

**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

REPLY COMMENTS OF HAWAIIAN TELCOM

Hawaiian Telcom (“HT”) hereby submits its reply in the above-captioned proceedings regarding the Federal Communications Commission (“FCC” or “Commission”) *NPRM* proposing to adopt rules associated with carriers upgrading networks to provide Internet Protocol (“IP”)-based service.¹ The Commission specifically requested comment on potential rules related to customer premises equipment (“CPE”) back-up power, copper retirements, and Section 214(a) discontinuance procedures.

HT agrees with the Commission that consumers should be informed about the technological capabilities of their services. Contrary to the assertions of consumer groups,

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

however, consumers are already aware of this issue and have taken responsibility for making communications available during emergencies, including CPE back-up power if the customer so chooses. Furthermore, under current law and rules, the Commission has already ensured that competitors have sufficient notice and safeguards regarding new services and network features. In order to establish technologically neutral regulations, to encourage advancements to networks and services, and to promote broadband deployment, the Commission should not adopt new, burdensome regulations governing a carrier's transition to new technologies. Rather, the Commission should focus only on encouraging carriers to provide reasonable consumer notice so that consumer expectations and choice are protected.

I. CPE BACK-UP POWER RULES ARE NOT JUSTIFIED GIVEN THE CURRENT CONSUMER-DRIVEN RESPONSIBILITY TO OBTAIN COMMUNICATIONS CAPABILITIES DURING A POWER OUTAGE.

The days are long gone when telephone service was offered through a single regulated provider in which only voice communications was offered over a self-powered copper wire and carrier provided CPE. This pre-*Computer II* market environment has long since been superseded with multiple customer-driven choices for services and CPE.² The deregulated CPE market has been a resounding success for competition policy and for consumers. In particular, since CPE was deregulated in the early 1980s, customers have shown a marked preference for purchasing CPE that requires a power source at the customer location, such as wireless handsets, which do not function during power outages absent back-up power. And most carriers do not provide CPE because consumers can obtain CPE that they want from multiple retail outlets and online retailers, such as Amazon, Walmart, and Best Buy.

² *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) ("*Computer II*").

Therefore, the central-office based back-up power voluntarily provided by incumbent Local Exchange Carriers (“ILECs”) is now largely irrelevant to the vast majority of consumers.³ Because consumers know whether their CPE functions during a power outage, they have undertaken the responsibility for their communications needs in emergencies, such as through use of a wireless phone, or customer-premises back-up power. The *NPRM* fails to recognize these current market facts.⁴ Any Commission requirements to mandate provider-controlled CPE back-up power is antiquated and unnecessary. Thus, HT supports the comments of Cincinnati Bell and NCTA in urging the Commission not to adopt specific CPE back-up requirements.⁵

If the FCC nonetheless believes that a voice communications provider that has voluntarily chosen to supply back-up power at the customer’s premises should entail minimum standards, the Commission’s rules should be flexible in order to take into account different technologies and battery capabilities. This approach is essential to avoid picking and choosing favored technology and equipment, a result that would stifle innovation and thus disserve consumers, as well as being inconsistent with the *NPRM*.⁶ The Commission’s federal advisory committee, the Communications Security, Reliability and Interoperability Council (“CSRIC”), has issued a report identifying the differences in these deployed technologies, noting the varying

³ The *NPRM* recognizes that such central-office based powering is not the subject of this rulemaking. *NPRM*, ¶ 33.

⁴ Comments of American Cable Association, PS Docket No. 14-174, *et al.*, 6-7 (dated Feb. 5, 2015) (“ACA Comments”).

⁵ Comments of Cincinnati Bell Telephone Company LLC, PS Docket No. 14-174, *et al.*, 6-8 (posted Feb. 5, 2015) (“Cincinnati Bell Comments”); Comments of the National Cable & Telecommunications Association, PS Docket No. 14-174, *et al.*, 6-9 (dated Feb. 5, 2015) (“NCTA Comments”).

⁶ *NPRM*, ¶ 94; Federal Communications Commission, Connecting America: The National Broadband Plan, GN Docket No. 09-51, 60 (rel. Mar. 16, 2010).

technological capabilities of back-up performance with the technology.⁷ Because every deployed solution entails unique advantages and disadvantages for particular consumers, singling out one feature among them all entails a severe risk of eliminating technologies that some consumers desire.

