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
NTCA–THE RURAL BROADBAND ASSOCIATION

February 5, 2015

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA") hereby submits its comments in response to the Notice of Proposed Rulemaking[1] in the above-captioned proceeding. NTCA is a national association of more than 900 members. All of NTCA's members are rural incumbent

[1] *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, Notice of Proposed Rulemaking, FCC 14-185 (rel. Nov. 25, 2014) ("NPRM").

local exchange carriers ("RLECs"), many of whom also provide video, wireless, and broadband services to their rural communities.

The NPRM proposal to require fixed voice service providers to ensure that voice subscribers have eight hours of standby power in the event of a power outage strikes the proper balance between ensuring that consumers continue to have the ability to place 911 calls when a power outage occurs and the increased costs of mandating a longer time frame. The cost of installing backup power equipment for longer time periods would be several hundred dollars or more per customer location, resulting in higher prices and/or reducing the ability to invest in other advancements for the benefit of consumers.

As to the NPRM proposal to ensure that consumers are equipped to manage their own backup power needs after eight hours – potentially with commercially available batteries – the lack of standardization in backup power technology may mean that the widespread availability of such technology may be several years away. The Commission should decline to adopt additional rules beyond the eight hour requirement and instead focus on the promotion by industry and manufacturers of greater standardization of customer premises equipment ("CPE") backup power solutions.

As to the NPRM inquiries on the Commission's copper retirement notice provisions, NTCA is pleased that the NPRM recognizes the importance of having its copper retirement rules continue as "notice-based" provisions instead of far more burdensome and unnecessary approval requirements. The Commission should also grant providers the flexibility to determine the most effective form by which to deliver copper retirement notifications.

Finally, the Commission's Section 214 discontinuance rules must strike a balance between ensuring that carriers' transition to Internet Protocol ("IP") services does not harm

consumers and a discontinuance regime that promotes, rather than inhibits, that transition and the introduction of new, feature-rich services. Again, here, the creation of industry best practices will enable the Commission to create standards that offer carriers the appropriate level of guidance necessary to invest in new technologies and services without fear of "regulatory tripwires" or protracted and expensive Section 214 proceedings that hamper their ability to plan for investments and rapidly respond to consumer demand.

II. THE COMMISSION SHOULD LOOK TO CREATE BACKUP POWER "BEST PRACTICES" BEFORE ADOPTING OVERLY BURDENSOME BACKUP POWER RULES

RLECs have a strong commitment to public safety and their customers' access to voice service in the event of a power outage or other emergency or disaster situation. As leaders in their small communities, the owners, operators and employees of rural carriers – who typically also live and work in these communities – have unparalleled accountability to their neighbors and a personal stake in the reliability of their networks. Based in the communities they serve, these operators take great pride in their status as carriers of last resort and as lifelines to their communities in times of disaster. Based in rural and remote areas, they also have a long track record of dealing with disasters such as floods, tornados, and other disasters and weather events that have cut off electricity to vast portions or even all of their service territories.

In that spirit of community responsibility, RLECs have taken great pains to ensure the resilience of their networks should disaster occur and to restore service as quickly as possible. This includes making certain that customers have reasonable access to emergency services in a power outage situation. As a number of these carriers have installed fiber-based voice and broadband facilities deeper into their networks over time to meet consumer demand for advanced

services, they have done so with an eye towards ensuring that consumer expectations continue to be met.

Thus, NTCA supports the underlying goals of this NPRM. As NTCA has consistently stated,[2] the ongoing transition to IP-enabled services and changes in underlying network technologies must never be used as an excuse in and of themselves for departure from policies that serve the principles of competition, consumer protection, universal service, and public safety.[3]

Before moving forward with some of the proposals in the NPRM, however, the Commission should take stock of the existing state of backup power availability and the ramifications of the proposals contained in the NPRM on technological advancement and broadband deployment. The NPRM proposes in particular that fixed voice service providers should assume responsibility for ensuring power is available for consumers to make use of their communications services for the first eight hours during a power outage.[4] An eight hour standard would appear to strike a proper balance between ensuring that consumers continue to

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[2] Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-To-IP Evolution, WC Docket No. 12-353 (fil. Nov. 12, 2012); Comments of NTCA–The Rural Broadband Association, GN Docket No. 13-5 (fil. Jul. 8, 2013).

