

**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 UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) submits these comments in response to the Federal Communications Commission’s (Commission) Notice of Proposed Rulemaking (NPRM) in the above-referenced proceedings.¹ In the NPRM, the Commission “focuses on the technical revolution involving the transition from networks based on [TDM] circuit-switched voice services running on copper loops to all-[IP] multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure.”² We welcome the opportunity to weigh in as the Commission prepares to address these important issues.

¹ *Technology Transitions, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, FCC 14-185 (rel. Nov. 25, 2014) (“*NPRM*” and “*Declaratory Ruling*”).

² *Id.* at ¶ 1.

As an initial matter, we implore the Commission to tread carefully in fashioning regulations intended to facilitate the success of technology transitions. The Commission's determination to ensure that certain "fundamental values" embodied in the Communications Act are not lost due to technology changes is laudable.³ At the same time, however, the Commission must make sure that its policies and regulations also reflect the importance of ensuring that technology transitions are allowed to occur unencumbered by unnecessary and unwarranted restrictions and obligations. If we are to fully enjoy the greater benefits that modern, all-IP networks will make possible, providers must be given a meaningful opportunity to upgrade their networks in a manner that will allow them to reap the benefits of their prudent investments in a timely manner.

To that end, the Commission must not erect barriers that will take away the incentives for providers to commit their resources, time, and efforts to make successful technology transitions. Its policies and regulations should encourage service and product providers to be innovative and forward-looking in moving toward all-IP networks. The Commission's efforts should also include educating consumers about how transition from legacy networks may affect their current communications experience, both to reassure them that technology transitions will result in net gains because of the new features and applications that will be possible, and to manage their expectations about what legacy service features may no longer be available. Similar to the manner in which the Commission, aided by service providers, states, and municipalities, successfully shepherded consumers through the digital television transition, it should employ that same approach in helping the public embrace this phase of the technology revolution. Faxing, alarm monitoring services, and the like will continue to be available to consumers post-

³ *NPRM* at ¶ 1. The principles that the Commission seeks to preserve include competition, consumer protection, universal service, public safety, and national security. *Id.*

transition. And, in the same manner that consumers transitioned to subscription TV service, purchased digital TVs, and/or got set top boxes so their analog televisions continued to receive over-the-air broadcasts, consumers will survive the transition to all-IP networks. It is in everyone's best interest that the Commission help the public to understand that the benefits of allowing technology transitions to happen unimpeded by unnecessary regulation vastly outweigh the minimal burdens that some customers may (but need not with proper notice and education) experience.

I. CPE BACKUP POWER REQUIREMENTS MUST BE REASONABLE

Requirements for provider supply of CPE backup power must be reasonable in scope and appropriately tailored to supplement – rather than replace – self-provisioning of backup power consistent with individual customer needs. Such requirements should acknowledge the steps that consumers already take to ensure the availability of voice services during a time of emergency, as well as supplementary measures by industry to provide backup power during emergencies.

The Commission's record in this proceeding lacks any detailed analysis of current backup power requirements, and nothing in the record demonstrates an overwhelming need for provider-supplied CPE backup power to replace line power currently available with legacy networks. Moreover, as evidenced by the level of wireless penetration in the United States, consumers are already ensuring redundancy with respect to their voice communications. According to recent USTelecom statistics, among telephone households during 2013, more than 90 percent had wireless service and 43 percent used only wireless telephones for voice service. In remaining telephone households, 30 percent were using non-traditional services such as VoIP via broadband. This means only 27 percent of telephone households were using traditional landlines as of year-end 2013. When taking into account customers who have both wireless and

landline phones, but use their wireless phones mostly, USTelecom projects that the portion of customers relying either exclusively or mostly on traditional landlines will be only 11 percent by the end of 2015. Based on national trends, by the end of 2015, the portion of telephone households at the national level using only wireless phones for voice service is projected to surpass 50 percent.⁴

Given these marketplace realities, and the provision of CPE backup power by carriers already in place, most consumers likely have adequate redundancy for their voice services. In fact, the most recent report from CSRIC Working Group 10, which focuses on CPE powering, noted that “the need for back-up power is evolving, as consumers increasingly rely on their cell phones and other portable devices for emergency communications during a commercial power outage.”⁵

In addition, even where residential consumers utilize a traditional phone line or interconnected VoIP service, it is likely that a substantial portion of those consumers use cordless phones. Cordless phones, while convenient, do not rely on line power for their CPE in a power outage and will therefore not work in power outages. As a result, even with the presence of backup power for residential CPE, the use of only cordless phones in a particular residence will negate any benefits from provider-supplied backup power.

