has little choice, but to change to a service they may not want. As documented in the consumer advocates filings and the customer reports in Attachment 1, when carriers such as AT&T and Verizon succeed in persuading customers to move to U-Verse or FiOS, many customers who desire to return to wholly copper-based service are told that the copper is no longer available, including that it has been removed.

⁹⁹ Footnote 22, *supra*.

¹⁰⁰ NPRM, ¶ 61.

¹⁰¹ *Id.*

¹⁰² *Id.*, ¶ 61.

¹⁰³ GN Docket No. 14-28, et al, Verizon ex parte (January 20, 2015); GN Docket No. 13-5, Verizon ex parte (June 2, 2014).

When an ILEC proposes to retire copper, there should be notice to all customers who receive service through the facilities subject to retirement. That bright-line resolution avoids many of the FCC's questions about recipients of notice.¹⁰⁴

G. Content of notice

NASUCA strongly supports the Commission's proposal for

a requirement that the notices to subscribers affected by copper retirements state clearly and prominently that a retail customer 'will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases' if that statement is accurate; if this statement would be inaccurate, then we propose requiring the incumbent LEC to include a statement identifying any changes to the service(s) and the functionality and features thereof.¹⁰⁵

NASUCA also supports the Commission's admonition that "[i]f the incumbent LEC cannot state accurately that the service(s) available to consumers will be unchanged, it [should] consider carefully whether it is required to file a discontinuance application pursuant to section 63.71 of our rules."¹⁰⁶

The Commission's proposal "that the notice provide sufficient information and that it contain a clear statement of the customer's rights and the process by which the customer may comment on the planned copper retirement"¹⁰⁷ should not be burdensome for the ILECs. The Commission specifically proposes "requirements similar to those required by section 64.2008 of our rules for use of CPNI and by section 63.71 of our rules for notice to affected customers of planned service discontinuances."¹⁰⁸ Both those rules are consumer-focused and conceptually appropriate.

H. Expansion of Right to Comment

The Commission acknowledges that "[u]nder our current network change disclosure rules, only information service providers and telecommunications service providers that directly interconnect with

¹⁰⁴ NPRM, ¶ 61-62. NASUCA agrees that "the incumbent LEC should be required to make additional efforts to contact retail customers who do not contact the incumbent LEC to schedule a service call in instances when an incumbent LEC technician must visit the customers' premises to complete work to effectuate the copper retirement." Id., ¶ 67.

¹⁰⁵ Id., ¶ 65.

¹⁰⁶ Id., ¶ 66.

¹⁰⁷ Id.

¹⁰⁸ Id.

the incumbent LEC's network have the right to object to planned copper retirements, and they can only delay implementation for up to six months and seek technical assistance from the incumbent LEC."¹⁰⁹

Both of those limitations should be removed: Customers should have the right to comment,¹¹⁰ and delay should not be the best that customers and competitors can look forward to.

The Commission further proposes allowing retail customers 30 days in which to comment on a proposed copper retirement from the date the Wireline Competition Bureau releases its Public Notice.¹¹¹ But the "Public Notice" is insufficient, because it is only available on the Commission's website. At the very least, the notices sent by carriers to retail (and wholesale) customers should include the Commission web addresses.

An effective comment process would help call to the Commission's (and the public's) attention "circumstances in which incumbent LECs are not complying with their obligations...."¹¹² Specifically, the FCC could "monitor for circumstances in which an incumbent LEC's proposed copper retirement is accompanied by or is the cause of a discontinuance, reduction, or impairment of service provided over that copper—but the incumbent LEC has failed to seek the necessary authority...."¹¹³ (If ILECs do not comply with their obligations, the FCC should take swift action in response.) Likewise the Commission (and the public) will see "value in hearing from the public about the potential benefits and/or harms that could come from the retirement of these copper facilities [for] policymaking decisions going forward."¹¹⁴

The Commission's rules should also require notice to, and the ability to comment by, the States and the Department of Defense.¹¹⁵

¹⁰⁹ Id., ¶ 77, citing 47 C.F.R. § 51.333(c)-(e).

¹¹⁰ The Commission correctly acknowledges that "[w]hile the Bureau has provided the public at large with the opportunity to comment on network change disclosures via a special email address, we can do more to facilitate participation in this important process." NPRM, ¶ 77 (footnote omitted).

