

**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 of Incumbent Local
Exchange Carrier Rates for Interstate
Special Access Services

RM-10593

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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I. INTRODUCTION

The California Public Utilities Commission (CPUC) submit these comments in response to the Federal Communications Commission’s (FCC or Commission) *Notice of Proposed Rulemaking (NPRM)* regarding the national transition of telecommunications networks.

In this *NPRM*, the FCC continues its focus “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.”¹ The FCC notes that, in its January 2014 *Technology Transitions Order*, the Commission unanimously recognized that for these technology transitions to succeed, the FCC must preserve the technologically-neutral principles embodied in the Communications Act. These principles – competition, consumer protection, universal service, and public safety and national security² – have long defined the relationship between those who build and operate networks and those who use them. The FCC is “determined to ensure that these fundamental values are not lost merely because of technology changes.”³

¹ *NPRM*, ¶ 1.

² *Id.*

³ *Id.*

The CPUC here comments on questions the FCC has posed related to backup power for Customer Premises Equipment (CPE), copper retirement, and customer notice about related changes.

II. PROPOSED RULES PERTAINING TO BACKUP POWER

The FCC begins its inquiry with the observation that historically, consumers were accustomed to being able to use their landline phones even when the power went out because copper networks have “line power” - that is, the copper wire conducts “electricity from the local exchange carrier’s central office to the customer premises equipment (CPE)”. With the advent of newer technologies, consumers are migrating to IP-based facilities that provide services such as interconnected VoIP service. While these newer services offer enormous advantages but they do not necessarily supply line power. In light of the need for communications networks to function at all times, and especially during emergencies, the FCC seeks comment on how it can “safeguard continuity of communications throughout a power outage.” The FCC is proposing rules that “would establish reasonable expectations in a technology-neutral fashion, and would apply to all fixed networks supplying this fundamental means of residential communication.”⁴

In CPUC Decision (D.) 10-01-026, California adopted back-up power education policies.⁵ The CPUC’s rules require all facilities-based providers of telephony services, including cable providers and facilities-based providers of Voice over Internet Protocol

⁴ *NPRM*, ¶ 3.

⁵ The proceeding was in response to Pub. Util. C. § 776, which required the CPUC to consider the need for backup power systems installed on the property of residential and small commercial customers by a facilities-based provider of telephony services, and upon determining that the benefits of the standards exceed the costs, develop and implement performance reliability standards.

(VoIP) services, to inform their residential and small business customers that their service requires back-up power on the customer's premises. The CPUC also mandated that service providers inform their customers of the limitations of service, including potential service failure during a power outage. In addition, the CPUC required these voice service providers to educate customers about how best to maximize the ability to make or receive necessary phone calls during an outage. The CPUC's review of the FCC's proposed rules indicates that the two sets of rules are consistent regarding consumer notice.

A. Transitioning Responsibility for Backup Power from the Service Provider to the Customer

The FCC proposes that providers should assume responsibility for provisioning backup power capable of powering their customers' CPE during the first 8 hours of an outage.⁶ California supports this proposal. Service providers should be responsible for providing customers an initial backup battery upon initiation of the voice service, and those batteries should provide at least 8 hours of standby time.⁷ In 2008, CPUC staff prepared a study of backup power reliability in emergencies.⁸ The study concluded that 8 hours of backup power is reasonable under most circumstances if the battery is

⁶ *NPRM.*, ¶ 36.

⁷ The CPUC concurs with a standard of "standby time", and not talk time, which uses more power and would mean that batteries would drain faster.

⁸ The CPUC has previously noted that "standby time" does not equate to "talk time" *See* CPUC Decision 10-01-026; January 21, 2010. "Standby time" refers to the amount of time the telephone can remain ready to make or receive a call. "Talk time" refers to the amount of time the telephone can remain in active use making or receiving calls.

maintained in good condition.⁹

At the same time, California recognizes that the 8-hour standard should be evaluated relative to network power availability following a power outage. Many customer premises are often served by remote terminals which themselves are battery-powered during a power outage. These remote terminals, typically, do not have onsite generation capabilities to maintain network services beyond a limited amount of time.

In addition, the CPUC notes the implications of the backup power issue posed by widespread use of cordless phones. The CPUC's advocacy division, the Office of Ratepayer Advocates, has obtained information showing that the "take rate" for cordless phones vastly outstrips new purchase of corded phones. Cordless phones also are not self-powered, and fail during a power outage. The FCC should include cordless phones in any public education plan.

