

**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 PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Comments in accordance with the Public Notice (PN) in PS Docket No. 14-174 *et al.*, DA 15-5 issued by the Federal Communications Commission (FCC or Commission) on January 6, 2015, soliciting comments regarding the *Notice of Proposed Rulemaking and Declaratory Ruling* regarding ensuring reliable backup power, protecting consumers, and preserving competition during the transition from networks based on time-division multiplexed circuit-switched voice services running on copper loops to all-Internet Protocol multimedia networks using a variety of physical infrastructure (“*Emerging Wireline Networks and Services NPRM*” or “*NPRM*”) issued on November 25, 2014.¹ The

¹ *In re Ensuring Customer Premises Equipment Backup Power for Continuity of Communications; Technology Transitions; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers; et al.*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, *et al.*, (FCC, Rel.

Emerging Wireline Networks and Services NPRM set deadlines for filing comments and reply comments at 30 and 60 days after publication in the Federal Register. On January 6, 2015, a summary of the *Emerging Wireline Networks and Services NPRM* appeared in the Federal Register. 80 Fed. Reg. 450. Accordingly, comments are due on or before February 5, 2015, and reply comments will be due on or before March 9, 2015.

Introduction and Summary

In the *NPRM*, the FCC acknowledged that the Nation's communications networks are in the midst of a series of technology transitions.² The Commission is primarily focused on the technological revolution involving the transition from networks based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to all-Internet Protocol (IP) multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure.³ The Commission issued the *NPRM* for the purpose of seeking comment on means to strengthen the public safety, pro-consumer and pro-competition policies and protections in a manner appropriate for the technology transitions that are underway and for the networks and services that emerge from those transitions. Specifically, the Commission sought comment on the following steps it had determined would assist in the preservation of pro-consumer and pro-competition policies and protections in a manner appropriate for in the midst of the technology transition:

- Ensure reliable back-up power at residences or other locations for consumers of IP-based voice and data services across networks that provide wireline services that substitute for and improve upon the kind of traditional telephony used by people to dial 911/E911, when commercial power supplies are interrupted;⁴

Nov. 25, 2014), Notice of Proposed Rulemaking and Declaratory Ruling ("*Emerging Wireline Networks and Services NPRM*" or "*NPRM*").

² *Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435, paras. 1 (2014) (*Technology Transitions Order*).

³ *Technology Transitions Order*, 29 FCC Rcd at 1440, paras. 16-18; *see also* 47 U.S.C. §§ 151, 160, 201, 225, 251, 254, 255.

⁴ *NPRM*, ¶ 3, at 3.

- 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., discontinuing basic voice services provided over TDM networks);⁵ 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 businesses, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs, and “ensuring that wholesale access does not decline merely because technologies are in transition.”⁶

The Pa. PUC makes three brief points in its Comments. First, the Pa. PUC agrees with the Commission’s assessment that consumers that have been transitioned to an IP-based service must be provided with a sufficient end-user premises backup power source to ensure continuity of communications in the event of commercial power outages, including, most importantly, continued access to 911/E911 emergency response services. Second, the Pa. PUC agrees that the Commission should take forward-looking action to ensure: (1) that consumers and other affected parties have the information they need to make informed choices as network technologies transition; and, (2) that IP-based and other new retail services meet consumers’ and providers’ fundamental needs before the Commission allows a carrier to remove legacy services and, potentially, network facilities, from the marketplace. Lastly, the Pa. PUC strongly believes that technology transitions should not be used as a pretext to limit competition: in the context of the Commission’s copper retirement and service discontinuance rules, wholesale access should not be affected or severely impacted “merely because technologies are in transition.”

As an initial matter, these Comments should not be construed as binding on the Pa. PUC in any matter currently pending before the Pa. PUC. These Comments could

⁵ NPRM, ¶¶ 4-5, at 3-4.

⁶ NPRM, ¶ 6, at 5.

change in response to later events, including Ex Parte filings or the review of other filed Reply Comments and legal or regulatory developments at the state or federal level.

A. Consumers that Have Been Transitioned to IP-based Services and New Network Facilities Should Continue to Have Access to Reliable Backup Power

The Commission noted that consumers receiving voice telephone service over legacy copper networks rightly became accustomed to retaining the ability to use their landline phones even when in the midst of a commercial power outage or disruption since legacy copper networks conduct electricity from the local exchange carrier's central office to the customer premises equipment (CPE)⁷ (i.e., copper networks possess "line power"). 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 as long as wireline interconnecting links to customer premises are not severed. For example, the Pa. PUC rules require a carrier to provide emergency sources of ringing, lighting, and other power. Section 63.14 of the Pa. PUC rules states in pertinent part:

(a) *Emergencies.* A public utility shall take reasonable measures to meet emergencies, such as fire, storm, illness of personnel, power failure or sudden increase in traffic, by making available to the extent practicable the following:

(1) Emergency sources of ringing, lighting and other power.

