

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Ensuring Customer Premises Equipment Backup	)	PS Docket No. 14-174
	)	
Technology Transitions	)	GN Docket No. 13-5

**REPLY COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) opposes proposals to mandate that providers of Voice over Internet Protocol (VoIP) services provide equipment used by their customers with battery backup capability. Because consumers are fully informed of the limitations of VoIP services offered by cable operators and thus empowered to make their own decisions regarding the best way to maintain continuity of service during a power outage, requiring all consumers to bear the costs of purchasing a battery is both unnecessary and wasteful.

**I. LEGACY NETWORK CHARACTERISTICS DO NOT JUSTIFY IMPOSING A BATTERY BACKUP MANDATE ON CABLE VOIP PROVIDERS**

In response to the *Notice*,<sup>1</sup> a few parties urge the Commission to impose a battery backup mandate on the theory that consumers have come to expect that their voice service will work even when the power is out.<sup>2</sup> Public Knowledge, for example, states that “Americans have come to expect the indefinite reliability of the basic telephone network, particularly during power outages caused by natural disasters and other emergencies” and therefore the Commission should

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<sup>1</sup> *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185 (rel. Nov. 25, 2014) (“Notice”).

<sup>2</sup> *See, e.g.*, Public Knowledge Comments at 21; NASUCA Comments at 8; State 911 Administrators Comments at 1.

impose “requirements to provide backup power [] to all carriers providing basic fixed telephone service, managed VoIP, 911, and E911, across all types of technologies.”<sup>3</sup>

The theory that all consumers place a high value on the availability of a landline phone service that works when the power is out is at odds with real world experience in the voice marketplace over the last decade. Since 2005, VoIP providers have been obligated to inform consumers regarding key limitations of their services.<sup>4</sup> If these advocates were correct about consumer preferences, such disclosure would provide a strong disincentive for consumers to purchase VoIP services. But in fact, cable operators have added roughly 28 million voice customers since introducing VoIP service.<sup>5</sup> Cable operators have not noticed any meaningful customer outcry or defections following power outages, nor have they witnessed significant spikes in demand for backup batteries after an outage.

Similarly, if consumers valued line-powered voice services as suggested, few would ever “cut the cord” and rely solely on wireless services that require equipment to be charged on a daily basis. Yet today, almost half of all households in the U.S. are wireless-only.<sup>6</sup> And if having access to landline service during a power outage is as critical to consumers as suggested, why are cordless phones so much more prevalent than corded phones?<sup>7</sup>

The fact that consumers have embraced cordless phones and wireless and VoIP services in ever-increasing numbers, while steadily abandoning line-powered circuit-switched voice

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<sup>3</sup> Public Knowledge Comments at 24, 21.

<sup>4</sup> 47 C.F.R. § 9.5. Specifically, VoIP providers must advise subscribers “prominently and in plain language” of circumstances in which E911 service may not be available and they must distribute “warning stickers or other appropriate labels” to place near CPE.

<sup>5</sup> *See Local Telephone Competition: Status as of December 31, 2013* (WCB 2014) at 8, Fig. 6.

<sup>6</sup> NCTA Comments at 6, *citing* Stephen J. Blumberg and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY–JUNE 2014 (Dec. 2014) (CDC Report) at 5.

<sup>7</sup> *See, e.g.*, NCTA Comments at 7.

services, strongly suggests that Public Knowledge and others are simply wrong about the expectations consumers have for their voice services. Customers understand the capabilities of the services and equipment they are purchasing and have concluded that the value those services provide relative to Plain Old Telephone Service (POTS) outweighs any inconvenience associated with taking responsibility for powering their equipment and devices, especially since the majority of customers also purchase mobile services. As ACA succinctly explains, “[c]onsumers 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 [line-powered] copper.”<sup>8</sup>

The record also makes clear that the marketplace is fully meeting these evolving consumer expectations. NCTA and others explained that customers are provided with information on the limitations of VoIP service at the time service is initiated.<sup>9</sup> The overwhelming majority of wireline customers also have mobile services, which provide a strong measure of redundancy during an emergency situation.<sup>10</sup> Whether a customer selects wireline service, wireless service, or both, the customer has a variety of options for backup power capability, such as uninterruptible power source (UPS) devices that can provide power to multiple devices.