B. Duration Of Time For Which Backup Power Should Be Provided

The FCC seeks comment on how a provider would meet its responsibility to provide backup power for a specific duration of time.¹⁰ California urges the FCC to require service providers to offer optional battery backup power maintenance services at cost to ensure battery backup is functional. Some customers may not be able to perform battery inspection or replacement on their own, whether because disabled, not technically

⁹ See *California Public Utilities Commission, Reliability Standards for Telecommunications Emergency Backup Power Systems and Emergency Notification Systems, Final Analysis Report, May 9, 2008*. The study determined that the number of customers affected by power outages lasting more than 8 hours ranges from 1% to 9.1%, with an average of 3.9%. Adopting a greater standard above 8 hours increases costs relative to the extra security provided, though subsequent battery technology improvements may change the cost/benefit analysis. The CPUC study is now relatively dated and the FCC could update its cost benefit analysis using latest battery technology.

¹⁰ *NPRM*, ¶ 37.

proficient, or disinterested. Such maintenance plans should provide on-site installation of the battery. Further, the CPUC supports FCC adoption of the Communications Security, Reliability and Interoperability Council's (CSRIC) ¹¹ Best Practice, which recommends that “service providers should work with their vendors to provide a mechanism to monitor battery status and determine whether the battery is degraded. This can be done through remote monitoring of batteries as part of the service offered to consumers or through LEDs visible to consumers.”¹²

C. Backup Power Alternatives

The FCC asks whether consumers should be able to opt out of backup power.¹³ Further, the Commission asks whether customers should be required to “self-provision” backup power, meaning that the burden of maintaining continuity of power for CPE no longer would be on the service provider. And, the FCC asks whether service providers should be required to offer spare batteries at reasonable cost.

The CPUC recommends that, when service is first provisioned, voice service providers should give consumers a free back-up power battery unless the customer uses CPE purchased from a vendor other than the voice service provider. Consumers should be able to opt-out of battery maintenance plans and battery replacement and avoid the charges associated with those services otherwise self-provisioned or provided by third-parties. If a customer chooses not to participate in a maintenance program, the service

¹¹ The Communications Security, Reliability and Interoperability Council's (CSRIC) mission is to provide recommendations to the FCC to ensure, among other things, optimal security and reliability of communications systems, including telecommunications, media, and public safety.

¹² CSRIC Working Group 10B Final Report – CPE Powering, New Best Practices No.14, September 2014.

¹³ *NPRM*, ¶ 37.

provider needs to inform customers of the importance of battery maintenance and implications for their voice service during power interruptions.

Expecting consumers to self-provision CPE backup power after 8 hours of standby time may be reasonable but *only* if the following conditions are met: (1) the FCC has conducted a public education about program of consumer responsibilities to self-provision CPE power beyond the 8 hours; (2) service providers have disclosed to consumers their responsibilities and their options for replacing batteries to prolong onsite CPE power; and (3) service providers offer spare batteries at reasonable cost.

Further, the FCC should mandate that service providers offer spare batteries at reasonable cost. In addition, the FCC should consider adopting policies regarding whether providers should offer CPE with a proprietary battery design that would leave the customer with only one purchase option – the service provider itself.

1. Customer Education About Backup Power

The FCC seeks comment on whether it should require providers to develop and implement consumer education plans regarding the availability of CPE backup power, as well as when providers should make such information available.¹⁴ Further, the Commission recognizes the CSRIC report observation that, because of the wide variety of backup power options and interfaces individual service providers and CPE vendors offer, “some level of standardization is needed of . . . power systems and interfaces, if VoIP services are to meet the reliability that consumers expect in the United States.” The

¹⁴ *Id.*, ¶ 39.

FCC asks whether it should charge CSRIC or another of its advisory bodies with addressing this issue.¹⁵

The CPUC urges the FCC to mandate that service providers give customers educational materials consistent with existing California's existing requirements.¹⁶ In D.10-01-026, the CPUC adopted rules requiring VoIP providers, as well as those using other technologies needing backup power on the customer's premises, to educate customers about the need for backup power upon service initiation and annually thereafter regarding backup power. The CPUC also recommends that the FCC not preempt consistent state requirements for notification or education regarding backup power. Further, as it did with cramming rules, the FCC should allow states to adopt more extensive backup power requirements. And, consistent with California's backup power education rules, the CPUC recommends that the FCC require service providers to send an annual reminder to customers to check the status of their battery.