A. Providers Should, at Most, be Required to Provide 8 Hours of CPE Backup Power to Customers at Their Premises.

USTelecom agrees with the Commission that the provisioning of no more than eight hours of backup power capable of powering customers’ CPE during the occurrence of an outage

⁴ See USTelecom website, *Consumers Continue Shift Away From Landline – Regulations Are Behind*, November 25, 2014 (available at: <http://www.ustelecom.org/blog/consumers-continue-shift-away-landline-%E2%80%93-regulations-are-behind>) (visited February 4, 2015).

⁵ CSRIC Working Group 10 Report, p. 19 (September 2014) (available at: <http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf>) (visited February 4, 2015) (“*CSRIC 10 Report*”).

seems reasonable, and would “accommodate circumstances where the power goes out in the middle of the work day or in the middle of the night, when consumers may be away from home or asleep and therefore would not reasonably be able to take measures on their own to ensure continuity of communications.”⁶ We note that the Commission’s proposed backup power requirement is consistent with the minimum standards established by the National Fire Protection Association (NFPA) of eight hours.⁷ NFPA is the “leading advocate of fire prevention and an authoritative source on public safety,” and its adoption of an eight-hour industry standard for battery backup demonstrates its suitability for addressing public safety concerns.⁸

Moreover, as the Commission acknowledges in its NPRM, provisioning eight hours of backup power is consistent with industry standards and reflects what VoIP providers currently employ. Indeed, the most recent report released by CSRIC Working Group 10 notes that while backup power duration across different use cases may vary, several current deployments support up to eight hours of standby battery backup.⁹

Any obligation greater than eight hours runs the risk of imposing onerous and unnecessary burdens on providers for provisioning backup power during emergencies, while at the same time diminishing the important role of consumers in individually preparing for emergencies. The Commission should avoid imposing on communications providers the significant logistical burdens necessary to ensure extended power supplies during outages. Individual consumers are far better positioned to ensure that any backup power contingencies beyond eight hours are met.

⁶ *NPRM* at ¶ 35.

⁷ See Comments of the Electronic Security Association, p. 2 (filed February 4, 2015).

⁸ See National Fire Protection Association website, *About NFPA* (available at: <http://www.nfpa.org/about-nfpa>) (visited February 5, 2015).

⁹ See *CSRIC 10 Report* at pp. 10, 11.

B. Providers Must Have Flexibility to Determine How to Meet Any Backup Power Requirements.

The Commission should ensure that carriers are afforded flexibility for determining the best manner in which to meet specific backup power requirements for residential CPE. Even in the absence of regulatory mandates, the carrier community has a long history of demonstrating their understanding of the important public safety role they play by voluntarily designing their networks and CPE to ensure reliability during both normal operations and during public emergencies. By adhering to industry best practices, our member companies have ensured that these networks can deliver critical emergency communications during natural or man-made disasters.

In particular, the industry has demonstrated a commitment to designing their networks and CPE consistent with industry best practices for ensuring that their networks remain operational to the extent reasonably possible in the event of loss of commercial power. The communications industry has been lauded for generally being “diligent in deploying backup batteries and generators” at the network level¹⁰ and this same commitment exists for residential CPE.

USTelecom members providing interconnected VoIP services to consumers have up to now had some flexibility in how they deploy reliable backup power capabilities in the event of a loss of power. Many customers prefer to maintain control and oversight of their on-sight backup power, including by adding additional battery capacity, and some consumers are able to procure additional backup power for their services from their providers.

¹⁰ See Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission*, p. 14, June 12, 2006 (available at: www.fcc.gov/pshs/docs/advisory/hkip/karrp.pdf) (visited February 4, 2015).

The Commission will best ensure that consumer needs are met by continuing to allow providers some flexibility in meeting evolving backup power requirements in different ways,¹¹ according to their customers' unique needs and preferences. We therefore urge that any CPE backup power mandate not limit provider options for deploying limited backup power to their customers in any reasonable and feasible manner.

II. COPPER RETIREMENT IS NOT SERVICE DISCONTINUANCE

We are encouraged by the Commission's indication that it "do[es] not intend to establish an approval process for copper retirement."¹² To do so would be a monumental shift in policy, overturning years of regulatory practice and upending long-standing industry expectations. It would also be unnecessary, given the extent of fiber deployment that already has been achieved. While there is no question that providers still employ copper in their networks and that many providers rely on copper infrastructure (at least in part) to provide service to their customers, the trend has been a dramatic shift away from copper toward fiber. So it is surprising that the Commission has chosen to focus so much of its attention on modifying regulations for a process that is quickly winding down and may be fully resolved in the very near future.