(2) Other reserve equipment.

(i) The reserve equipment shall include a minimum of 3 hours battery reserve for central offices equipped with permanently installed standby power facilities.

⁷ The Pa. PUC liberally construes the term CPE to include, as needed, network interface devices that would also need to be supported by premises back up power sources during the duration of commercial power supply interruptions, e.g., optical network terminals or terminations (ONTs). *See generally* AT&T, *Backup Power for Voice Services in the Customer Premises*, (San Francisco, CA, February 2, 2009), Performance Reliability Standards Workshop Sponsored by the California Public Utilities Commission, <http://www.cpuc.ca.gov/NR/rdonlyres/FFE91CE3-D2E2-4CCE-97A3-239493CDC5F5/0/MicrosoftPowerPointPRSWorkshopATTV11.pdf> .

(ii) Central offices shall have adequate provisions for standby power. A central office which is without stationary standby power facilities shall have available a portable power unit which can be delivered and connected on short notice.

(iii) Exchanges exceeding 5,000 lines shall be equipped with stationary standby power facilities.

* * *

52 Pa. Code § 63.14. Accordingly, consumers have been able to rely on the continued availability of telephone service during emergencies as the carrier is required to possess adequate backup power capabilities at its central office so as to ensure continuous voice service over wireline connections to residences during the emergency.

However, IP-based services and new network facilities (such as fiber to the premises or home — FTTP/FTTH — or coaxial cable used by cable systems that provide interconnected VoIP service) do not necessarily supply line power. In the event of a commercial power outage, the newer technology generally requires a backup power source, such as batteries, at the consumer's residence or place of business (CPE backup power that will also be used to support the relevant ONT). Accordingly, it is imperative that consumers who have either migrated or been transitioned to an IP-based network or new facilities continue to have reasonable CPE backup power alternatives as a means to ensure continuity of communications throughout a commercial power outage, including, most importantly, continued access to 911/E911 emergency response services. As a preliminary matter, the Pa. PUC believes that the Commission has the statutory authority to address this issue and require that providers have sufficient backup power to maintain 911/E911 connectivity during commercial power outages so long as the federal rules do not preempt more stringent state rules.

The Pa. PUC asserts that the transition to an alternative technology platform should not reduce the importance of robust access to emergency service providers and should not negatively impact consumers. The retirement of TDM-based systems should not lead regulators to abandon efforts to ensure that the IP-based wireline broadband and

wireless networks of the present and future perform adequately in an emergency. This policy objective must be technology-neutral given the technology neutrality mandate of Section 253, 47 U.S.C. § 253. The Pa. PUC asserts that it is reasonable for providers to continue to bear primary responsibility for CPE backup power. The Pa. PUC notes that many providers of wireline IP-based services require that their respective end-user consumers be responsible for purchasing and/or replacing backup power batteries that are essential for the continuous operation of basic VoIP calling functions during a commercial power outage. However, adequate and reliable access to 911/E911 response services and functionalities during emergency conditions is a long-standing public policy objective. In fact, the benefits of reliable access to emergency services exceed the costs of implementing and ensuring continued access to emergency services.

The Pa. PUC had specifically and formally identified the importance of premises backup power sources to the FCC as early as 2013 through the submission of formal comments in the Commission's *Improving 9-1-1 Reliability* proceeding. The Pa. PUC had put forward the following positions:

The Pa. PUC submits that the reliability, survivability, and functionality of telecommunications and communications networks and services that are transitioning through retail and wholesale broadband access and the use of the Internet Protocol (IP), are increasingly becoming distributed in nature and provide a joint responsibility for end-user consumers. Such responsibility may be understood, consciously undertaken, and actively managed by institutional business or enterprise customers that operate complex and multi-purpose local or wide area networks of their own, but the same cannot be easily said for residential end-user consumers that often lack the technological knowledge, sophistication, and skills to address network-related reliability and survivability issues on their end. The promulgation and adoption of adequate technical standards that can be applicable to the reliability and survivability of distributed retail broadband access network equipment installed at the premises of residential end-users and adequate levels of consumer education can dramatically improve the capabilities of large numbers of consumers to use the life and property saving 911/E911 access

capabilities especially in cases of inclement weather that cause prolonged interruptions of commercial power supplies.