Service providers have a responsibility to inform their customers about backup power. California recommends that the FCC adopt a plan that would include widespread public education prior to any IP transition cut over effective date. Such a plan would be similar to the large-scale federal and private education plan undertaken for the transition from analog to Digital Television (the "DTV transition"). Finally, the CPUC recognizes that some level of battery standardization is preferable in backup power rules to facilitate

¹⁵ *Id.*, ¶ 46.

¹⁶ The CPUC's rules are appended to this filing as Attachment A.

battery availability in commercial retail outlets. Customers then would be able to obtain and replace batteries as an option to buying them from the service provider.¹⁷

III. RECOMMENDATIONS FOR PROPOSED RULES ON COPPER RETIREMENT

The FCC recognizes that the frequency and scope of copper retirements is increasing, and believes that this change should prompt reconsideration of key assumptions on which the Commission based its existing copper retirement rules. As noted above, the FCC proposes steps to maintain the vitality of its core values of consumer protection, competition, public safety, and national security through the forthcoming technology transitions.¹⁸ The Commission emphasizes that it is not planning to revisit or alter its earlier decision allowing states to have their own copper retirement rules.¹⁹

A. Definition of “Copper Retirement”

The FCC’s current rules require ILECs to comply with network change requirements (public notice and technical description of the planned changes and the implementation date²⁰) before retiring any copper loops or subloops. Those rules, however, do not define “copper retirement”. Here, the FCC identifies the facilities that should be included in “copper retirement” as copper loops, subloops, and the feeder

¹⁷ This recommendation presumes that the equipment service providers give to customers does not take standard batteries available in the marketplace today.

¹⁸ *NPRM*, ¶ 49.

¹⁹ *Id.*, ¶ 54. Fn.144; *See Triennial Review Order*, 18 FCC Rcd at 17148, ¶. 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.”)

²⁰ *See* 47 C.F.R. §§51-325 – 51-335.

portion of the loop - an expansion of the current rules, which do not include the feeder portion of the loop.²¹ In addition, the FCC asks what activities should constitute copper retirement, and specifically, whether “removing or disabling of” these three components – copper loops, subloops, and the feeder portion of the loop – would meet that definition.²²

The CPUC supports the FCC’s proposal to include all three components – loop, subloop, and feeder portion of the loop – in the definition of “copper retirement”. A CLEC’s use of an ILEC’s facilities for provisioning service may depend on access to all three components. In addition, the CPUC concurs that physical removal of the copper should constitute “copper retirement”. The disabling of the copper should constitute copper retirement only if it is intended to be long term or permanent. Loops and other facilities may be disabled after a disaster, for example. In cases where the copper line is disabled for a finite period of time but the goal is to repair the facilities and restore service, the temporary disabling should not be treated as “retirement” of the copper.

1. “De Facto” Copper Retirement

The FCC acknowledges “numerous allegations that in some cases [ILECs] are failing to maintain their copper networks”, and have not followed the FCC’s process for formally retiring the affected copper facilities.²³ To determine if rules governing “de

²¹ *NPRM*, ¶ 50.

²² *Id.*, ¶ 51.

²³ *NPRM*, ¶ 53.

facto” copper retirement are needed, the FCC asks for “specific examples and facts concerning the consequences to consumers, competition, and public safety”.²⁴

The CPUC’s Communications Division (CD) has received a number of complaints from members of the public in six different, mostly rural, communities regarding substandard service over copper facilities. The community representatives complain of repeated service outages that last for days at a time. When the service goes out, the local residents do not have access to emergency services, specifically, 911. For example, in the town of Hyampom in rural Trinity County (Northern California), and in Woodside, a semi-rural area of San Mateo County (San Francisco Bay Area), the local emergency first responders are volunteer fire departments whose members cannot be contacted when the wireline service fails. (Wireless service is spotty in these areas.) These community representatives allege that the repeated service outages occur because the ILEC is relying on older facilities that are not properly maintained and may need to be replaced.²⁵

In addition, as noted in the *NPRM*, a consumer group, The Utility Reform Network (TURN) filed a formal complaint with the CPUC on March 17, 2014, in which it alleged that Verizon, in particular, is not adequately maintaining its copper facilities as an intentional corporate strategy to migrate customers to non-regulated services.²⁶

²⁴ *Id.*

²⁵ See *NPRM*, ¶ 19, Fn.51. In addition to Hyampom and Woodside, representatives of the following communities have lodged similar complaints with the Communications Division: Sierra Paradise Estates (Mono County in Eastern California), Orleans (Humboldt County in Northern California), Hollister Ranch (Santa Barbara County on California’s Central Coast), and Sea Ranch (Mendocino County in Northern California).

