

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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 AMERICAN CABLE ASSOCIATION

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SUMMARY

ACA supports consumers having access to voice service to make and receive emergency communications to the maximum reasonable extent. This includes the ability to make 911 calls and receive alerts during disasters and other times when residential electric power is out of service. As discussed herein, ACA's independent cable operator members providing interconnected VoIP service take this responsibility seriously and have adopted a variety of approaches to inform subscribers about and enable access to and use of backup power supplies for customer premises equipment ("CPE"), including standalone backup batteries with uninterrupted power supply ("UPS") functionality or UPS devices which have backup battery power.

Cable operators have been offering voice service for approximately 15 years. Their entry, along with that of mobile wireless and nomadic interconnected and non-interconnected VoIP providers, has been part of the dramatic evolution away from use of line power copper facilities, which has long been underway in the market for residential voice service and is nearing its conclusion. Today, virtually every consumer has mobile wireless service, and many subscribe to multiple wireless services and use multiple devices. Of these consumers, 44 percent live in homes that no longer subscribe to wireline voice service (*i.e.*, consumers that have "cut the cord"), an amount that grew by 10 percent in the past year. As for consumer subscription to wireline networks, the market (56 percent of the total residential voice market) is about evenly divided between incumbent local exchange carriers ("LECs") with "switched access lines" (presumably line power copper loops) and VoIP providers, including non-nomadic cable operators and nomadic (over-the-top) providers. Moreover, voice service over LEC copper lines has declined by 40 percent in the past 6 years, and that trend is certain to continue as consumers cut the cord and LECs replace copper with fiber.

The vast majority of consumers thus have already demonstrated that they are willing to forgo copper facilities with line power to access emergency communications during power outages. Almost half of them rely solely on mobile service for emergency communications during those times. Approximately one-quarter find it acceptable to take wireline VoIP service with some form of backup power capability. Further, even where consumers still subscribe to wireline voice service, most all have the ability to use mobile service as well to use for emergency communications.

ACA is dismayed that nowhere in the NPRM does the Commission provide a complete picture about how the voice service market has evolved and how consumers have already shifted from line power copper to use of wireless and wireline technologies with backup power capabilities. As a result, the Commission does not properly frame and then analyze the issues of what level of access to emergency communications capabilities during power outages is reasonable, and how to ensure consumers that level. Instead, it proposes only to apply requirements to facilities-based fixed voice services. However, by not accounting for today's market facts and overall trends about the provision of voice services, the Commission has no basis to move forward on adopting "baseline requirements for ensuring continuity of power for CPE during commercial power outages."

ACA agrees that the Commission's inquiry about emergency voice communications is important and submits that to proceed most productively, it should begin by re-framing the fundamental question: in an environment where consumers have access to voice and other communications services over numerous networks using different technologies with varying types of backup power capabilities and have mostly subscribed to these alternatives to line power copper voice service, do they have sufficient backup power capabilities for CPE to enable reasonable access to emergency communications? ACA believes the answer is "yes." Within this dynamic, smaller cable operators in particular, as a matter of practice, are acting responsibly in addressing this need by alerting subscribers that their non-nomadic VoIP service will not work during a power outage and enabling them to have backup power capabilities through batteries incorporated into their Embedded Multimedia Terminal Adapter or Embedded-Digital Video Adapter or through a separate, connected UPS device. Some operators even go beyond these baseline capabilities by supplying and managing batteries. As indicated by their use of cable interconnected VoIP service, subscribers have understood and accepted these practices and, to the best of ACA's knowledge from discussions with its members, have not taken any issue or lodged any complaint. Accordingly, even after the issue is properly framed, the Commission has no basis to impose new regulatory requirements on smaller cable operators. Such requirements, furthermore, would impose burdens on these operators and additional significant costs on their subscribers and would inhibit the development of more efficient and effective solutions. As such, the Commission's proposals are not competitively-neutral: at a time when consumers are migrating steadily to wireless voice service, increasing the cost of wireline voice service would serve to accelerate this trend.