Therefore, a one-size fits all solution is inappropriate and would disserve customer interests. A fixed minimum duration requirement for voluntarily provided CPE back-up power, such as eight hours, is not realistic for most providers. The examples identified in the *CSRIC Back-Up Power Report* often entail less than eight hours of battery duration.⁸ The predominant length of power outages is four hours or less.⁹ Requiring back-up power for eight hours, or even a longer time period such as 24 hours,¹⁰ is therefore not required in the vast majority of power outages, and would be exceedingly burdensome to comply with.¹¹

In no event should a telecommunications provider be responsible for maintaining CPE back-up power even if it provides such back-up voluntarily or at the customer's request. The provider has no ability to monitor whether a customer's battery is functioning properly. Only the

⁷ See CSRIC IV Working Group 10B, CPE Powering – Best Practices; Final Report – CPE Powering, at 7-18 (September 2014) (*CSRIC Back-Up Power Report*) available at <http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf> (last viewed Mar. 5, 2015).

⁸ *Id.*

⁹ See, e.g., Comments of AT&T Services, Inc., on Notice of Proposed Rulemaking, PS Docket No. 14-174, *et al.*, 20 (dated Feb. 5, 2015) (“AT&T Comments”).

¹⁰ Comments of National Association of State 911 Administrators, PS Docket No. 14-174, *et al.*, 2 (posted Feb. 6, 2015).

¹¹ See, e.g., Cincinnati Bell Comments at 6-7. And the suggestion that back-up power be provided for seven days is simply enormously expensive, and not justified for the vast majority of power outages. See, e.g., Comments of Public Knowledge, Appalshop, Benton Foundation, Center for Media Justice, Center for Rural Strategies, Common Cause, The Greenlining Institute, Media Action Center, Media Literacy Project, National Consumer Law Center, on Behalf of Its Low-Income Clients, New American Foundation Open Technology Institute, Rural Broadband Policy Group, and TURN (The Utility Reform Network), PS Docket No. 14-174, *et al.*, 24 (dated Feb. 5, 2015). Such an over-the-top protection should be left to the choice of an individual consumer who desires such excessive protection, at his or her own cost.

consumer can efficiently monitor battery back-ups. At most, HT supports the best practices recommendations of the CSRIC that focus on provision of customer information and provision of affordable back-up power on request.¹² Such guidelines could be endorsed by the Commission, but should not be adopted as regulations. Regulatory mandates inhibit technological innovation, which is inconsistent with oft-repeated Commission policies as indicated previously.

HT believes, however, that consumer information is valuable in promoting efficient marketplace functioning, and that resulting customer-driven choices concerning CPE back-up power will promote consumer welfare. However, most customers already are aware of the need for back-up power during power outages for a wide variety of customer electrical equipment, and provide their own.¹³ Over half of customers already are taking voice service from IP-based voice providers, demonstrating they understand how their service functions and are willing to take over emergency communications responsibilities.¹⁴ In addition, existing voice companies already provide customer information along those lines.¹⁵ Given the clear success of such VoIP providers in the market, consumers apparently do not believe that they are obtaining inferior service from a VoIP provider. The Commission need only encourage such market-enhancing behavior, and there is no further need for burdensome requirements or certifications. There are no concrete examples in the record of the need for any further mandates or rules in order to protect consumers.

¹² Comments of CenturyLink, PS Docket No. 14-174, *et al.*, 47-48 (dated Feb. 5, 2015) (“CenturyLink Comments”); ACA Comments at 7.

¹³ *See, e.g.*, ACA Comments at 8-10.

¹⁴ AT&T Comments at 12.

¹⁵ *See, e.g.*, CenturyLink Comments at 48-9; NCTA Comments at 5.

II. NEW COPPER RETIREMENT POLICIES ARE UNNECESSARY.

The Commission has had ample experience with carrier retirement of copper-based services. There is simply no further reason that additional rules or procedures are required. Section 51.333 of the Commission's rules addressing copper retirements has been in place for ten years, and the rules are flexible enough to address any issues that have arisen under the rule. The Commission rightfully notes in the *NPRM* there are benefits to the copper retirement process and that promotion of network innovation should be encouraged.¹⁶ Required maintenance of copper-based features because a competitor is relying on the older technology undermines this goal. HT is particularly appreciative of the FCC's tentative conclusion that it does not believe it should institute an-approval based copper retirement process¹⁷ because such a requirement would be inconsistent with the statute, unnecessary, burdensome, and deter efficiency-enhancing behavior.¹⁸

Consumers in particular are capable of understanding how their service is changing. Given that most consumers' services do not change functionally when IP-based services replace older analog services, any further customer notice requirement associated with copper retirements is likely to be confusing and possibly counterproductive. Therefore, there is nothing useful to be gained by adding a specific consumer comment procedure when copper is retired.