¹¹¹ Id., ¶ 68.

¹¹² Id., ¶ 78.

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id., ¶ 79.

I. Certification

NASUCA generally supports the certification process proposed in the NPRM.

J. Competition: Expansion of Notice Requirements

The Commission's "competitive concerns"¹¹⁶ over copper retirement, like the consumer protection concerns just discussed, should ultimately redound to the consumers who benefit from the competition.

K. Sale of Copper Facilities That Would Otherwise Be Retired

The Commission states, "One potential way to maintain valued parts of the copper network while allowing incumbent LECs to continue their technology transition plans would be for incumbent LECs to sell or auction copper facilities that they intend to retire, on reasonable terms and conditions."¹¹⁷

NASUCA agrees, but submits that the sale should not be on "commercial terms" dictated by the copper wire owners.¹¹⁸

AT&T has stated that it will take a fourth-quarter 2014 \$2.1 billion "non-cash" charge for abandoning copper assets.¹¹⁹ That is a large amount of copper. The announcement raises the question of what value should be placed on the copper if portions of AT&T's copper wire network is sold, including in situations where a sale might be mandated to ensure continued provision of service by an Eligible Telecommunications Carrier ("ETC"). Presumably the net book value of the copper is minimal.

Only if the network owners are prevented from exercising their market power in the disposal of copper facilities will sale of facilities be a "win-win" proposition,¹²⁰ as the Commission suggests. The Commission must do more than merely "promote"¹²¹ sales of retired copper. A voluntary approach, at the sole discretion of incumbent LECs,¹²² will not work. The purchase of retired copper is one among many

¹¹⁶ Id., ¶ 20.

¹¹⁷ Id., ¶ 84.

¹¹⁸ Id., ¶ 86.

¹¹⁹ See <http://www.fiercetelecom.com/story/att-plans-shut-down-certain-copper-network-assets/2015-01-20>.

¹²⁰ NPRM, ¶ 87.

¹²¹ Id.

¹²² Id., ¶ 89.

necessary “valid or plausible method[s] to address the competitive concerns raised by incumbent LEC copper retirement.”¹²³

If a domestic carrier seeks to abandon its copper facilities, then the petitioning carrier should be required to offer those facilities or any part thereof for sale at net book value. In addition, the carrier should offer an unrestricted UNE-Loop on any other facilities retained for the provision of wireline service, where unrestricted refers to the removal of the current restrictions on UNE-loops that restrict the CLEC to offering only voice grade service on advanced service loops. The CLEC would be allowed to offer any service that is technically feasible using the advance service loop.

The copper facilities are mostly depreciated. The carriers were fully reimbursed for their investments. NASUCA's proposal is particularly important for areas of the country where fiber optic loops to the home have not and will not be deployed and where carriers such as AT&T and Verizon have stated their intention to either sell wireline facilities or migrate wireline customers to wireless service.

IV. SECTION 214 DISCONTINUANCE

The Commission’s service discontinuance rules cannot logically be addressed without considering the impact of the CAF II forbearance Order,¹²⁴ which removed ETC service obligations (other than Lifeline) from the price cap ILECs. As a result of this, the Commission can logically expect to see an increase in ILECs seeking to discontinue services.

That makes it all the more important for the FCC to adopt rules that protect consumers. There must be adequate notice of discontinuance, and there must be an open public process. And, importantly, if there is no adequate substitute for the service, the Commission must be able to reject the carrier’s discontinuance plan.

“The discontinuance rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, to ensure appropriate oversight by the Commission of

¹²³ Id., ¶ 88.

¹²⁴ WC Docket No. 10-90, et al., Report and Order, FCC No. 14-190 (rel. December 18, 2014).

such changes, and to provide an orderly transition of service, as appropriate.”¹²⁵ This leaves open the possibility that a “transition of service” may not be appropriate. Such is true where there is no reasonable substitute for the service.¹²⁶

As stated, “The Commission has discretion in determining whether to grant a provider authority to discontinue, reduce, or impair service pursuant to section 214.”¹²⁷ Yet “the fact that a carrier is statutorily obligated to seek discontinuance approval does not mean the carrier will be prevented from discontinuing the service.”¹²⁸ History confirms as much. But there is no guarantee to carriers, and the Commission need not provide one.