Last year, the Commission's Advisory Committee, the Communications Security, Reliability and Interoperability Council IV ("CSRIC"), completed two reports on customer premises equipment powering – one on consumer notification and one on best practices for backup power. Both have real value for accomplishing the objectives set forth in the NPRM. The best course forward for the Commission, until it can precisely identify substantial problems with current backup power practices, is to continue to facilitate the development of industry best practices and then encourage their use and monitor developments.

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COMMENTS OF AMERICAN CABLE ASSOCIATION

The American Cable Association (“ACA”) hereby files comments in response to the Federal Communications Commission’s (“Commission’s”) Notice of Proposed Rulemaking (“NPRM”) in the Technology Transitions proceeding.¹ ACA represents over 800 independent cable operators, incumbent telephone companies, municipal utilities, and other local providers of video, broadband, and voice communications services using a variety of technology platforms.

¹ See *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 Internet Special Access*, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185 (rel. Nov. 25, 2014).

These providers offer service in smaller communities and rural areas, as well as by overbuilding other providers in urban and suburban markets. In aggregate, these providers pass nearly 19 million homes and serve nearly 7 million with video or broadband service. Approximately 2.75 million households subscribe to ACA members' residential voice service, including non-nomadic VoIP service. Because of its members' experience in offering voice service, providing subscribers with information about the capabilities and use of this service, and enabling access to adequate customer premises equipment ("CPE") backup power capabilities, ACA focuses its comments on the issue of continuity of power for CPE and its concerns with the rationale and proposals in the NPRM.

I. INTRODUCTION AND SUMMARY

ACA supports consumers having access to voice service to make and receive emergency communications to the maximum reasonable extent. This includes the ability to make 911 calls and receive alerts during disasters and other times when residential electric power is out of service. As discussed herein, ACA's independent cable operator members providing voice service take this responsibility seriously and have adopted a variety of approaches to inform subscribers about, and enable access to and use of, backup power supplies for CPE, including standalone backup batteries with uninterrupted power supply ("UPS") functionality or UPS devices which have backup battery power.²

² In these comments, ACA follows the CableLabs note distinguishing between backup batteries, which switch on when the primary power source fails, provided secondary power sources are present, and UPS, which can be used as either the primary or secondary power sources at all times, provided additional power sources are present. *See* "CableLabs Certification Wave Requirements and Guidelines," Cable Television Laboratories, Inc., Revision 43 at 16 (Oct. 2014).

Cable operators have been offering voice service for approximately 15 years.³ Their entry, along with that of mobile wireless and nomadic interconnected and non-interconnected VoIP providers, has been part of the dramatic evolution away from use of line power copper facilities, which has long been underway in the market for residential voice service and is nearing its conclusion. Today, virtually every consumer has mobile wireless service, and many subscribe to multiple wireless services and use multiple devices.⁴ Of these consumers, 44 percent live in homes that no longer subscribe to wireline voice service (*i.e.*, consumers that have “cut the cord”), an amount that grew by 10 percent in the past year.⁵ As for consumer subscription to wireline networks, the market (56 percent of the total residential voice market) is about evenly divided between incumbent local exchange carriers (“LECs”) with “switched

³ Some cable operators initially offered TDM-based voice service. The first VoIP service specification was issued by CableLabs in 2004, which set the stage for deployments of this technology by all cable operators. See “PacketCable 1.5 Specification, MTA Device Provisioning, PKT-SP-PROV1.5I04-090624,” Cable Television Laboratories, Inc. (2004-2009).

⁴ See “Local Telephone Competition: Status as of December 31, 2013,” Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, at 2 (December, 2013) (310,698,000 Mobile Telephony Subscriptions) (“Local Competition Report”); see also “Annual Wireless Industry Survey,” CTIA The Wireless Association (Year-End 2103 Results) (As of December 2013, there were 335.65 million wireless subscriber connections. This compares to 158.7 million at the end of 2003.) available at: <http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey>; Wireless Quick Facts, CTIA The Wireless Association (June, 2014) (Wireless penetration in the U.S. now exceeds 104%.) available at: <http://www.ctia.org/your-wireless-life/how-wireless-works/wireless-quick-facts>; “Resource Library,” CTIA The Wireless Association (Nov. 24, 2104) (The average U.S. household owns 5.2 connected mobile devices, and 97 percent of households report having a mobile phone.) available at: <http://www.ctia.org/resource-library/facts-and-infographics/archive/97-percent-of-us-households-have-mobile-phones>; “Resource Library,” CTIA The Wireless Association (Nov. 12, 2014) (More than 84 percent of U.S. low-income adults with a household income of less than \$30,000 a year own a cellphone.) available at: <http://www.ctia.org/resource-library/facts-and-infographics/archive/84-percent-low-income-rely-on-wireless>.