At most, the Commission should encourage carriers to provide customers reasonable notice of any changes associated with copper retirement, including individual notices if the carrier determines that such methodology is more effective given the circumstances. Adoption of burdensome and unnecessary notice or certification requirements, such as an individual

¹⁶ *NPRM*, ¶ 15.

¹⁷ *Id.*, ¶ 56.

¹⁸ Comments of USTelecom, PS Docket No. 14-174, *et al.*, 7-9 (dated Feb. 5, 2015) ("USTelecom Comments").

customer mandate in all circumstances, is simply not required to protect consumer interests.¹⁹ If a carrier fails to provide reasonable notice consumers, the Commission could address such situations on a case-by-case basis.

In particular, HT urges the Commission not to adopt a rule that would prevent “upselling” of new and advanced services to consumers.²⁰ It is in the interest of consumers to receive information about their communications service needs and capabilities. An “upselling” prohibition would be anti-competitive, undermine the Commission’s goal of increasing adoption of broadband service, and violate the First Amendment right of carriers to provide valuable information to their clients on new products, services, and features.²¹ Because an “upselling” prohibition would be unlawful and a poor policy choice, it should be rejected.

III. THERE IS NO JUSTIFICATION FOR CHANGING CURRENT SECTION 214(A) REQUIREMENTS TO PROTECT WHOLESALE PROVIDERS.

Section 214(a) was adopted in 1933 in order to permit the Commission to review a carrier’s specific plans to discontinue a line or service to a community in order to protect consumers who have come to rely on those services. Over eighty years later, modifying those rules in light of the fact that there are multiple customer alternatives is unnecessary, burdensome, and inhibits a carrier from improving customer services. Section 214 notice requirements are not justified when a carrier discontinues wholesale services, a conclusion that is consistent with past precedent.²²

¹⁹ AT&T Comments at 36-41; USTelecom Comments at 9-10; Cincinnati Bell Comments at 12-13.

²⁰ *NPRM*, ¶72, *et seq.*

²¹ Cincinnati Bell Comments at 15-16.

²² *Id.*, at 20; CenturyLink Comments at 15; USTelecom Comments at 11-12.

In particular, the proposal to establish a rebuttable presumption that discontinuance of service of a wholesale service requires a discontinuance petition should be rejected.²³ This novel interpretation of Section 214 has no support in the law, and will only serve to force a network provider to maintain an antiquated network for the benefit of competitors, increasing its costs and therefore undermining its ability and incentive to innovate.²⁴

First, requiring that existing network services and/or features to be maintained in order to accommodate a competitor is unlawful. Section 251(c) requires only that existing network elements and services be offered to competitors, and public notice be given of a change in the network.²⁵ These are the requirements that Congress adopted to protect competitors. Section 214 serves an entirely different purpose, and contains no mandate to continue to provide an older service or network feature. Second, existing network notification procedures are sufficient to protect competitor interests. Third, the presumption would be anti-competitive, because it would force an existing carrier to maintain outdated networks, facilities, services, and features at its own cost, only for the benefit of a competitor. Given the state of the law and the market, competitors should not be able to control a network provider's offerings beyond the specific requirements of the law. Current Section 214 discontinuance and network notification procedures are adequate to give notice to wholesale customers so that they can take steps to ensure that their services to retail customers continue to function.

IV. CONCLUSION

The transition to technologically advanced networks, such as those represented by IP-oriented network features, is well underway. The Commission should be encouraging this

²³ *NPRM*, ¶ 102.

²⁴ *See* USTelecom Comments at 11-12; CenturyLink Comments at 18.

²⁵ 47 U.S.C. § 251(c)(3), (5).

transition rather than delaying network improvements by evaluating theoretical harms based on a market that no longer exists. Consumers are hungry for service improvements, and the Commission should encourage and foster such consumer demands by allowing the market to operate, free from its burdensome regulatory proposals. Rather, simple, flexible customer notice guidelines would be a far better method of protecting customer access to emergency services.

Respectfully submitted,

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