A. Adequate substitutes for discontinued service

“In evaluating a section 214 discontinuance application, the Commission generally considers a number of factors, including the existence, availability, and adequacy of alternatives.”¹²⁹ Through these factors, the Commission ensures that the removal of a choice from the marketplace occurs in a manner that respects consumer expectations and needs.¹³⁰ NASUCA agrees that “[i]ndustry and the public will benefit from articulation of clear, technologically neutral principles that define what constitutes an adequate substitute for consumers for a discontinued retail service.”¹³¹

The Commission “should update its rules to define what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (e.g., TDM to IP, wireline to wireless).”¹³² There is no reason why the updates for service

¹²⁵ NPRM, ¶ 23.

¹²⁶ The Commission correctly notes that “[m]any of the services that the incumbent LECs are claiming would replace TDM offerings currently are not offered pursuant to tariffs and therefore, lack the transparency and section 203 protections that purchasing a tariffed service provides.” *Id.*, ¶ 112. Such services are also mostly outside state commission review.

¹²⁷ *Id.*, citing 47 U.S.C. § 214(c).

¹²⁸ NPRM, ¶ 25.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*, ¶ 93.

¹³² *Id.*

discontinuance should apply only to discontinuances “in connection with a technology transition,” however. That would give carriers leeway to game these consumer protections.

The Commission seeks “comment on whether consumers expect, or should be entitled to expect, the same or equivalent functionalities from new services, or whether there are benefits from new services (e.g., more choice, lower cost, better features) that would compensate for any differences.”¹³³ Only carriers with market power would be able to impose choice on consumers. And when choice is imposed, the customer has no input into the calculus of whether the benefits outweigh the cost.

NASUCA supports inclusion in the rules of Public Knowledge’s “ten attributes it believes require particular evaluation: “(1) Network capacity, (2) Call quality, (3) Device interoperability, (4) Service for the deaf and disabled, (5) System availability, (6) PSAP and 9-1-1 service, (7) Cybersecurity, (8) Call persistence, (9) Call functionality, and (10) Wireline coverage.”¹³⁴ It does not appear that this list of attributes has received any serious criticism.

Crucially, large ILEC Windstream supports principles to evaluate replacement offerings that are consistent with both consumer advocates and the principles espoused by the Commission in the NPRM:

- (1) *Price per Mbps Shall Not Increase.* The price per Mbps of the IP replacement product shall not exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below.
- (2) *A Provider’s Wholesale Rates Shall Not Exceed Its Retail Rates.* An incumbent’s wholesale charges for the IP replacement product shall not exceed its retail rates for the equivalent offering.
- (3) *Basic Service Pricing Shall Not Increase.* The wholesale price of the lowest capacity level of special access service at or above the DS1 level shall not increase (e.g., 2 Mbps Ethernet price shall not exceed the DS1 price when 2 Mbps is the lowest Ethernet option available).
- (4) *Bandwidth Options Shall Not Be Reduced:* Wholesale bandwidth options must, at a minimum, include the options that the incumbent offers to its retail business service customers.
- (5) *No Backdoor Price Increases:* Price hikes shall not be effectuated via significant changes to charges for NNI or any other rate elements, lock-up provisions, ETFs, special construction charges, or any other measure.

133

¹³⁴ *Id.*, ¶ 94, citing Letter from Harold Feld et al., Public Knowledge, to Tom Wheeler, Chairman, FCC, GN Docket Nos. 12-353 and 13-5, at 3 (filed Jan. 13, 2014). This would include a “demonstration, as part of the section 214 discontinuance process, that any IP-supported networks or network components offer comparable communications security, integrity, and reliability....” NPRM, ¶ 99.

- (6) *No Impairment of Service Delivery or Quality*: Service functionality and quality, OSS efficiency, and other elements affecting service quality shall be equivalent to, if not better than, what is provided for TDM inputs today. Installation intervals and other elements affecting service delivery shall be equivalent to, if not better than, what the incumbent delivers for its own or its affiliates' operations.¹³⁵

Windstream's principles for evaluation of replacement offerings are well taken and should be incorporated in the Commission's order.

Another tool for determining adequacy of substitutes is the traditional antitrust formula for determining substitutability, as used in the *Qwest Phoenix Forbearance Order*.¹³⁶ This would include the Small but Significant Non-Transitory Increase in Price ("SSNIP") test.¹³⁷ In the *Qwest Phoenix Forbearance Order* in 2010, the Commission found, inter alia, that wireless voice service was not a substitute for wireline voice service. Despite the continuing growth in wireless connections¹³⁸ since 2010, wireless is still not a substitute for wireline.