²⁶ This allegation also goes to the separate but related issue of forced migration, which the FCC raises in ¶¶ 19, 60.

Specifically, TURN made the following allegations in its formal complaint:

- 1) Verizon does not adequately repair and maintain the copper network necessary to provide regulated basic telephone service (and other telecommunications services). Instead, Verizon deliberately allows its regulated network to deteriorate.
- 2) In some cases, Verizon refuses to repair the copper plant necessary to provide regulated landline telephone service when basic telephone service customers request repair.

TURN filed its complaint in an open docket in which the CPUC is reviewing service quality issues.²⁷ The CPUC has not adjudicated the complaint, and has made no findings regarding TURN's allegations. However, in light of the FCC's request for examples, we are providing notice to the FCC of this complaint.²⁸

B. Revision Of Copper Retirement Processes To The Promote Competition And Protect Consumers

The FCC tentatively concludes that the impact of copper retirement on competition and consumers warrants revisions to its network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection.²⁹ The FCC recognizes that requiring ILECs to obtain FCC approval before retiring copper could "harm incentives for fiber deployment," and does not want to mandate that copper

²⁷ Emergency Motion of The Utility Reform Network (TURN) Urging the Commission to Take immediate Action to Protect Verizon Customers and Prevent Further Deterioration of Verizon's Landline Network (TURN Emergency Motion), filed in *Order Instituting investigation to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modifications to Service Quality Rules*, R.11-12-001, p. 2.

²⁸ The TURN complaint can be found on the CPUC's website at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=88991674>

²⁹ *NPRM*, ¶ 55.

be maintained indefinitely. For these reasons, the Commission proposes to leave in place its current notice-based process for copper retirement.

Specifically, the FCC proposes requiring ILECs to provide a description of planned changes, including, but not limited to, any changes in prices, terms, or conditions that would accompany any planned changes.³⁰ The FCC further proposes clarifying that ILECs must directly notify each telephone exchange service provider that interconnects with the ILEC's network of planned copper retirements. Further, the FCC would require ILECs to file a certificate of service with the FCC confirming such notice has been provided, regardless of the timing of the retirement.³¹

Finally, the FCC asks whether ILECs should be required to develop annual forecasts of anticipated copper retirements and if so, to whom such forecasts should be provided. The FCC poses other questions pertaining to the timing and format of such notices.

The CPUC concurs with the proposals to require ILECs to notify competitors of planned changes and retirements, to prepare annual forecasts, and to submit a certification to the FCC that such notice has been provided. These requirements will better enable competitors to take steps appropriate to their business models and to forwarn their customers of impending service changes. The CPUC supports a requirement that ILECs make annual forecasts of expected copper retirements and

³⁰ *Id.*, ¶ 57.

³¹ The ILEC provides public notice by either a) filing a public notice with the Commission; or b) providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. *See* 47 C.F.R. §51.329.

provide those forecasts to the FCC, to State Commissions in relevant states and to affected competitors.

The CPUC also agrees that though copper retirement notices provided in a uniform format would pose some advantages, a uniform format may not cover all aspects of each provider's copper retirement plans. The FCC should require that all necessary components of the ILEC's planned retirement be contained in any notice, but also allow each provider to include additional information about options available to customers. Finally, the CPUC recommends that, in instances where the service provider initiates the copper retirement, the FCC require a 6-month notice to both wholesale customers and retail customers, so that both have sufficient lead time to plan for the change. If the replacement is initiated because the copper lines have been destroyed by an act of nature or other disaster, the 6-month notice time would need not apply.

IV. CONSUMER PROTECTION

A. Notice To Retail Customers

The FCC notes that consumers and other retail customers must be informed about both what copper retirement means for them, and what their service choices are. The FCC acknowledges complaints from multiple sources that in some cases ILECs "are moving customers of legacy services onto IP-based and triple play services during copper retirements, with no procedures in place for customer notice or choice."³²

The FCC proposes to require an ILEC planning to retire copper to notify directly all potentially affected retail customers either by electronic or postal mail unless the FCC

³² *NPRM*, ¶ 60.

authorizes in advance, for good cause shown, use of another form of notice. The Commission also proposes that the ILEC must notify those customers who will need new or modified CPE, or who would otherwise be negatively affected by the planned network change. And, the FCC contemplates a form of notice that would be both efficient for the ILECs to distribute and affective in educating retail customers.