Aside from whether the Commission has sufficient legal authority to adopt some of the provisions it proposes,¹³ the substance and reach of some of the proposals in the NPRM suggest that the Commission believes that there is still widespread reliance on copper infrastructure, and

¹¹ For example, CSRIC Working Group 10 noted in its most recent report that there are multiple currently available technologies that may offer suitable approaches for ensuring reliable service on residential CPE. Among them are "D" cell batteries, which it noted as an "example of how longer outages can be addressed through existing supply chains, at little cost to the consumer." *CSRIC 10 Report* at p. 19. It further noted that such batteries "are easy for consumers to replace and are readily available in mass quantities through retailers." *Id.*

¹² *NPRM* at ¶ 49.

¹³ We question, for example, whether proposed restrictions against providers upselling their customers when providing notice of discontinuance may be unlawful restrictions on speech. *See NPRM* at ¶¶ 71-76. Also, because the notice requirements in § 251(c)(5) are aimed at carriers, not customers, the Commission's authority to compel additional, burdensome notice to customers under that provision is specious. *See NPRM* at ¶¶ 69-70.

that providers intend to rely on copper networks indefinitely. We think that premise is faulty. Although individual companies must be free to make transition decisions based on their own particular circumstances, ILECs have systematically been moving away from copper to fiber networks for some time. This shift is both prudent (given the cost of maintaining copper infrastructure, especially where fiber plant exists), and necessary if we are to have any chance of achieving broadband deployment as now measured by the Commission; that is, 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads.¹⁴ These speeds will not be achieved with legacy, copper-based networks.

We also note the lack of any cost/benefit analysis of the Commission's proposals in the NPRM. It is not evident, for example, whether establishing a *de facto* retirement rule that would significantly lower the threshold for when copper will be deemed to have been retired would provide greater benefits than what the Commission is able to accomplish on a case-by-case basis under current rules. It is also not evident from the record to what extent the current rules are not effective in addressing instances where customers are being impacted by, for example, inadequate maintenance of copper facilities. The additional costs to providers when they are forced to alter or abandon their plans to retire copper must be weighed against the burdens some of the Commission's proposals in the NPRM would entail.

A. Copper Retirement Requires Only Notice.

The Commission's proposals to drastically increase the scope and substance of notification that ILECs choosing to retire copper must provide threatens to obliterate the lines between the copper retirement and network change (notice-based) procedures and the section 214 application (permission-based) procedures. In the case of copper loop retirement, for

¹⁴ See News Release, FCC, FCC Finds U.S. Broadband Deployment Not Keeping Pace (January 29, 2015) (announcing the updated broadband speed benchmark in the 2015 Broadband Progress Report), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0129/DOC-331760A1.pdf.

example, the rules provide for notice of the retirement process, but objectors cannot unduly delay or ultimately prevent the retirement process from moving forward.¹⁵ But under section 214(a),¹⁶ a provider's service may not be discontinued, reduced, or impaired without Commission authorization. In our view, the more restrictions and requirements that are added to the copper retirement process, the more it begins to look like the service discontinuance process.

Moreover, the Commission proposes to increase the requirements for notice to competing providers and to provide an opportunity for additional providers to comment on planned copper retirements without making a finding that the current rules have not provided effective protection.¹⁷ These additional requirements would be overly burdensome, and one cannot help but think that they are not about notice at all, but rather are designed to empower competing providers to delay or even prevent copper retirements from occurring. If that is not the intent, the Commission should better explain what it believes will actually be gained by adopting these proposals that would significantly increase ILEC notice requirements.

B. Individual Notice to Retail Customers And an Opportunity For Them to Comment on Copper Retirement Plans Will Confuse Customers Without Providing Any Benefits.

USTelecom is not advocating against customer notification, or suggesting that customers should not have the benefit of being fully informed about changes to their service. In fact, in the past our members have provided, and will continue to provide, adequate notice of service changes consistent with statutory and regulatory requirements. They also have worked, and will continue to work with the Commission, consumers, and competing providers to resolve issues with discontinuances and in connection with network changes as they arise.

¹⁵ See generally 47 C.F.R. §51.333.

¹⁶ 47 U.S.C. §214(a).