NASUCA submits that in many locales, there are no adequate substitutes for many basic telephone services. In those instances, the Commission should deny the carrier's petition to discontinue the service(s). And if a carrier discontinues service without approval? Forfeitures are "appropriate for a carrier that obtains discontinuance authority predicated on meeting certain adequacy standards but fails to abide by those commitments..."¹³⁹ like other violations of FCC rules. Likewise, the risk of blocking, choking, reducing, or restricting traffic¹⁴⁰ is minimized by the adoption of bright-line rules.

B. Wholesale services

NASUCA supports the Commission's tentative conclusion that "incumbent LECs that seek section 214 authority to discontinue, reduce, or impair a legacy service used as a wholesale input by

¹³⁵ Id., citing Letter from Jennie B. Chandra, Windstream Commc'ns, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5 and 12-353, WC Docket No. 05-25, RM-10593, at 10 (filed Sept. 26, 2014).

¹³⁶ *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, ¶¶ 51-60 (2010) (*Qwest Phoenix Forbearance Order*).

¹³⁷ Id., ¶ 56.

¹³⁸ See WT Docket No. 13-135, Seventeenth Report (rel. December 18, 2014), Chart II.B.1.

¹³⁹ NPRM, ¶ 94.

¹⁴⁰ Id., ¶ 98.

competitive providers [should be required] to commit to providing equivalent wholesale access on equivalent rates, terms, and conditions.¹⁴¹ The conclusion should, in fact, be more firm: As just discussed, carriers should be required to ensure that adequate alternatives exist for consumers, **including wholesale customers**.¹⁴² This should not be an ILEC-by-ILEC commitment; it should be a Commission rule that applies to all those planning to discontinue, reduce or impair legacy services.

C. “Special” access

“Separately, the Commission is seeking to bring comprehensive reform to its regulatory framework for special access services and address problems identified by both incumbent LECs and competitive LECs.”¹⁴³ There is a data collection “on the legacy TDM and packet-switched services provided by incumbent LECs and competitors for a comprehensive, one-time, multi-faceted market analysis of the special access market.”¹⁴⁴ The analysis will, among other things, evaluate “how the intensity of competition (or lack thereof), whether actual or potential [competition], affects prices, controlling for all other factors that affect prices” and help identify reliable indicators of competition”¹⁴⁵

NASUCA submits that this analysis should also be done for “ordinary” access, the services that consumers take from ILECs. The prices for these services currently have no discernable cost basis, as would be expected in a competitive market.

The Commission also seeks comment on whether, “[w]here an incumbent LEC discontinues, reduces, or impairs a service offering used by competitive LECs to provide end users with service, this can also be expected to affect the competitive LECs’ retail customers....”¹⁴⁶ If a CLEC service is

¹⁴¹ NPRM, ¶ 110.

¹⁴² “[S]ince section 214(a) and the Commission’s discontinuance rules apply to common carrier and interconnected VoIP services, the mere fact that a carrier obtains discontinuance authorization under section 214(a) for such services has no legal bearing on its obligation to provide UNEs under section 51.319 of our rules.” *Id.*, ¶ 109.

¹⁴³ *Id.*, ¶ 30.

¹⁴⁴ *Id.*, citing *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16343-49, ¶¶. 66-71 (2012) (*Data Collection Order and FNPRM*).

¹⁴⁵ *Id.*, quoting *Data Collection Order and FNPRM*, ¶¶ 68-69.

¹⁴⁶ *Id.*, ¶ 102.

disrupted, their customers suffer.¹⁴⁷ It will be interesting to review the comments that attempt to rebut this proposition. NASUCA supports the Commission's proposal to adopt "a rebuttable presumption that where a carrier seeks to discontinue, reduce, or impair a wholesale service, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to section 214(a)."¹⁴⁸

The NPRM states that while "competitive LECs request that the Commission protect their access rights to these last-mile services amidst technology transitions, incumbent LECs are concerned that being required to offer long-term TDM arrangements may impede their plans to move to IP-based services."¹⁴⁹ This is just another aspect of the statutorily-required balancing the FCC must do.¹⁵⁰

V. CONCLUSION

NASUCA commends the Commission for addressing the consumer-concerning issues of back-up power, copper retirement, and service discontinuance in the current transition. These comments largely support the FCC's proposals in the NPRM. NASUCA requests that the Commission carefully consider the modifications to the Commission's proposals submitted here.