* * *

Through the Pa. PUC examination of a formal end-user consumer complaint and the relevant evidentiary record, the Pa. PUC was able to ascertain that manual intervention is or may be required in order to take advantage of the full eight (8) hours of reserve backup power from the distributed battery packs that are associated with the provision of retail wireline VoIP services.¹² The Pa. PUC is generally aware that both telecommunications carriers and CATV providers of fixed wireline VoIP services are or may be experimenting with distributed backup power battery packs with increased output duration of more than eight (8) hours. However, the Pa. PUC continues to believe that the common standard of backup power output for eight (8) hours is still prevalent among the installed residential consumer base of these distributed battery packs. As the respective durations of regional commercial power outages during the June 2012 derecho and Hurricane Sandy demonstrated, the Pa. PUC questions whether the eight (8) hour standard is adequate to ensure the reliability and availability of 911 services for residential end-users, including the provision of retail broadband access services, during prolonged commercial power outages. In short, the Pa. PUC believes that even where adequate power supplies were maintained and/or timely restored to wireline network nodes on a priority basis, these nodes could not be effectively used by residential end-user consumers for 911/E911 calls with distributed premises backup power battery packs that had simply exhausted.

The Pa. PUC further believes that there must be a comprehensive examination of whether the telecommunications carrier or CATV company wireline networks are technically capable and do conduct periodic remote telemetry testing of the distributed backup power battery packs that are installed at the premises of residential end-user consumers. The detection of potentially malfunctioning or underperforming battery packs is crucial if adequate levels of backup power are to be maintained during commercial power interruptions so that 911 services reliably work if an emergency occurs... Furthermore, according to the Pa. PUC's knowledge and belief, it appears that when such a distributed backup power battery pack fails, e.g., it does not properly recharge under normal operating conditions, the relevant responsibility for detecting the failure and the replacement cost for the battery pack shift to the residential end-user consumer.

^{12/} *In re Eileen F. Floyd v. Verizon Pennsylvania LLC*, Docket No. C-2012-2333157, (Pa. PUC Order entered April 30, 2013), at 9-10.

In re Improving 9-1-1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket Nos. 13-75 and 11-60, Comments of the Pennsylvania Public Utility Commission, May 13, 2013, at 19 and 21-22.

At this time, there remains an issue as to whether providers should continue to bear primary responsibility for CPE backup power and the extent to which consumers should be responsible for any associated maintenance of the backup power supply.⁸ The Pa. PUC recognizes that network providers and suppliers have been exploring a variety of backup power options to be provided, at a minimum, at time of installation by service providers and supported by consumer education and replacement. The Pa. PUC supports these efforts.

The Pa. PUC believes that the need for adequate and reliable backup power at customer premises is a key element because, without reliable backup power, access to emergency services is undermined at the very time that people are more likely to need to access emergency personnel. The Pa PUC recognizes that this provision of backup power to customer premises equipment is changing rapidly so that more reliable and longer battery backup can be maintained at a customer's premises. The Pa. PUC stands ready to continue to examine the rapid changes in battery backup at the customers' premises and the impact that such changes may have on determining responsibility for providing and maintaining CPE back-up power.

The Pa. PUC also suggests that, as part of its efforts to promote smooth technology transitions, the Commission should adopt baseline requirements for ensuring

⁸ Because the modern IP-based wireline broadband networks are evolving into architectures of a distributed form and intelligence, it cannot be easily argued that the network interface device provides a clear "demarcation point" where somehow *all* of the network provider's responsibilities "end" and the end-user's responsibilities "begin." The fact that the ONTs receive power (inclusive of battery back up power) from the customer's premises so that they can properly function, diminishes the value of such interface devices as convenient network "demarcation points" in assigning relevant backup power responsibilities.

continuity of power for CPE during commercial power outages for providers of interconnected VoIP-based services that do not provide their own line-power at their central offices but rely on backup power at the customer's premises. The provider should be required to ensure access to a continuous CPE backup power source. This way, potentially all residential IP-based services, as well as any basic services delivered over fiber, can operate and provide basic telephone or minimally essential communications, including 911/E911 calls, as well as for the receipt of emergency alerts and warnings during the power outage. The Pa. PUC suggests that backup power that is capable of powering CPE for a minimum of at least eight hours during a commercial power outage is consistent with the Commission's enunciated proposal.⁹ The Pa. PUC notes that eight hours appear to be consistent with certain VoIP deployment models already in practice, such as Verizon's FiOS service.