⁵ See Stephen J. Blumberg, Ph.D., and Julian V. Luke, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-July 2014,” Division of Health Interview Stations, National Center for Health Statistics, Center for Disease Control and Prevention, U.S. Department of Health and Human Services (rel. Dec. 2014).

access lines” (presumably line power copper loops)⁶ and VoIP providers, including non-nomadic cable operators and nomadic (over-the-top) providers.⁷ Moreover, voice service over LEC copper lines has declined by 40 percent in the past 6 years, and that trend is certain to continue as consumers cut the cord and LECs replace copper with fiber.⁸

The vast majority of consumers thus have already demonstrated that they are willing to forgo using copper facilities with line power to access emergency communications during power outages. Almost half of them rely solely on mobile service for emergency communications during those times. Approximately one-quarter find it acceptable to take wireline VoIP service with some form of backup power capability. Further, even where consumers still subscribe to wireline voice service, most all have the ability to use mobile service as well for emergency communications.

ACA is dismayed that nowhere in the NPRM does the Commission provide a complete picture about how the voice service market has evolved and how consumers have already shifted from line power copper to use of wireless and wireline technologies with backup power

⁶ As discussed below, while once these copper lines were powered exclusively from the central office, that has long since passed. Today, power for CPE is much more likely to be supplied through remote terminals in the field, and, as the noted in the NPRM (n. 26), remote terminals “are less likely to provide backup power than central offices.”

⁷ See Local Competition Report at 2-7.

⁸ See *id.* at 13. See also “Verizon Reports High-Quality Customer Additions in 4Q, Caps Year in Position to Drive Continued Profitable Growth,” available at <http://www.verizon.com/about/news/verizon-reports-high-quality-customer-additions-4q-caps-year-position-drive-continued/> (“Verizon has been replacing high-maintenance portions of its residential copper network with fiber optics to provide customers with a more resilient infrastructure, which improves customer satisfaction and reduces repair costs. In fourth-quarter 2014, Verizon migrated an additional 52,000 customers who had been using copper connections, bringing the full-year total to around 255,000. Verizon has converted more than 800,000 customers to fiber since starting this initiative in 2011.”).

capabilities.⁹ As a result, the Commission does not properly frame and analyze the issues of what level of access to emergency communications capabilities during power outages is reasonable and how to ensure consumers have access to that level. Instead, it proposes only to apply requirements to facilities-based fixed voice services.¹⁰ However, by not accounting for today's market facts and overall trends about the provision of voice services, the Commission has no basis to move forward on adopting "baseline requirements for ensuring continuity of power for CPE during commercial power outages."¹¹

ACA agrees that the Commission's inquiry about emergency voice communications is important and submits that to proceed most productively, it should begin by re-framing the fundamental question: in an environment where consumers have access to voice and other communications services over numerous networks using different technologies with varying types of backup power capabilities and have mostly subscribed to alternatives to line power copper voice service, do they have reasonable backup power capabilities for CPE to enable access to emergency communications? ACA believes the answer is "yes." Within this dynamic, smaller cable operators in particular, as a matter of practice in providing interconnected VoIP service, are acting responsibly in addressing this need by alerting subscribers that their non-nomadic VoIP service will not work during a power outage and enabling them to have backup power capabilities through batteries incorporated into their Embedded Multimedia Terminal

⁹ Even if consumers continue to use line power copper facilities, that capability will be of little or no value if they have only cordless phones since few, if any, cordless phones have backup batteries. *See* "CPE Powering -- Best Practices," Final Report – CPE Powering, Working Group 10B, Communications Security, Reliability and Interoperability Council IV at 16 (September, 2014) ("CSRIC Best Practices Report").