While battery backup capability for the embedded multimedia terminal adapter (EMTA) provided by a cable operator is an additional option that is available to consumers to ensure continuity of voice service during a power outage, NCTA demonstrated that the take rate tends to be extremely low when cable operators offer rechargeable batteries for sale, even after a power

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<sup>8</sup> ACA Comments at 9.

<sup>9</sup> NCTA Comments at 5; ACA Comments at 11.

<sup>10</sup> NCTA Comments at 6, *citing* CDC Report at 5.

outage, which suggests consumers are relying on other services and equipment.<sup>11</sup> This choice is not due to lack of experience or information. For example, based on an analysis performed by one operator, demand for backup power by existing customers who did not have such functionality did not increase even after power outages of more than two days.

Beyond general consumer expectations, some parties argue that a mandatory backup battery requirement is necessary because there are certain segments of the population that use services and equipment, such as medical alert devices, that are entirely dependent on wireline voice service and who would be harmed if such service did not work during a power outage.<sup>12</sup> As an initial matter, many of these devices do not require wireline service. For example, while Public Knowledge identifies LifeWatch as a service that requires a working phone line,<sup>13</sup> a quick check of the company's web site reveals that they also offer cellular-based equipment.<sup>14</sup> Other companies also offer wireless medical alert devices that can either replace or supplement a device that depends on the wireline network.<sup>15</sup>

Moreover, as noted above, consumers that have critical needs for uninterrupted service can purchase UPS or other devices to supply power to their telephone service. Many of these consumers will have backup power for other medical or essential electronics. A battery mandate

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<sup>11</sup> NCTA Comments at 8 (“Cable operators have found that the overwhelming majority of residential customers choose not to purchase a battery when it is offered at the time service is initiated. Based on information gathered from some of NCTA’s larger members, the percentage of new voice customers electing to purchase a backup battery is not more than three percent, and for some companies it is less than one percent.”).

<sup>12</sup> *See, e.g.*, Public Knowledge Comments at 22; AARP Comments at 11.

<sup>13</sup> Public Knowledge Comments at 22.

<sup>14</sup> *See* LifeWatch USA, Medical Alert Plans, at <http://www.lifewatch-usa.com/medicalalarms.html#cell> (“LIFEWATCH USA CELLULAR-BASED IN HOME SYSTEM: No phone? No problem! Our new Cellular Medical Alert System enables persons without phone service the ability to have a medical alert system in their home.”).

<sup>15</sup> *See, e.g.*, Life Alert, Emergency Help Phone, at [http://www.lifealert.com/HELPPhone\\_50.aspx](http://www.lifealert.com/HELPPhone_50.aspx) (“Nationwide coverage. You can be located by GPS anywhere in the United States where GSM cellular phones operate.”).

for voice CPE would result in such consumers having to pay for two backup power sources when one would have been sufficient.

Finally, it is important to remember that even the legacy phone network does not work during some emergency situations. An ice storm or hurricane that takes down utility lines will not only cause a loss of power but also a loss of phone and cable service. Moreover, as demonstrated by Superstorm Sandy, copper facilities may be more susceptible to water damage than fiber facilities.<sup>16</sup> So even if it were the case that traditional POTS is more reliable on average than VoIP service (and there are no studies or reports in the record demonstrating that one technology or the other is more reliable), neither offers basic residential customers guaranteed levels of service and reliability and the Commission cannot use the past performance of legacy services as the basis for making VoIP providers solely responsible for powering CPE.