The CPUC recommends that the customer notice should not depend on the extent of the potential negative impact to the affected customer. It both is good business practice and makes good business sense to inform customers of changes that may affect them. The notice requirement should apply to all customers whose premises are connected to a copper loop planned for retirement. Further, the CPUC recommends that the FCC require the ILEC to notify customers of the copper retirement in the same manner that the ILEC bills the customer.

B. Content Of Notice

The FCC proposes a requirement that notices to customers affected by copper retirements state clearly and prominently that the customer “will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases” if that statement would be accurate. If the statement would not be accurate, then the FCC proposes requiring the ILEC to include a statement identifying any changes to the service(s), including functionality and features.³³ The FCC seeks input on its proposals for notice content, including a requirement that the notice provide sufficient information and a clear statement of the

³³ *Id.*, ¶ 65.

customer's rights as well as the process for the customer to comment on any planned copper retirement.

The CPUC supports these proposals as long as the FCC does not preempt a state's own notice requirements regarding copper retirements, which the FCC asserts it will not do.³⁴ The CPUC recommends that if a customer's copper is retired, and the customer does not currently subscribe to VoIP service, the service provider must inform the subscriber about the need for backup power if the customer decides to then order VoIP service from the same service provider. The customers also should be informed of the possible effect of the copper retirement on their other services and equipment, such as alarm services or fax machines.

In addition, the FCC asks whether it should adopt different or additional notice requirements for non-English-speaking consumers, or those with disabilities.³⁵

In 2008, the CPUC adopted telephone marketing regulations in its Limited English Proficiency (LEP) docket.³⁶ Consistent with those rules, the CPUC recommends that the FCC require the service provider to notify customers in the same language in which it marketed service to the customer. Further, the FCC should ensure that any notice and public education program include special materials for the disabled, including distribution of material in Braille, by text message, and by e-mail, which are all formats heavily used by disabled populations.

³⁴ *NPRM*, ¶ 54.

³⁵ *Id.*, ¶ 67.

³⁶ See D.08-10-016; Phase II Decision Addressing In-Language Market Trials, Fraud Notification and Reporting, and Consumer Complaint and Language Preference Tracking For Limited English Proficient Telecommunications Consumers, October 2, 2008.

The administrative vendor for the CPUC's Deaf and Disabled Telecommunications Program (DDTP) has provided anecdotal information to the CPUC regarding customers using captioned telephones. Some users have reported to the DDTP that their service has been changed from TDM to VoIP, and they discover the change when the captioned telephone no longer works, because it is designed to use a TDM connection. In addition, closed captioners with the DDTP have informed CPUC staff that they use TDM lines to transmit closed captioning service to local television stations. These are issues the FCC should address in developing rules for the transition.

The FCC also asks for information about allegations of "forced migration" – specifically about claims that ILECs may be misleading retail customers to believe they cannot maintain their wireline service(s), or not disclosing that the wireline service remains available over fiber facilities.³⁷ The CPUC cites again to the TURN complaint, identified in the context of allegations of *de facto* copper retirement. In its complaint, TURN makes the following allegation:

Verizon has a policy and practice of surreptitiously "migrating" unwitting California basic phone service customers who request service repair away from their phone service of choice to other Verizon services, such as FiOS (which is a largely deregulated VoIP phone service) and possibly to a new fixed wireless service called Voice Link. Customers are migrated to FiOS in neighborhoods where fiber has been installed with planned migration to Voice Link in non-FiOS neighborhoods. In the case of FiOS migration, at least some customers are not informed that they are being migrated. Furthermore, customers are not informed of the ramifications of being moved from regulated basic phone service to a largely deregulated VoIP phone service, with diminished consumer protections, that is inferior to basic phone service in certain

³⁷ *Id.*

important respects, including superior reliability during power outages.³⁸

Again, the CPUC has not adjudicated this allegation, but is passing it along to the FCC in response to the FCC's request for information. In addition, from 2012 through 2014, the CPUC has received at least 77 informal complaints from residential customers of the two largest ILECs in the state. The complainants alleged the following: 1) customers were forced to subscribe to VoIP service because the ILEC informed the customer that s/he had no choice; 2) customers were "bullied" into switching to VoIP service by persistent marketing practices (which often target the elderly); or 3) customers agreed to switch to VoIP but were not fully informed of the effect the switch would have on other equipment or services used in the household.