The Pa. PUC also encourages the Commission to fully utilize the technical expertise and the relevant final recommendations regarding premises backup power requirements and technology alternatives of the Communications Security, Reliability and Interoperability Council (CSRIC).¹⁰ In accordance with the Commission's directives, the established Working Groups will submit their final recommendations in this area in March 2015.¹¹ The Pa. PUC participated in the customers' back up power recommendations including customer education regarding the various backup power options at the customers' premises.

⁹ NPRM, ¶ 35, at 21.

¹⁰ NPRM, ¶ 36, at 22.

¹¹ *See generally* CSRIC, *Final Report — CPE Powering*, Working Group 10B, CPE Powering — Best Practices, September, 2014.

B. The Commission Should Take Steps to Protect Retail and Wholesale Competition in the Context of the Retirement of the Legacy Copper Network and the TDM-based Services Supported by the Legacy Network

As a preliminary matter, the Pa. PUC appreciates the Commission's statement in the *NPRM* that it is not seeking to revisit or alter its previous determination in the 2003 *Triennial Review Order* to preserve state authority with respect to requirements for copper retirement and shall continue allowing the state commissions to evaluate an incumbent LEC's (ILEC) retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements.¹²

The Pa. PUC agrees with the Commission's overall recommendation to revise its copper retirement rules in order to align the goals of consumer protection and competition with the ongoing incentives to deploy advanced facilities and services. Section 3011 of Pennsylvania law, 66 Pa. C.S. § 3011, declares that it is the public policy of Pennsylvania to strike a balance between *mandated* deployed and *market-driven* deployment of broadband service and to continue alternative regulation of local exchange telecommunications service, to ensure the efficient delivery of technological advances and new advanced services throughout the Commonwealth, and to promote the delivery and provisions of competitive services without jeopardizing universal service. Thus, the Pa. PUC supports the proposals of wireline ILECs to migrate or transition to all-fiber networks and facilities, as this technological advancement will provide consumers with access to new advanced services as envisioned under state and federal law while maintaining universal and wholesale access services.

However, this support is not unconditional. The Pa. PUC agrees with the Commission's tentative conclusion that the foreseeable and increasing impact that copper

¹² See *Triennial Review Order*, 18 FCC Rcd at 17148, para. 284 (“[W]e stress that we are not preempting the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements.”).

retirement is having on competition and consumers warrants revisions to the FCC's network change disclosure rules to allow for greater transparency, to provide a meaningful opportunity to participate by all stakeholders, including incumbents¹³ and competitors, , and to ensure consumer protection.¹⁴

First, the Commission proposed revising the pertinent network change disclosure rules to define the “copper retirement” to include the removal and disabling of copper loops, subloops, and the feeder portion of loops. The Pa. PUC agrees with the concept that if the feeder portion of the loop is unavailable for unbundled access, the practical difficulty of obtaining wholesale access to the remaining portion of the loop forecloses competitive access to the retail customer.¹⁵ Accordingly, we recommend that the Commission adopt its tentative proposal to include the feeder portion of the loop within the definition of copper retirement.

Moreover, the Pa. PUC states that, if it is alleged and proven that a provider is failing to maintain its copper network or neglecting it in such a fashion to the point where it is no longer reliably usable or arises to the functional equivalent of a “disabling” of the copper network,¹⁶ that should fall within the purview of a “copper retirement” (or what the Commission terms as “*de facto*” retirement in association with the “adequate maintenance of facilities”).¹⁷ Of course, the burden of proof would be placed on the complaining party bringing the service complaint before the Commission— and/or the appropriate State utility commission — and alleging that copper facilities are being allowed to degrade in quality by the network provider without timely and adequate notice to its wholesale access and retail service customers.

¹³ See, e.g., *In re: Technology Transitions*, Docket No. 13-5, Windstream Communications Ex Parte (August 7, 2014) and Granite Telephone Ex Parte (October 30, 2014).

¹⁴ See generally NPRM, ¶ 57, at 28.

¹⁶ The Pa. PUC asserts that “copper retirement” is the method of “removing or disabling” copper loops, subloops, and the feeder portion of loops. In our view, “removing” constitutes the physical removal of copper. Additionally, the Pa. PUC states that “disabling” means rendering the copper inoperable.

¹⁷ NPRM, ¶ 53, at 27.