## **II. PROPOSALS TO REQUIRE BATTERY BACKUP FOR A SPECIFIC PERIOD OF TIME SHOULD BE REJECTED**

Most parties that support imposing a battery backup mandate suggest a specific period of time that the VoIP provider should be responsible for backup power ranging anywhere from eight hours to as much as seven days.<sup>17</sup> For the reasons explained above and in NCTA's comments, all of these proposals are expensive and unwarranted. The vast majority of customers are not relying on their VoIP service as their sole means of communicating and therefore there is no reason to require that every VoIP customer bear the cost of purchasing a backup battery.

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<sup>16</sup> Verizon Comments at 5 (“Decades of experience confirm that fiber is a safe, proven, and known technology with a track record of serving communities well. From the perspective of reliability, fiber is immune to many environmental factors that affect copper cable, and is less likely to experience outages during weather events or other public safety emergencies. Fiber lines are generally more durable, do not corrode, have a much longer lifespan, and require fewer repairs than copper lines.”).

<sup>17</sup> See *Notice* at ¶ 35 (8 hours); AARP Comments at 19 (12 hours); NASUCA Comments at 10 (24 hours); State 911 Coordinators Comments at 2 (24 hours); Public Knowledge Comments at 25-26.

Moreover, as NCTA explained, while the EMTA is connected to the cable network, it is located within the customer's premises and therefore not within full control of the cable operator.<sup>18</sup> As a result, once service is initiated, the customer is in the best position to access the device for purposes of installing a new or replacement battery. Consequently, to the extent the Commission imposes any legal obligations related to backup power (which should be limited to consumer education only), those obligations should apply only to the initial point of sale where providers and consumers already are interacting and customers can ask all their questions about availability and installation of backup power. Conversely, obligations such as battery monitoring or replacement that would require providers and consumers to devote time and resources to a technician visit should not be imposed. Focusing on the initial point of sale would be consistent with the Commission's existing requirements for disclosure of E911 limitations, which are focused on ensuring that the customer has sufficient information at the time service is initiated.<sup>19</sup>

Furthermore, any such rules should reflect the fact that not all CPE is designed with space for a dedicated battery.<sup>20</sup> Backup power for such equipment must come from a separate UPS device, which consumers easily can purchase at major retail outlets.<sup>21</sup> Any mandate that effectively forces the use of equipment that has space for a dedicated battery could have the effect of discouraging the development of innovative new CPE and denying consumers the benefits of improved equipment.<sup>22</sup>

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<sup>18</sup> NCTA Comments at 2 n.6.

<sup>19</sup> 47 C.F.R. § 9.5.

<sup>20</sup> NCTA Comments at 10.

<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> See AT&T Comments at 10 (“[O]nce the Commission establishes minimum backup power requirements, service providers inevitably will build systems to meet those requirements, rather than experimenting with new technologies and systems that might better meet their customers’ needs. Rules that establish de facto industry standards thus could delay or derail new devices and technologies that offer consumers cutting-edge features and functionalities they might otherwise desire.”).

In addition to advocating the mandatory provision of batteries, some parties also urge the Commission to prevent providers from recovering the costs attributable to such requirements from their customers.<sup>23</sup> There is no basis for this approach. As an initial matter, part of the reason that VoIP services have been so popular with consumers is that they often are less expensive than legacy POTS. So there is no basis for any suggestion that these restrictions are needed because cost savings attributable to new technology are not reflected in retail rates. Moreover, even if charges for batteries were not specifically identified, the cost associated with purchasing, distributing, maintaining, and replacing batteries ultimately will be borne by consumers of VoIP services, just like every other cost attributable to providing these services.