[3] The Commission's commitment to such principles is also necessary in other contexts. The Commission recently opened a docket to examine ILECs' obligations to offer competitive carriers access to certain wholesale inputs. As the Petitioner in that proceeding stated, "[i]n the absence of a change in rules or forbearance, ILECs remain obligated to provide access to DS1 and DS3 capacity loops irrespective of whether the loop is copper or fiber, or whether transmissions over the loop are in a TDM or IP format."). Petition of Windstream Corporation for a Declaratory Ruling, WC Docket No. 13-5, 15-1 (filed Dec. 29, 2014), p. 3. Petitioner is correct that the benefits of competitive access cannot be maintained if "ILECs are allowed to cite the IP transition as basis for subverting DS1 and DS3 capacity loop unbundling obligations." *Id.*, p. 15. This of course applies to each of the foundational principles of public safety, competition, consumer protection, and universal service.

[4] NPRM, ¶ 35 (noting that "[e]ight hours appears to be consistent with certain VoIP deployment models already in practice").

have the ability to place 911 calls when a power outage occurs and the increased costs of mandating a longer time frame. NTCA members report that the cost of installing backup power equipment for longer time periods would be several hundred dollars or more per customer location, resulting in higher prices and/or reducing the ability to invest in other advancements for the benefit of consumers.

Another consideration, as the NPRM appears to acknowledge,[5] is the distinction between standby backup power and actual "talk time." The Commission should make clear that its eight hour backup power standard is applicable to standby backup power only.

The NPRM also states that after eight hours, the responsibility for continuity of power would be in the hands of consumers. However, the NPRM goes on to seek comment on how the Commission can ensure that consumers are equipped to manage their communications needs after this period. This line of inquiry in the NPRM raises questions that require much more careful consideration and examination in industry forums before moving forward.

First, a Communications Security, Reliability and Interoperability Council ("CSRIC") report cited in the NPRM is quite instructive in this regard. More specifically, CSRIC Working Group 10B examined options available for providing backup power for several different Voice over Internet Protocol ("VoIP") technologies.[6] As the report states, "[e]ven if a VoIP service has a good battery backup system, the ability to provide power during outages is usually limited to a few hours. Best practices are needed to offer solutions that can last multiple days or even weeks,

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5 *Id*., fn. 110 ("In this context, unless otherwise stated we use the term 'backup power' to refer to the availability of standby backup power, not actual talk time.").

6 CSRIC IV Working Group 10B, CPE Powering – Best Practices; Final Report – CPE Powering, at 9-11 (September 2014) ("CSRIC CPE Powering Report").

in case catastrophic damage, such as a major storm."[7] As the report goes on to state, "[f]or the service provider, one of the greatest challenges is how to provide a reliable service given the wide range of technologies and the lack of any standards for DC power backup systems and interfaces."[8] The report concluded, among other things, that "[t]he lack of any commonality or standards in DC power supplies negatively impacts the ability to back up VoIP systems. Every vendor of a DC powered CPE devices makes their own decisions on power adapters and interface connectors."[9]

This lack of standardization is most relevant in terms of the NPRM proposal to ensure that consumers are able to self-provision backup power for periods longer than eight hours. While the NPRM inquires whether providers should be required to standardize backup power technology such that consumers would have the ability to replace batteries with commercially available batteries (*i.e.*, D-cell batteries commonly available to consumers at retail stores of all kinds), as the CSRIC report demonstrates, the lack of standardization in backup power technology may mean that the widespread availability of such technology may be several years away.

It is also unclear at what point this obligation would end – is backup of this kind required only with respect to network equipment located at the customer premises (*e.g.*, an Optical Network Terminal on the side of house)? Or does this line of inquiry actually contemplate

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7 *Id*., p. 5.

8 *Id*. The CSRIC report goes on to state that "[a]s an analogy, imagine trying to service the needs of all consumers in United States for AC powered devices if there was no standardized AC wall plug. It would lead to chaos." *Id.*

9 *Id*., p. 20.

addressing consumer behavior, preferences, and CPE technology choice within the premises? If so, how would such a policy be implemented – and what if the network provider is the broadband provider but is *not* the voice provider to the consumer? Who bears the obligation(s) with respect to backup power to sustain voice-related CPE in that instance? Questions of this kind highlight why the better focus in the near-term would be on developing clear definitions and best practices through the work of groups such as CSRIC that can examine the technical implications of various choices.