Respectfully submitted,

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¹⁴⁷ See, for example, the problems experienced by ISPs and their customers due to recent AT&T service outages in Mendocino County, Appendix 1, at 1-2.

¹⁴⁸ Id., ¶ 103.

¹⁴⁹ Id., ¶107.

¹⁵⁰ Id., ¶109.

February 5, 2015

ATTACHMENT 1

Recent Examples of

Inadequate AT&T and Verizon Network Maintenance in California

This Appendix describes recent telephone service outages in California. The outages were reported by customers directly to The Utility Reform Network (TURN) and received press coverage in Mendocino County and Los Angeles. Reports of telephone service outages in other parts of the state were also submitted by customers to TURN.

Following a December, 2014 storm, AT&T customers in Mendocino County experienced telephone service outages for periods of up to a month or more due to AT&T's failure to promptly repair service. AT&T declared a state of emergency for all of California. The situation was described in a January 8 web site post by Pacific Internet, a local Internet Service Provider:

For some time now, AT&T has declared themselves to be in a 'state of emergency'. This applies to the entire state of California. What this means, is AT&T is unable, unwilling, or a mixture of both, to meet the demands on maintaining their infrastructure. Unfortunately for our phone and Internet customers, our service utilizes that infrastructure -- the telephone lines running throughout town.

The current problem affects everybody, not only our customers, nor is the problem restricted to Ukiah. Other ISPs are facing the same issue. Inland and coastal Mendocino County is affected, as well as other counties throughout California. Even AT&T customers experience delays when AT&T gets backlogged on their work.

The current outages largely started with the big storm in early December 2014. Some customers experiencing phone and/or Internet outages have been waiting for over a month at this time....

What You Can Do

Wait.

OK, we're writing this to give you more options than that, but seriously, with the advent of decent weather, AT&T is eventually going to catch up on their workload, so it is a reasonable course of action. The main issue is that affected customers will be without phone or Internet for the duration of the waiting period. Making matters worse, AT&T quit giving us commit times for our trouble tickets in mid-December and hasn't been keeping commit times since.¹⁵¹

The outages impacted residential and business customers as well as small Internet Service Providers (ISPs) serving the region, as reflected in complaints submitted to TURN. For example, on January 14, a representative of a business association located in Boonville, CA submitted a verbal complaint to TURN:

¹⁵¹ <https://www.pacific.net/motd/att.php>

She has had no dial tone on her business phone line since before the Christmas holiday, except for a 1-day period when it worked. She has submitted service requests via AT&T's automated service line on 3 separate occasions. They were told it would be repaired by 12/19/14; it worked for 1 day on 12/23/14. They called again on 1/5/15 and were told it would be repaired by 1/7/15. They called again 1/14/15 and were told it would be repaired by this evening. Since 12/19/14 their phone has worked for 1 day.

On January 27, the same customer provided a follow-up report:

Except for 1 day (12/21/14), we have had no dial tone at our business since 12/18/14. Our cell phones do not work at this site so we are unable to conduct business and unable to contact Police or Fire in case of an emergency.

Utility Comment: They committed to repairing the phone line on 3 separate occasions. The last repair due dates were 1/7/15, and today at 5pm.

Similarly, A customer in Little River, CA (near the village of Mendocino) relayed her experience to

TURN:

Her main phone number went out on November 30- she made a trouble report & automated service said would be fixed by December 5. Called on 5th to confirm and was told could fix by Dec 10. Not restored until Dec. 14. Was out again on the 19th called the repair man who had left his cell number and left 3 messages - never heard back called main repair and began anew. Was promised a referral from her 2nd line which is for her dial-up computer service & enabled us to call out - but no one knows that number. Referral never happened. Voice service was restored 1/16/15. Customer is going to request credit for time out of order.

The ISPs suffered economic harm, as described in an article in the Ukiah Daily Journal:

"Sage Statham, manager of local phone and Internet service provider Mendocino Community Network, said the company has had to credit around 100 customers for related outages, and another 50 complaint tickets have been opened with AT&T. Statham said only three lines have been repaired since Dec. 23.