¹⁰ *See* NPRM, ¶ 33. As a result, in no sense can the Commission's proposals be considered to be technology neutral. This runs counter to Commission practice and can only be justified with sufficient rationale. In the NPRM, the Commission provides none.

¹¹ *See* NPRM, ¶ 32.

Adapter (“E-MTA”) or Embedded-Digital Video Adapter (“E-DVA”) or through a separate, connected UPS device. Some operators even go beyond these baseline capabilities by supplying and managing batteries. As indicated by their use of cable interconnected VoIP service, subscribers have understood and accepted these practices and, to the best of ACA’s knowledge from discussions with its members, have not taken any issue or lodged any complaint. Accordingly, even after the issue is properly framed, the Commission has no basis to impose new regulatory requirements on smaller cable operators and their provision of interconnected VoIP service. Such requirements, furthermore, would impose burdens on these operators and additional, significant costs on their subscribers and would inhibit the development of more efficient and effective solutions. As such, the Commission’s proposals are not competitively-neutral: at a time when consumers are migrating steadily to wireless voice service, increasing the cost of wireline voice service would serve to accelerate this trend.

Last year, the Commission’s Advisory Committee, the Communications Security, Reliability and Interoperability Council IV (“CSRIC”), completed two reports on customer premises equipment powering – one on consumer notification and one on best practices for backup power.¹² Both have real value for accomplishing the objectives set forth in the NPRM. The best course forward for the Commission, until it can precisely identify substantial problems with current backup power practices, is to continue to facilitate the development of industry best practices and then encourage their use and monitor developments.

¹² See “CPE Powering—Consumer Outreach,” Final Report – CPE Powering, Working Group 10A, Communications Security, Reliability and Interoperability Council IV (June, 2014) (“CSRIC Consumer Outreach Report”), and CSRIC Best Practices Report.

II. FRAMING THE PROPER INQUIRY: HOW SHOULD THE COMMISSION ENSURE CONSUMERS HAVE REASONABLE ACCESS TO EMERGENCY VOICE COMMUNICATIONS SERVICES DURING POWER OUTAGES GIVEN THEIR USE OF VARIOUS NETWORKS WITH DIFFERENT TECHNOLOGIES AND BACKUP POWER CAPABILITIES?

The time has long passed since all consumers received voice service over copper facilities powered from the incumbent LECs' central offices, where backup power from batteries and generators could be supplied for several weeks.¹³ First, over 30 years ago, incumbent LECs began to deploy more efficient Digital Loop Carrier facilities, installing large scale feeder lines from a central office to aggregation points (remote terminals) in neighborhoods and then using copper loops to individual residences. In this network configuration, remote terminals have their own power supply – which also powers CPE – and usually have some form of backup power, including batteries or a generator. However, backup batteries may last from 8-24 hours, and while this time could be extended by using a generator, often generators are not available.¹⁴ Thus, the capabilities of line power copper, as well as consumer expectations about the backup power capabilities of the service provided over line power copper, have already been diminished.

Of even greater import, consumers have led a market-driven evolution away from use of line power copper for voice service to service provided over wireless and other wireline networks. This began in the early 1990s, picked up speed after passage of the 1996 Telecommunications Act, and accelerated as cable operators entered the market and wireless coverage increased and rates declined. As a result, as discussed in the Introduction, line power copper networks serve about one-quarter of the voice market today and that is certain to continue

¹³ See *Engineering and Operations in the Bell System, Second Edition Reorganized and Rewritten Telecommunications in the Bell System in 1982-1983*, AT&T Bell Laboratories at 544 (1984).