Moreover, RLECs serving a very small percentage of the nation's subscribers are unlikely, on their own, to possess the economies of scope and scale necessary to affordably obtain backup power equipment using batteries commonly available to consumers. As a result, a Commission mandate at this time would impose substantial costs on RLECs at a time when substantial investments are needed to improve the quality and availability of their broadband networks.

To be sure, the Commission need not and should not on its own initiative adopt a standard practice. The NPRM rightly proposes that CSRIC develop a set of best practices in this area. Such best practices are likely to spur battery manufacturers to move to a greater degree of standardization, thereby driving down costs to providers and consumers. The Commission should therefore, as the NPRM proposes, decline to adopt additional rules beyond the eight hour requirement discussed above and instead focus on the promotion by industry and manufacturers of greater standardization of consumer CPE backup power solutions. Development of CSRIC "best practices" for example would enable providers and manufacturers to engage the Commission and each other to create affordable and implementable backup power solutions that minimize costs to carriers and consumers alike.

III. THE COMMISSION SHOULD ADOPT FLEXIBLE COPPER RETIREMENT NOTICE PROVISIONS; THE NPRM'S SECTION 214 DISCONTINUANCE PROPOSALS SHOULD NOT INADVERTENTLY LIMIT CARRIERS' ABILITY TO OFFER CUTTING-EDGE IP-BASED SERVICES

The NPRM also seeks comment on the Commission's copper retirement notice provisions and additional proposed amendments to the Commission's Section 214 discontinuance provisions. As an initial matter, NTCA is pleased that the NPRM recognizes the importance of having its copper retirement rules continue as "notice-based" provisions instead of far more burdensome and unnecessary approval requirements.[10] The NPRM is correct in stating that "an approval requirement would undesirably harm incentives for fiber deployment."[11] In terms of the NPRM proposal to ensure that consumers are informed of providers' copper retirement plans, NTCA urges the Commission to adopt flexible and minimally burdensome requirements. To be sure, the NPRM is correct that consumers deserve to know how or whether their provider's copper retirement plans will affect the service they receive. At the same time, overly burdensome notice requirements only divert limited resources needed to improve the quality of services consumers receive.

Thus, the Commission should grant providers the flexibility to determine the most effective form by which to deliver copper retirement notifications.[12] For example, some carriers may find that bill inserts are more effective for their particular customer base, as opposed to emails. Bill inserts may also be more effective – and less expensive – than separate mailings that

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10 NPRM, ¶ 56.

11 *Id*.

12 *See, Id*., ¶ 63 ("We propose allowing incumbent LECs to use written or electronic notice such as postal mail or e-mail to provide notice to retail customers of a planned copper retirement.").

may be simply ignored by consumers. Others may find local news publication or other methods of outreach are more effective based upon the communities they serve. In short, RLECs as members of the communities they serve and with decades of experience serving these communities are in the best position to determine the form by which to notify consumers.

In terms of proposed revisions to the Commission's Section 214 discontinuance rules, the NPRM is correct that "fundamental values and the Commission's statutory obligations are not lost or mooted merely because legacy services are discontinued."[13] Again, here, it is worth repeating that the transition to IP networks should not by itself provide an excuse to back away from the fundamental values of consumer protection, competition, public safety, and universal service. Thus, the Commission is correct to consider whether the replacement of legacy services with IP-based services protects consumers in times of emergency or continues to support features they have come to depend on.

At the same time, the Commission should heed its own comments in the Declaratory Ruling that accompanies the NPRM: "[O]ur interpretation [of Section 214] emphatically does not mean that every prior feature no matter how little-used or old-fashioned, must be maintained in perpetuity."[14] This is most relevant as it relates to the NPRM inquiries concerning what constitutes a substitute retail service when a provider files an application to discontinue service pursuant to Section 214. More specifically, the Commission must strike a balance between ensuring that carriers' transition to IP services does not harm consumers and a discontinuance

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13 *Id*., ¶ 92.

14 *Id*., ¶ 118.

regime that promotes, rather than inhibits, that transition and the introduction of new, feature-rich services.