"Likewise, [Jim] Persky said Pacific Internet has lost \$8,000 to date since early December.

"In fairness, we can't charge our customers for service they aren't getting," Persky said. "At least 28 of our own customers are down, and I'm not sure how many actual AT&T customers are experiencing outages."¹⁵²

On February 3, a Verizon customer located in the Laytonville, Mendocino County exchange provided the following report to TURN:

We live in Mendocino County. There is no cell phone reception at our house. We have had a land line to the property since around 1995. It's our only link to emergency services, if we need them. I am 71 and my wife is 64. Our phone line goes dead several times a year, mostly during the rainy

¹⁵² http://www.ukiahdailyjournal.com/news/ci_27286113/mendocino-county-facing-more-broadband-issues

months. Our phone repair people tell us that this is due to the deteriorated condition of Verizon's copper wire infrastructure. As the system continues to age, phone outages increase, leaving us with no communication to the outside world. This is a serious problem with us and all of our neighbors in the Jackson Valley. Something needs to be done NOW!!!!

The problems in Mendocino County point to inadequate staffing on the part of AT&T and failure by both AT&T and Verizon to adequately maintain basic service network facilities. Some outages reflect on-going problems that pre-date the severe weather that occurred during a few days during mid-December. And, in AT&T's case, the company did not have sufficient staff to meet repair commitments or provide timely repair for over a month after the storm.

Recent reports received by TURN from other areas of California point to poor service quality due to inadequate maintenance. For example:

January 15, 2015 Grass Valley, California (AT&T)

Over the last few years they have had numerous episodes of loss of service. To be specific, telephone and/or DSL. Besides this, they have also had continuous problems with interference on the line. Over the last months they have increased to the point where in the last 30 days there has been 20 days where they have lost phone or internet for periods of days. As I am writing this, they cannot get either a phone or internet connection. They have called the repair service and where they (service people) have come out, made some adjustments and left. The last time this happened he only had service for between 24 to 48 hours when it again failed.

January 7, Eureka, California (AT&T)

Senior Citizen. Mr. XXXXX called AT&T because he has been having a lot of static, echo and no service for a while with his line, as well as missed appointments by technician. A technician has already come out three times and the problem has still not been fixed. The technician also verified that the problem was on the AT&T side.

Other customers report that AT&T is attempting to use copper landline outages as a means of persuading people to purchase more expensive services or to convince them to leave the copper network.

For example,

September 10, 2014, East Palo Alto, California (AT&T)

Senior Citizen Has had no connection to her landline for over 3 weeks and has been trying to get ATT to reconnect her line but instead they are trying to sell her the bundle package which she doesn't want.

July 24, 2014, Chico, California (AT&T)

Sales Rep suggested that they had no choice but to go wireless since all of ATT is going to be wireless soon. This is coming after a month of service outages that lasted for several hours and one night including phone and internet connection. There has been no explanation for service disruptions and claim they have no choice except to go wireless.

Similar outages occurred in AT&T's Southern California territory, as reported by NBC's Los Angeles affiliate:

During last week's heavy rain, the I-Team heard from numerous viewers who lost their home phone service for days, including Ron Olsen of Studio City.

Olsen's phone went dead for nine days, along with his Internet and the security system on his front gate, which is connected to his landline.

"Nine days," Olsen said. "I mean, this is ridiculous."

AT&T declined NBC4's request for an interview, but said in an email the company's technicians were working quickly to restore service to customers.

Olsen said he called AT&T at least six times to get his phone fixed, and even called the office of the company's President, but got no response.

It was only after the I-Team asked AT&T why Olsen's landline was still on the blink after nine days, that the company sent three repair trucks to fix it.

The report interviewed an AT&T technician who stated that the outages were due, in part, to AT&T's failure to adequately maintain its network and upgrade its facilities. Namely, the technician stated that AT&T still depends on,

...miles of decades-old, antiquated phone cables under the streets that are insulated with paper. 'If (the phone cables) get wet, the paper gets wet, and they short out,' an AT&T technician, who asked not to be named, told the I-Team. When the cables short out, he added, residents lose dial tone on their home phone.¹⁵³

¹⁵³ <http://www.nbclosangeles.com/news/local/ATT-Slow-to-Fix-Phone-Service-After-Storm--285660311.html> See, also, <http://workingreporter.com/wordpress/modern-problems/>