This does not mean that the Pa. PUC supports permanent retention and operation of a ubiquitous copper network. It means that as this network is retired or upgraded, the stakeholders using that network, be they incumbents, wholesale access providers, or competitors, must not be precluded from providing their respective wholesale and/or retail services. The states must also continue to play an oversight role, including dispute resolution.¹⁸

The Pa. PUC agrees with the Commission's tentative proposal to revise the network disclosure rules to require ILECs to provide interconnecting competitors with additional information about the potential impacts of proposed copper retirements. The Pa. PUC agrees that, as ILECs continue with their planned technology transitions, competitive providers should be fully informed about the impact that copper retirements will have on their businesses so that retirement of the legacy copper network facilities will not harm their ability to compete. In the *Triennial Review Order*, the FCC allowed ILECs that overbuild fiber-to-the-home (FTTH) networks to retire copper, subject to disclosure, *i.e.*, they must inform existing wholesale access customers of the copper retirement. Also, the FCC's decision in multiple *Triennial Review Orders* forbears from requiring the unbundling of non-copper facilities.¹⁹ Thus, the risk that is introduced as a result of the FCC's copper retirement policy is that incumbents or competitors who rely on that network using copper-based unbundled network facilities or interconnection (including the use of unbundled copper loops for the provision of retail broadband access services) cannot be left without legal access and a regulatory forum to resolve disputes. Hence, the ILEC under the revised network disclosure rules should provide a description of the expected impact of the planned changes, including but not limited to any changes in prices, terms, or conditions that will accompany the planned changes.

¹⁸ See generally NPRM, ¶ 54, at 27.

¹⁹ *Triennial Review Order*, 18 FCC Rcd 16978, paragraphs 272-273; *Triennial Review FTTC Reconsideration Order*, 19 FCC Rcd 20293, paragraphs 9-19 (2004); *Triennial Review Order MDU Reconsideration Order*, 19 FCC Rcd 15846, paragraphs 7-9 (2004).

Additionally, the Pa. PUC agrees that ILECs must provide direct notification of planned copper retirements to each telephone exchange service provider or other user that interconnects with the ILEC's network and must file a certificate of service to the Commission confirming the provision of such notice regardless of the timing of the retirement. The advance notice given by an ILEC to a competitive wholesale access provider of a planned copper retirement should be of sufficient length that the competitive provider has ample lead time to obtain a functionally equivalent service so that they can both plan for the necessary changes to their products as well as prepare their customers for changes to any offerings that may have been dependent upon ILEC last-mile facilities.

Further, the Commission determined that consumers 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. The Commission proposed that notice obligations should be extended to retail customers.²⁰ The Pa. PUC agrees with this recommendation. The Pa. PUC states that copper retirements under the existing rule apparently has the potential to reduce wholesale, incumbent, or competitor access, thereby reducing retail customer choice. This has real consequences on the ground in the states.

The Pa. PUC has previously noted the importance that copper facilities and networks play in the delivery of universal service and competition in the nation and Pennsylvania in particular.²¹ For example, a Pennsylvania ILEC recently sought to discontinue specific legacy interstate DS0 special access services needed to provide a variety of services, including voice-grade service offered at 64 Kbps, which is the

²⁰ See generally NPRM, ¶ 61, at 30.

²¹ *In re: Petition of USTA for Declaratory Ruling that Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, WC Docket Nos. 13-3 (March 12, 2013), pp. 12-15; *In re: Petition of XO for A Rulemaking on Incumbent LEC Retirement of Copper Loops and Copper Subloops*, RM-11358, DA -7-207, Comments of the Pa. PUC, pp. 1-3.

transmission speed associated with traditional telecommunications voice service. Hence, the discontinuance of the legacy copper network could impact the consumer's ability to have continued access to voice-grade (64 Kbps) services in the exchange, especially if subsequently, the ILEC were to assert before the Commission that the 64 Kbps channel requirement provides no benefit to customers or that retaining the 64 Kbps channel requirement is contrary to the public interest.²²

The Pa. PUC asserts that the Commission's goal should be to preserve universal service while promoting competition. Accordingly, it is appropriate to extend the notice and meaningful opportunity to be heard obligations set forth in the current network change disclosure rules to include incumbent carriers, wholesale access providers, and retail customers. Customers should have the opportunity to comment in the copper retirement process. The Pa. PUC agrees with the Commission's decision to revise its network change disclosure rules to address the form, timing, and content of notice to retail customers, as well as to educate subscribers regarding copper retirements, which may affect them.