¹⁴ See *id.* at 547.

to decline. Consumers have accepted alternatives, and in doing so, they have indicated a preference for a level of access to emergency communications during a power outage that is different than what is available from a line power copper. Some rely primarily, if not exclusively, upon mobile phones to be able to contact 911 during outages, while others choose to install UPS devices, which can be purchased readily and relatively inexpensively (for shorter term backup) in the market. Consumers make these decisions based on many factors, including the likelihood of outages in their area, availability of alternative means of contacting 911 during outages, and the level of connectivity during an outage that the consumer needs and desires. Consequently, ACA submits that consumers have reasonable access to emergency communications with a combination of wireless service and more recently deployed wireline plant and backup power at the customer premises. From its discussions with members, ACA has found that cable operators have had no complaints from subscribers either about having battery or other UPS backup for voice service (as opposed to line power) or about having to obtain a battery or UPS device.

Thus, for many reasons, the Commission's inquiry in the NPRM is deeply flawed and, if pursued, is almost certain to result in solutions with little or no real benefit while imposing requirements that unfairly burden cable operators and other wireline providers and their customers. From the NPRM's almost exclusive focus on the effect of the retirement of copper facilities on continuity of power, the Commission seems to imply that the consumers' transition away from obtaining voice service using central office line power copper is a recent phenomena, which requires special attention for its impact on access to emergency communications during

power outages.¹⁵ Clearly, this is not the situation. Further, in examining the issue of whether consumers have adequate access, the Commission fails to acknowledge to any significant extent the backup power capabilities of non-nomadic VoIP service and barely raises the role of mobile wireless service in providing emergency communications during power outages.¹⁶ The Commission, in addition, does not address different types of consumer environments and CPE. For instance, a large percentage of consumers, particularly the elderly, live in multi-unit dwellings where the building owner provides and controls the CPE, including powering for these devices.¹⁷ Yet, the NPRM does not discuss this issue. Nor does it delve deeply into consumer use of cordless phones with no battery backup.¹⁸ The Commission also does not examine the extent and duration of power outages and the increased use of generators by homeowners to handle outages. Accordingly, the Commission’s definition of the “problem” in the NPRM is virtually certain to produce an unjustifiable and unproductive result. Instead, because the issue is important and stating the problem correctly is necessary to drive the proper result, ACA urges the Commission to step back and re-frame the question: how can we ensure that consumers have reasonable access to emergency voice communications during power outages given their use of various networks with different technologies and backup power capabilities?

¹⁵ The Commission should understand that consumers subscribe voluntarily to interconnected VoIP service provided by cable operators and are not required to do so as a result of facilities being retired.

¹⁶ The NPRM deals with consumer usage patterns, including use of wireless service, in a few sentences in ¶ 41 where it examines the costs and benefits of its proposals, rather than at the outset to frame the proper inquiry and analysis.

¹⁷ Over 30 percent of the housing units in the U.S. are in multi-unit dwellings. *See* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_S0201&prodType=table.

¹⁸ *See* NPRM, ¶ 33, where a general question is raised about accounting “for power outages affecting other CPE, such as cordless phones, or the network itself.”

III. SMALLER CABLE OPERATORS PROVIDING INTERCONNECTED VOIP SERVICE PROVIDE SUBSCRIBERS WITH REASONABLE NOTICE OF BACKUP POWER CAPABILITIES AND ENABLE SUBSCRIBERS TO HAVE REASONABLE ACCESS TO BACKUP POWER CAPABILITIES; THUS THE COMMISSION'S PROPOSALS FOR BACKUP POWER REQUIREMENTS FOR SMALLER CABLE OPERATORS AND THEIR PROVISION OF INTERCONNECTED VOIP SERVICE ARE UNWARRANTED

In their provision of interconnected VoIP service, smaller cable operators have demonstrated they are acting responsibly in addressing the needs of their subscribers to originate and receive emergency communications and have access to backup power capabilities during electrical outages. First, as a matter of practice, they inform potential and current subscribers that their voice service is not powered by the network and that during a power outage they may lose access to 911 if they do not have a UPS, including battery backup, and when backup batteries lose their charge. This notice typically is given in tandem with instructions on the functionalities and use of their voice service and is posted on the operator's website for ready and continuing access. Where applicable, the notice also alerts customers about specific backup power capabilities. These operators may receive sign-off from the subscriber that they have received such notice.