The FCC also seeks comment on whether, in instances where an ILEC technician must visit the customer's premises to retire the copper, the ILEC should be required to make additional efforts to contact those retail customers who do not contact the ILEC to schedule a service visit.³⁹ And, the FCC proposes requiring that ILECs give subscribers the same amount of notice that they give now to other service providers which the FCC believes provides sufficient time for subscribers to become educated about the proposal.⁴⁰

The CPUC recommends that the FCC require carriers to attempt to contact their retail customers by telephone at least two or three times. In addition, the CPUC urges the FCC to set a notice period of 6 months for customers affected customers by a planned

³⁸ TURN Emergency Motion, pp. 2-3.

³⁹ *Id.*

⁴⁰ *NPRM*, ¶ 68.

copper retirement. This period would be consistent with the CPUC’s recommendation that the FCC increase notice to affected CLECs of a copper retirement from the current 90 days to 6 months.⁴¹

C. Upselling And Consumer Education

In the *NPRM*, the FCC acknowledges concerns from Public Knowledge and NASUCA that ILECs may take advantage of copper retirements to “upsell” subscribers—i.e., try to convince customers to purchase more profitable bundles of services while the ILEC is supposed to be preparing the customer for a change in *facilities* only (e.g., copper to fiber). The FCC is “concerned by a number of consumer allegations that copper retirements have resulted in changes to their service may stem from aggressive or confusing upselling.”⁴²

Accordingly, the FCC proposes to require ILECs to give customers a neutral statement of the various choices the ILEC would make available to retain customers affected by copper retirement. The FCC further asks what kinds of services it should require the ILEC to identify, such as services reasonably comparable to those to which the retail customer presently subscribes.

The CPUC support this proposal, but recommends that the FCC permit carriers to discuss other products *only if* the customer initiates an inquiry about other products. For instance, if the customer’s telephone service is being changed to VoIP because of a copper retirement, the customer may wish to subscribe to a bundle of services – VoIP,

⁴¹ See discussion, *supra*, at pp. 12-13.

⁴² *Id.*, ¶ 71.

Internet access and video – at the same time the new VoIP service is initiated. Or the customer may simply wish to subscribe to a service ancillary to the voice service (a “vertical” service), such as Caller ID or Call Waiting.

In addition, California recommends that carriers be required to identify services reasonably comparable to those to which the retail customer presently subscribes. This requirement is consistent with the CPUC’s rules for copper loop retirement.⁴³ There, the CPUC concluded that, when retiring copper loops, ILECs shall also offer to their retail end-user customers a service over fiber comparable to what the customer was previously receiving.

D. Additional Steps

The FCC asks if it should require ILECs to take any additional steps beyond the contemplated customer notice to educate retail customers about planned copper retirements that might affect them.⁴⁴ The CPUC recommends that the Commission require ILECs to put educational materials about copper retirement and network transition on their websites. Also, the FCC should mandate that, in conjunction with any planned mass retirements in specific geographic areas, the ILEC prepare and distribute public service announcements via broadcast and other media during the 6-month period (per the CPUC’s recommendation) between notice of and the effective date of the transition.

⁴³ See D.08-11-033, *Decision Adopting Process Governing Retirement By Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*; November 6, 2008.

⁴⁴ *NPRM*, ¶ 74.

E. Expansion Of Right To Comment

Under the FCC's current network change disclosure rules, "only information service providers and telecommunications service providers that directly interconnect with an ILEC's network have the right to object to planned copper retirements, and they can only delay implementation for up to six months and seek technical assistance from the incumbent."⁴⁵ Here the FCC proposes to revise its current rules in order to provide the public, including retail customers and industry participants, the opportunity to comment publicly on planned network changes.⁴⁶ The Commission also proposes requiring ILECs to provide notice of planned copper retirements to the public utility or public service commission and to the Governor of the state(s) in which the proposed network transition will occur. In addition, the FCC proposes to require the ILECs to provide notice to the Secretary of Defense.⁴⁷

And, the FCC proposes requiring ILECs going forward to certify their compliance with any new rules the FCC adopts at the conclusion of this *NPRM*. Because the FCC proposes creating one comprehensive rule containing all requirements applicable to copper retirements, the FCC anticipates that it would be most efficient for an ILEC to submit a single certification confirming that it is has fulfilled its various responsibilities.⁴⁸

The CPUC agrees with according the public the right to comment on copper retirement. In this time of transition, public concerns will be raised and those directly

⁴⁵ *Id.*, ¶ 77.