¹⁷ *NPRM* at ¶ 7. See also *Declaratory Ruling* at ¶ 117 (pointing wireline carriers to their obligations under 47 C.F.R. §68.110(b), but not otherwise suggesting that provision has not been effective).

Many providers already have to (and do) notify customers when making facilities changes because they need access to their customers' premises to effectuate certain network changes. Even where such notice does not routinely happen or is not required, we believe customers are already receiving adequate notice when their service will be affected. To the extent the Commission believes (and can demonstrate) that additional notice is warranted, more clarity would be warranted. For example, in proposing that notice be provided to "anyone who will need new or modified CPE or who will be negatively impacted by the planned network change," the Commission offers no guidance on how providers are supposed to glean who has CPE that will no longer work, or to tell the difference between a "negative" impact vs. some other level of impact (inconvenience, for example). With regard to notice form, in many cases customers are able to indicate a preference for receiving notifications from their provider, as an alternative to more burdensome notice requirements.

Moreover, the Commission's proposal to go one step further by allowing customers to comment on planned copper retirements would give them little if any advantage over the current process, since they cannot prevent copper from being retired even under the rules that are being proposed. Providing an opportunity for customers to comment on copper retirements will only delay transition. The Commission, after examining the record submitted in this proceeding, should make a reasoned determination of what information retail customers need and would most benefit by, and should not impose additional burdens beyond that.

III. THE COMMISSION SHOULD NOT USE THE SECTION 214 PROCESS TO IMPEDE PROGRESS ON TRANSITION

The Commission has tentatively concluded that it should require providers to commit to providing equivalent wholesale access at equivalent rates, terms, and conditions while the special

access proceeding is pending.¹⁸ It further explains that this requirement “would take the form of a condition imposed on a grant of discontinuance authority for TDM services on which competitive carriers depend.”¹⁹ This proposal, if adopted, would set a dangerous precedent in its disregard for the purposes of the section 214 process. That is, section 214(a) seeks to protect communities and to ensure that the public convenience and necessity are not harmed by any service discontinuance.²⁰ It should not be used by the Commission as a tool to enshrine wholesale competition in its current state indefinitely.

In addition, there is no clarity on what the Commission would deem to be “equivalent services” for purposes of imposing this requirement. To the extent it means identical, it is not clear that would be technically feasible or possible in all instances. It could also mean near identical, or comparable; in which case, providers still have no way of determining what service offering would be good enough. For example, reasonable substitute service need not have the exact same functionality; in fact, some service substitutes, such as Ethernet over copper or fiber, will be superior to copper-based services. In that case, differences in service quality should merit different rates, terms and conditions.

Another challenge would be determining what “equivalent rates, terms, and conditions” are under these circumstances. This proposal fails to acknowledge that there are different costs involved with providing wholesale access over legacy networks and providing wholesale access over state-of-the-art fiber and IP-based networks. To require the same service (assuming that is technically feasible) using upgraded, superior facilities would deprive carriers of a meaningful opportunity to recover their sunk costs and the full value of their investments. The Commission

¹⁸ *NPRM* at ¶ 92.

¹⁹ *Id.*

²⁰ 47 U.S.C. §214(a).

therefore should soundly reject this tentative conclusion and evaluate petitions to discontinue their services under the discontinuance rules as they currently exist, without imposing additional conditions or burdens that are not directly related to the impact on communities and the public good.

In considering what other steps it might take to ensure that “technology transitions do no harm to the benefits of competitive access,”²¹ we are reminded by the Commission’s own acknowledgement that it specifically designed its unbundling rules “to remove unbundling obligations over time as carriers deploy their own networks and downstream local exchange markets exhibit the same robust competition that characterizes the long distance and wireless markets.”²² Thus, the natural progression (and presumably the end game) is that, at some point in the future, unbundling obligations would go away – in essence, the Commission set the stage for providers to be able to invest their way out of unbundling obligations. This is particularly true in the case of “next-generation network facilities and equipment,” described as “fiber optic cables and equipment used to provide packet-based services.”²³

IV. CONCLUSION

We appreciate the Commission’s efforts to ensure that the appropriate regulatory environment exists for providers who are on the front lines, investing in new infrastructure and providing innovative products and services, and we trust that the Commission will continue to do so as it decides these important issues.

²¹ *NPRM* at ¶ 92.

²² *TRRO* para. 3.

²³ *TRRO* at [], para. 240.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Jonathan Banks
Diane Griffin Holland

607 14th Street, NW
Suite 400
Washington, D.C. 20005
(202) 326-7300

February 5, 2015