Moreover, the Commission acknowledged that it is not the only governmental entity with important responsibilities with respect to technology transitions. The Commission noted that the states serve a vital function in safeguarding the values of the Network Compact. Accordingly, the Commission revised its network disclosure rules regarding copper retirements so that states can fulfill their respective missions with respect to the ongoing technology transitions. The Commission also proposed requiring ILECs to provide notice of planned copper retirements to the U.S. Secretary of Defense and to the various State public utility commission(s) and to the Governor of the State(s) in which the network change is proposed. The Pa. PUC agrees with the proposed revision. Any FCC approval of a network change must not expressly obviate

²² See *e.g.*, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) from Obsolete Incumbent LEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks*, WC 14-192 (filed Oct. 6, 2014).

independent state law. This is necessary to ensure that a state's jurisdiction over protected voice-grade service or other service that is provided under state or federal law is not indirectly obviated by a Commission decision. An ILEC's transition from copper to fiber facilities or some other technological advance should not eliminate universal service or substantially restrict competition. The Pa. PUC agrees with the Commission that concerns about technological change, competitive access, and universal service should be addressed with the principle of cooperative federalism.

C. The Commission Should Protect Consumers, Competition, and the Public Safety by Requiring an Applicant Seeking 214 Relief to Affirm that if a Retail or Wholesale Service Being Discontinued, Reduced, or Impaired Will Be Replaced by an Adequate Functionally Equivalent Substitute Service.

In the *NPRM*, the Commission noted that it was critically important that technology transitions do no harm to the benefits of competitive access for retail customers or wholesale competitive providers. The FCC noted that competitive LECs are concerned that, if ILECs discontinue TDM-based services in the transition from TDM to IP-based services, they will lose the ability to access last-mile facilities necessary to serve their customers, such as DS1 and DS3 special access lines.²³ As noted above, incumbents, competitive LECs, and wholesale access providers use these facilities to serve retail customers, including providing packet-based broadband services to hundreds of thousands of American businesses at competitive prices. Accordingly, the Commission tentatively concluded that it should require ILECs, which are seeking to discontinue, reduce, or impair a legacy service used as a wholesale input by competitive providers, to provide equivalent wholesale access on equivalent rates, terms, and conditions.

²³ See, e.g., Windstream April 28, 2014 *Ex Parte* Letter at 2-8. No discontinuance would affect an incumbent LEC's obligations to provide unbundled access to loops under Section 51.319(a)(4) of our rules. 47 C.F.R. § 51.319(a)(4).

The Pa. PUC agrees with this tentative conclusion and recommends that the Commission adopt it. The Pa. PUC agrees that competitors and the public will benefit from the articulation of clear, technologically neutral principles that define what constitutes an adequate and functionally equivalent substitute for a discontinued retail service or a wholesale access service provided to end users by either the incumbent LEC or competitive LECs in the market. The Pa. PUC also asserts that an applicant seeking to discontinue support for analog services for consumers with disabilities should be required to ensure that the replacement service(s) is functionally equivalent *and* compatible with assistive technology devices used by people with disabilities.²⁴ The applicant also should provide notice to people with disabilities regarding the potential for disruption in service, such as home health monitoring systems and TTY-based communications.

Additionally, the Commission should consider not only the functionality related to voice calls (e.g., ability to use caller ID) but also non-call functions, third-party CPE, and/or services such as home alarms, fax machines and medical alert monitors. The Pa. PUC agrees that the Commission should take into consideration consumer trends in determining what has become an adequate substitute in the marketplace. Accordingly, the Commission should also consider how the action to discontinue, reduce, or impair service impacts a community or part of a community such that approval is necessary pursuant to Section 214(a). The Pa. PUC agrees that this presumption can be rebutted where it could be shown that the discontinuance, reduction, or impairment of the wholesale service would not: (1) discontinue, reduce, or impair service to a community or part of a community; or (2) impair the adequacy or quality of service provided to end users by either the incumbent LEC or competitive LECs in the market. The Section 214 applicant should also demonstrate that a substitute retail service available to its customers will offer 911/E911 capabilities that comport with Commission rules and that the

²⁴ It is the Pa. PUC's understanding that technology transitions can be made to properly function with legacy assistive technology devices (e.g., TTY terminals) through appropriate network software modifications, and/or through the general availability of IP-enabled devices that can also be distributed to selected and qualifying recipients under applicable state and federal programs.

transition to such substitute retail service will not result in any reduction in 911/E911 capability relative to that offered by the discontinued service.

Respectfully Submitted On Behalf Of
The Pennsylvania Public Utility Commission

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