⁴⁶ *Id.*, ¶ 78.

⁴⁷ *Id.*, ¶ 79.

⁴⁸ *Id.*, ¶¶ 80-83.

affected should have the right to express those concerns to decisionmakers. Further, the CPUC supports requiring ILECs to notify state officials and the Secretary of Defense. Pursuant to the CPUC's 2008 decision on copper retirement, ILECs in California already are required to file concurrently with the CPUC's Communications Division a copy of the notice of the network change regarding copper loops that they file with the FCC.⁴⁹ The CPUC also concurs with the FCC's proposal to require ILECs to certify compliance with the new FCC rules, and to do so in a single certification.

F. Sale Of Copper Facilities That Would Otherwise Be Retired

Responding to AT&T's May 2014 proposal to offer copper loops for sale on commercial terms to competitive carriers in lieu of retiring those facilities,⁵⁰ the FCC proposes permitting ILECs to sell their copper facilities on a voluntary basis.⁵¹ In seeking comment on this proposal, the FCC also asks whether there is a role for state public utility commissions in encouraging the sale or auction of copper facilities an ILEC intends to retire.⁵²

The CPUC recommends that the FCC promote the sale or auction of copper prior to retirement. In addition to enabling continued availability of copper facilities to competitors, this approach would be consistent with the California's own copper retirement rules. In D.08-11-033, the CPUC adopted a process for CLECs to purchase or lease the copper lines upon ILEC retirement. Decision 08-11-033 requires the following:

⁴⁹ See CPUC D.08-11-033.

⁵⁰ *NPRM*, ¶ 86.

⁵¹ *Id.*, ¶ 89.

⁵² *Id.*

Any CLEC that seeks to use that copper loop facility shall provide to the incumbent carrier within 20 days of the FCC notice a request for negotiations in writing either to purchase or lease the loop facilities and file a copy of its request with the Communications Division. The CLEC shall include in its request for negotiations the following information:

- i) Whether the CLEC seeks to purchase the copper loop facility, or whether the CLEC seeks only to have the ILEC maintain access to a loop facility;
- ii) the number of current or planned customers on the copper loop;
- iii) the services that the CLEC provides over the loop facility or plans to provide over the loop;
- iv) the number of UNEs that the CLEC currently purchases

Upon receipt of the CLEC's request for negotiations, the ILEC shall negotiate in good faith with the CLEC for a period of 60 days either to:

- i) sell the copper loop facility to the CLEC; or
- ii) reach a fair and equitable agreement with the CLEC on price and terms to ensure access to loop facilities.”

The CPUC recommends that State requirements should govern any potential sale of retired copper facilities where such regulations exist or are adopted subsequent to issuance of an FCC order in this docket. The FCC may need to adopt rules for those states which do not have copper retirement processes in place, and if the FCC were to do so, the CPUC's rules may serve as a model for the FCC.

V. SECTION 214 DISCONTINUANCE OF SERVICE

The FCC's rules regarding discontinuance of service derive from § 214(a) of the Communications Act.⁵³ In the *NPRM*, the FCC focuses on three key issues regarding service discontinuance:

⁵³ *NPRM*, ¶ 23. The CPUC notes the recent announcement by Frontier that it has reached an agreement with Verizon to purchase all of Verizon's landline facilities in multiple states, including California. Notwithstanding comments by its chief executive a few years ago, Verizon has not indicated that it would have sought to retire

- (1) ensuring that consumers receive adequate substitutes for discontinued services;
- (2) further defining the scope of its section 214(a) authority, focusing in particular on the context of wholesale services; and
- (3) ensuring competitive availability of wholesale inputs following discontinuance of incumbent LECs' TDM services on which competitive LECs currently rely.⁵⁴

The CPUC reserves the right to comment on § 214 service discontinuance issues in the reply round.