In addition to providing notice, cable operators enable subscribers to have reasonable access to voice communications during power outages through backup power supplies, including standalone backup batteries with UPS functionality or UPS devices which have backup battery power. For devices with battery backup, batteries generally last 6 to 8 hours, depending on usage. The devices often turn off non-voice functionalities so that battery life is extended. As for supplying, monitoring, and replacing batteries, the practices of cable operators vary, with

some undertaking these tasks and others relying on subscribers to address.¹⁹ Nevertheless, batteries are relatively inexpensive (most in the range of \$15-\$25) and can be obtained from a wide variety of sources, including from online distributors such as Amazon. Batteries usually last for at least 5 years, depending upon the frequency of outages.

In sum, without government intrusion, cable operators have acted to make their networks resilient and provide their subscribers with notice and access to UPS devices so that CPE can support voice communications during power outages. There is thus no market failure or demonstrable public safety concern warranting government regulation. ACA notes that the NPRM does not supply any evidence to the contrary.²⁰ In the face of these facts, the best course of action for consumers and the industry is for the Commission to refrain from adopting a new regulatory regime for backup power for CPE, step back and begin to examine the larger, more crucial question about how best to provide consumers with voice capabilities during emergencies given market and technology trends, and support and publicize the Best Practices of Working Group 10 of the CSRIC.

¹⁹ CableLabs has adopted specifications for management and monitoring for E-MTAs and E-DVAs that support battery backup. These specifications give, among other things, cable operators the ability to check on estimated battery life and determine whether a battery can no longer hold a charge. When an E-MTA/E-DVA is submitted for certification or qualification, CableLabs will, if relevant, confirm battery backup support. The decision to develop and supply devices with battery backup is made by the vendor and the decision to install by the cable operator. (*See* CL-SP-MIB-BB-I04-100608.)

²⁰ The NPRM does not offer a single incident where consumers using interconnected VoIP devices have been unable to reach 9-1-1 due to interconnected VoIP CPE lacking power.

IV. SHOULD THE COMMISSION PURSUE ITS PROPOSED BACKUP POWER REGULATORY REGIME, IT SHOULD NOT APPLY THESE RULES TO SMALLER CABLE OPERATORS AND THEIR INTERCONNECTED VOIP SERVICE UNTIL IT FIRST EXAMINES AND ADDRESSES THE BURDENS THEY WOULD IMPOSE

Assuming *arguendo* that the Commission proceeds with its proposed regulatory regime, it should not adopt and apply those rules to smaller cable operators and their interconnected VoIP services until it first assesses the impact on them and their subscribers and then alleviates any unreasonable burdens.²¹ For smaller cable operators, the burdens come primarily from the proposed requirement that providers be responsible “for provisioning backup power that is capable of powering their customers’ CPE during the first eight hours of an outage.”²² This burden may be increased if the Commission adopts requirements for a different or increased backup standard or if it mandates that these operators also monitor and replace batteries.²³ To provide some context for the degree of the burden, which may fall on the operator or its subscribers or both depending on whether the cost is passed along, it is valuable to compare the cost of installing new CPE with an operator’s current annual capital expenditures or with subscriber’s monthly bill. For instance, for a smaller operator with 10,000 subscribers, assuming the cost per subscriber of a new E-MTA/E-DVA with a battery is \$80 and labor for installation is \$120, the initial cost would be \$200 per unit – or, in aggregate, \$2,000,000.²⁴ The average annual capital budget for a typical operator with 10,000 subscribers is approximately \$2,000,000, and so this requirement would double its annual budget²⁵ If the operator passed along the entire

²¹ The comments in this section are relevant for the Commission’s Regulatory Flexibility Analysis.

²² See NPRM, ¶ 35.

²³ See *id.* ¶ 37.

²⁴ ACA based these numbers on discussions with its cable operator members.

²⁵ ACA members expend approximately 15 percent of their revenues on capital expenditures. ACA derived average industry revenues per operator and subscriber from

cost, it would more than double the average monthly subscriber bill. Clearly, the additional cost of complying with a new regulation to provide battery backup capability would be unreasonably burdensome for smaller operators and their subscribers, and that cost would increase if the operator is required to monitor batteries and replace them when they could no longer hold a sufficient charge.