### **III. CONSUMER EDUCATION AND CHOICE SHOULD BE THE GUIDING PRINCIPLES OF COMMISSION ACTION IN THIS PROCEEDING**

NCTA and many other parties demonstrated that the Commission should reject proposals to impose any type of battery backup mandate on VoIP providers and instead focus on consumer education and voluntary industry efforts.<sup>24</sup> As AT&T explains, the Commission “should focus on educating consumers regarding the need for backup power to maintain continuity of service during power outages, their options for monitoring and maintaining backup power for the services consumers select, and how to prolong battery life during power outages. It also should continue to allow consumers to choose their communications services and the size, cost, and type of backup-power systems, if any, that best meet their needs.”<sup>25</sup>

Recent experience with Australia’s National Broadband Network (NBN) confirms the wisdom of this approach. The company operating the NBN reported in 2011 that the batteries were the biggest source of user complaints, with consumers objecting to the size and imposition

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<sup>23</sup> Public Knowledge Comments at 27.

<sup>24</sup> See, e.g., ACA Comments at 7; AT&T Comments at 13; CenturyLink Comments at 46-49.

<sup>25</sup> AT&T Comments at 13.

of being forced to take a battery that they did not want.<sup>26</sup> Australia's Green Party objected to the requirement on the basis that the deployment of unwanted batteries was environmentally harmful and wasteful.<sup>27</sup> Consumer research commissioned by the government showed that a majority of Australian consumers believed that the decision of whether to have a backup battery should rest with individuals.<sup>28</sup> After consultation with emergency services organizations, the Australian Communications and Media Authority (ACMA) eliminated the mandate, saving consumers "hundreds of millions of dollars,"<sup>29</sup> and instead required service providers to provide notice to consumers, as this Commission has already done. The ACMA Chairman explained that, "We are confident that the new service provider rules strike the right balance between ensuring consumers have the appropriate information to make an informed choice, while not imposing an unnecessary and costly burden on industry."<sup>30</sup>

There also is support in the record for the Commission to continue to work with industry to promote the voluntary best practices identified by CSRIC Working Group 10.<sup>31</sup> Working Group 10 identified a significant number of practices that could assist consumers in maintaining continuity of voice service during a power outage. Significantly, this list does not place all responsibility on service providers and it recognizes that a one-size-fits-all mandatory approach

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<sup>26</sup> See *NBN users complain about battery backup*, IT News for Australian Business, (Oct. 11, 2011), at <http://www.itnews.com.au/News/276366.nbn-users-complain-about-battery-backup.aspx#ixzz3QcfsnA7K>.

<sup>27</sup> *Id.*

<sup>28</sup> See *New rules for service providers about backup power supply for NBN voice services* (Aug. 22, 2014), at <http://www.acma.gov.au/Industry/Suppliers/A-Type-of-equipment/Telecommunications-equipment/new-rules-for-service-providers-about-backup-power-supply-for-nbn-voice-services>.

<sup>29</sup> *NBN turns opt-out for future builds; Batteries Now Optional*, IT News for Australian Business, (Aug. 8, 2012) <http://www.itnews.com.au/News/311334.nbn-turns-opt-out-for-future-builds.aspx>.

<sup>30</sup> See *New rules for service providers about backup power supply for NBN voice services* (Aug. 22, 2014), at <http://www.acma.gov.au/Industry/Suppliers/A-Type-of-equipment/Telecommunications-equipment/new-rules-for-service-providers-about-backup-power-supply-for-nbn-voice-services>.

<sup>31</sup> See AT&T Comments at 13-14; ACA Comments at 7.

will not work. In the absence of any evidence of significant problems,<sup>32</sup> this sort of broad-based, voluntary approach is the best way to supplement the Commission's existing disclosure rules and achieve the Commission's objectives.

### **CONCLUSION**

The capabilities of voice networks have been evolving for more than a decade, with customers increasingly choosing wireless and VoIP services to replace traditional POTS. Contrary to the claims made in some comments, consumers are embracing these changes and have proven themselves fully capable of ensuring that they have access to voice services during power outages. Accordingly, the Commission should reject calls for new mandates that would raise costs for VoIP customers and instead focus its attention on consumer education.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris  
Loretta Polk  
Jennifer K. McKee  
National Cable & Telecommunications  
Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, DC 20001-1431

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<sup>32</sup> See ACA Comments at 6 (“[The Commission] 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.’”).