VI. FCC'S LEGAL AUTHORITY TO ADOPT RULES

In the *NPRM*, the FCC sets forth an analysis of its legal authority to adopt the rules it proposes.⁵⁵ In California's view, the FCC has the authority to adopt rules "pursuant to express statutory authority to promulgate regulations addressing a variety of designated issues involving communications...or pursuant to ancillary jurisdiction."⁵⁶ This authority derives both from Title II of the Communications Act, which gives the Commission jurisdiction over common carriers, including ILECs, and from a more recent conferral of statutory authority over provision of 911 service.⁵⁷ In addition, the FCC may rely on its "ancillary" authority, set forth in Title I of the Communications Act. In order for the FCC to regulate under its ancillary jurisdiction, "the subject of the regulation must be covered by the FCC's general grant of jurisdiction under Title 1 of the

these same facilities absent the sale. Accordingly, the CPUC will be reviewing the proposed acquisition under state laws pertaining to mergers, and does not anticipate applying copper retirement rules.

⁵⁴ *Id.*, ¶¶ 24-27.

⁵⁵ *NPRM*, ¶¶ 43, 44.

⁵⁶ *American Library Ass'n v. FCC* 406 F.3d 689, 693 (D.C. Cir. 2005).

⁵⁷ *New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act)*, PL 110-283, 122 Stat. 2620 (2008).

Communications Act” and “the subject of the regulation must be ‘reasonably ancillary’ to the effective performance of the Commission’s various responsibilities.”⁵⁸ The Commission’s proposed actions in the *NPRM* are directly tied to its authority “to promote the safety of life, and property through the use of wire and radio communications,” which includes interconnected VoIP.⁵⁹ Accordingly, the FCC seems to be on solid legal ground in proposing these regulations.

VII. CONCLUSION

The CPUC appreciates this opportunity to comment on the FCC’s proposed rules regarding backup power, copper retirement, customer notice, and other issues set forth in the *NPRM* and addressed in this pleading. The CPUC recognizes that the shift from a TDM-based network to an all-IP network poses great challenges to service providers, to regulators, and to consumers. Ideally, all parties should work in concert to effect an efficient transition with the least amount of disruption. Hopefully, the rules the FCC adopts in this proceeding will assist in that effort.

⁵⁸ *Id.*

⁵⁹ 47 USC §151.

Respectfully submitted,

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ATTACHMENT A

Per the CPUC Decision 10-01-026, at a minimum, the following elements should be included in a customer education program:

- Customers should be informed that their service utilizes a backup battery located on the customer's premises to provide service during a power outage.
- Customers should be told that cordless phones will not work during a power outage.
- Customers should be informed of the limitations of the backup battery's ability to provide service during a power outage and how to maximize the customer's ability to make necessary calls during a power outage. This includes the fact that the backup battery cannot power a cordless phone or other equipment connected to the telephone line that requires electricity from the customer's premises, such as telecommunications devices used to assist customers with disabilities.
- Customers should be informed of the service provider's and customer's responsibilities regarding battery monitoring and replacement. This should include information on the limitations of the service provider's liability as it relates to backup power.
- Information should be provided about the customer's options regarding where to place the backup battery unit on the customer's premises.
- If the service provider is responsible for battery monitoring and replacement, information should be provided on how customers can contact the service provider for information about the battery or if the customer believes the battery is not working properly.
- If the service provider is responsible for battery replacement but does not monitor battery condition, customers should be told that age and temperature impact battery performance, and provided information on how customers can monitor battery condition and how to contact the service provider if the battery needs replacement. This should include information on indicators (lights, audible tones, etc.) on the BBU that indicate battery condition.
- If the service provider is responsible for battery monitoring and/or replacement, information should be provided on how customers can contact the service provider for information about obtaining additional backup power capability such as additional batteries.
- If the customer is responsible for battery monitoring and replacement, customers should be told that age and temperature impact battery performance, how to determine whether replacement is needed, how to obtain replacement backup batteries and how to install them. This includes information on indicators (lights,

audible tones, etc.) on the BBU that indicate battery condition. This also includes whether the service provider can supply replacements and how to get them. If backup batteries are available from other sources, sufficient battery specifications should be provided to identify an appropriate replacement battery. In addition, customers should be told of possible sources or types of sources for the batteries, such as local hardware stores, etc.

- If the customer initiates service at a location that previously had service (e.g. in the case of a renter), and the service provider is not responsible for battery monitoring and replacement, the service provider should notify the customer if it does not install a new backup battery.
- If the service provider is not responsible for battery replacement, but offers battery replacement or other related services, information should be provided on what services are available, their cost to the customer and how to obtain them.
- If backup power can be supplied from a source other than the backup battery, the customer should be told of this fact and how to request additional information from the service provider. Upon request, information should be made available on the other types of backup power, to the extent the service provider has the information, and how to connect the backup power source to the telephone equipment.