While the direct cost of providing battery backup compliant with the Commission's proposal is substantial, that is not the only burden. The effect of imposing the battery backup requirement only on wireline providers would be to place their voice service at a competitive disadvantage with wireless voice service providers. At a time when there already is a continuous and substantial migration of consumers to wireless voice service, any action that accelerates that trend is a non-trivial concern for smaller operators and their provision of interconnected VoIP service. And, for those consumers that keep wireline voice service, they would face higher prices as providers charge them, as the Commission proposes to permit, "commercially reasonable compensation" for this service.²⁶ In sum, smaller cable operators and their subscribers would suffer real "pain" if the Commission adopts its proposal – all for a result that would produce dubious benefits.

ACA therefore urges the Commission, should it proceed to adopt its battery backup regulatory regime, to exempt smaller cable operators from these requirements. At most, the

FCC and industry sources. *See e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fifteenth Report*, MB Docket No. 12-203, FCC 13-99, Table 11 (rel. July 22, 2013); Wireline Competition Bureau Announces Posting of Broadband Data from Urban Rate Survey And Seeks Comment on Calculation of Reasonable Comparability Benchmark for Broadband Services, WC Docket No. 10-90, FCC Public Notice, DA 14-944 (rel. June 30, 2014); Wireline Competition Bureau Announces Posting of Voice Data from Urban Rate Survey, and Explanatory Notes, WC Docket No. 10-90, FCC Public Notice, DA 14-520 (rel. Apr. 18, 2014).

²⁶ *See id.* n. 109. These higher prices would be charged even where consumers find they have sufficient access to emergency communications through mobile wireless service.

Commission should, after a reasonable transition period, require these operators to provide notice and information to their subscribers about the capabilities of their CPE during power outages.²⁷

Should the Commission persist and decide to apply battery backup requirements to smaller operators, in no event should it mandate the changeout of existing CPE. Instead, these operators should be permitted to meet any new requirement when they replace existing CPE as part of their normal upgrade/replacement cycle.

V. CONCLUSION

In today's market, consumers have many ways to address their concerns about access to voice service and emergency communications during power outages. Some may rely primarily, if not exclusively, upon means other than interconnected VoIP service provided by their cable operator (*e.g.*, mobile phones) to contact 911 during outages, while others may choose to install a UPS device, which can be purchased readily in the market. Consumers make these decisions based on many factors, including the likelihood of outages in their area, availability of alternative means of contacting 911 during outages, and the level of connectivity during an outage that the consumer needs and desires. From discussions with ACA members, smaller cable operators have had virtually no complaints from subscribers either about having battery backup for voice service (as opposed to line-power) or about having to obtain a battery.

Smaller cable operators are serious about providing service resiliency and seek to work with the Commission to improve their service. At the same time, there is a trade-off between the

²⁷ As indicated herein, such a requirement is not needed since ACA members are already providing sufficient notice. ACA notes that the Commission also provides notice on backup power capabilities. *See e.g.* "FCC Guide, VoIP and 911 Service," available at: <http://www.fcc.gov/guides/voip-and-911-service> ("VoIP service may not work during a power outage, or when the Internet connection fails or becomes overloaded....If your power is out or your Internet connection is down, be aware that your VoIP service may not work. Consider installing a backup power supply, maintaining a traditional phone line or having a wireless phone as a backup.").

benefits of additional measures and their costs, and the NPRM does not provide justification for the imposition of new, onerous and costly mandates to provide backup batteries or other additional power supplies to all subscribers, particularly where subscribers have selected other means to ensure they have reasonable capability for emergency communications. The Commission should therefore re-frame its inquiry and start anew to examine whether consumers have reasonable access to voice service given their ability to access various providers with network using different technologies. Most certainly, the Commission should not proceed to impose new requirements on smaller cable operators providing interconnected VoIP service. Finally, if any new requirements are imposed, there should be an adequate transition, and they should be imposed only on new devices provided to new subscribers (and not on already installed devices).

Respectfully submitted,



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