Thus, the NPRM is correct that "the public and the industry alike would benefit from the establishment of criteria to evaluate replacement technologies when a carrier files an application to discontinue a retail service."[15] Again here, the development of best practices should form the foundation of the Commission's rules as to what constitutes a substitute service. As an example, as the NPRM notes, alarm manufacturers are working with providers to develop standards to ensure that the transition to IP does not limit consumers' ability to rely on their alarm services during emergency situations.[16] Similar efforts are likely underway all across the industry and across various technologies. The creation of best practices that flow from such efforts will provide the Commission and industry with insight into what consumers might consider a substitute service in an all IP environment and what features they no longer deem necessary. This will enable the Commission to create standards that offer carriers the appropriate level of guidance necessary to invest in new technologies and services without fear of "regulatory tripwires" or protracted and expensive Section 214 proceedings that hamper their ability to plan for investments and rapidly respond to consume demand.

As to those "regulatory tripwires," what the Commission should *not* do is repeat the mistakes made in its November 2014 Declaratory Ruling issued in this proceeding. As NTCA has stated,[17] this Declaratory Ruling has confused, rather than clarified, the scope and effect of

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15 *Id*., ¶ 93.

16 *Id*., ¶ 101.

17 NTCA Comments and Reply to Oppositions to USTelecom Petition for Reconsideration, PS Docket No. 14-174, *et al.* (fil. Jan. 30, 2015).

the Commission's Section 214 discontinuance rules. The newly introduced "functional test" factors – a "totality of the circumstances" test as the Commission terms it – will now require providers to attempt to divine whether a change in underlying technology might arguably equate *in some other party's subjective perspective* to a discontinuance of service and thereby generate a challenge.[18] In short, as it stands today, carriers have little to no guidance as to what this or future Commission's may consider to be a discontinuation of service, and by extension, what may be considered a substitute service for a discontinued service. This creates potential "regulatory tripwires" for carriers of all sizes that must consider such questions more thoroughly than ever before and thus it cannot be doubted that such uncertainty will slow, rather than incent, further investment and progress in the ongoing IP transition.

By contrast, "clear rules of the road" developed by reference to best practices and realistic assessments of customer preferences – rather than regulatory fiat – will provide carriers with certainty and therefore the incentive to invest, while ensuring consumer needs are satisfied as networks continue to evolve. Deciding these issues after full consideration through *both* notice-and-comment rulemaking *and* industry working groups that consult with user representatives will more appropriately strike the correct balance between protecting consumers and incenting and promoting the IP transition.

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[18] To repeat the example used in NTCA's recently filed reply to opposition in response to a USTelecom Petition for Reconsideration on this very issue: if a rural local exchange carrier deploys fiber-to-the-premise technology and provides IP-enabled voice atop that network but continues to do so as a local exchange service (and offers related exchange access services) subject to the very same state and federal regulations and tariffs as the day before, might that constitute a "discontinuance"? As a consequence of the Declaratory Ruling, the answer is less clear than it was before.

IV. CONCLUSION

The NPRM proposal to require fixed voice service providers to ensure that voice subscribers have eight hours of standby power in the event of a power outage strikes the proper balance between ensuring that consumers continue to have the ability to place 911 calls when a power outage occurs and the increased costs of mandating a longer time frame. As to the NPRM proposal to ensure that consumers are equipped to manage their own backup power needs after eight hours the Commission should decline to adopt additional rules beyond the eight hour requirement and instead focus on the promotion by industry and manufacturers of greater standardization of consumer CPE backup power solutions.

The Commission's copper retirement notice provisions should continue as "notice-based" provisions instead of far more burdensome and unnecessary approval requirements. Providers should have the flexibility to determine the most effective form by which to deliver copper retirement notifications.

Finally, the Commission's Section 214 discontinuance rules must strike a balance between ensuring that carriers' transition to IP services does not harm consumers and a discontinuance regime that promotes, rather than inhibits, that transition and the introduction of new, feature-rich services. The creation of industry best practices will enable the Commission to create standards that offer carriers the appropriate level of guidance necessary to invest in new technologies and services without fear of "regulatory tripwires" or protracted and expensive Section 214 proceedings that hamper their ability to plan for investments and rapidly respond to consumer demand.

Respectfully submitted,

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