

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 AMERICAN CABLE ASSOCIATION

The American Cable Association (“ACA”)¹ hereby files reply comments in response to the Federal Communications Commission’s (“Commission’s”) Notice of Proposed Rulemaking (“NPRM”) in the Technology Transitions proceeding.² ACA again focuses its comments on the

¹ ACA represents over 800 independent cable operators, incumbent telephone companies, municipal utilities, and other local providers of video, broadband, and voice communications services using a variety of technology platforms. These providers offer service in smaller communities and rural areas, as well as by overbuilding other providers in urban and suburban markets. In aggregate, these providers pass nearly 19 million homes and serve nearly 7 million with video or broadband service. Approximately 2.75 million households subscribe to ACA members’ residential voice service, including non-nomadic VoIP service.

² See *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174, *Technology Transitions*, GN Docket No. 13-5, *Policies and Rules Governing Retirement of Copper Loops by*

issue of continuity of power for customer premises equipment (“CPE”) and its concerns with the rationale and proposals in the NPRM. It also responds to comments filed by other parties.

ACA agrees with the Commission that consumers should have reasonable access to emergency communications during power outages. However, any policies the Commission develops to implement this objective should be based upon market realities, including the various types of providers offering voice services, consumer expectations of service capabilities, and consumer subscription preferences. Only after the Commission makes such an assessment can it determine the benefits and costs of proposed regulations and then whether the imposition of any regulations on fixed voice service providers are warranted. ACA strongly believes that after such a rigorous examination, the Commission will find that there is no justification for imposing new “battery backup” and related regulations on fixed voice service providers.

In its initial comments, ACA explained:

- Approximately 75 percent of consumers already subscribe to voice service offered by providers not using line power copper thus demonstrating that they are willing to forgo this capability, which would enable them to access emergency communications during power outages without battery backup.³ Almost 50 percent of households have “cut the cord,” and that percentage is expected to continue to increase. Even where consumers still subscribe to wireline voice service, most all have the ability to use mobile service for emergency communications.
- ACA’s independent cable operator members providing voice service are acting responsibly to provide subscribers with the ability to make 911 calls and receive alerts during power outages. ACA members have adopted a variety of approaches to inform subscribers about backup power supplies for CPE as well as enable access to such backup power supplies, including standalone backup batteries with

Incumbent Local Exchange Carriers, RM-11358, Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Internet Special Access, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185 (rel. Nov. 25, 2014).

³ The number of consumers that make full use of the capability of line power copper is even lower than this figure suggests because many consumers still subscribing to line power copper use only cordless handsets.

uninterrupted power supply (“UPS”) functionality or UPS devices which have backup battery power.⁴

- By seeking to impose regulations only on fixed voice service providers, the Commission’s proposals on battery backup are neither technology nor competitively neutral and would only accelerate the trend to “cut the cord.”

Consequently, ACA submitted that the Commission’s proposed regulatory regime is unwarranted, imposing requirements that –

- Do not properly address any concern consumers might have about having adequate access to emergency communications during power outages;
- Are not necessary to ensure the cable operators provide reasonable notice or access to backup power capability; and
- Would be especially onerous for smaller providers.

ACA supports ensuring that consumers have reasonable access to emergency communications during power outages, but instead of acting on conjecture and adopting its proposals for fixed voice service providers, the Commission should consider how best to meet its “access to emergency communications” objective in light of the fact that, as *Time* proclaimed last July, “Landline Phones are Getting Closer to Extinction.”⁵ Most consumers have willingly moved from line power copper to other technologies for voice service – a trend that shows no sign of abating – and most consumers that still use line power copper for voice service also subscribe to mobile voice service.⁶ Only by proceeding based on these facts can the Commission

⁴ ACA has determined that its members provide notice as a standard practice. In addition, VoIP providers under the Commission’s rules (47 C.F.R. § 9.5(e)(1-3)) must disclose and obtain acknowledgement from the subscriber that the service will not work when there is a loss of electrical power and must provide a label for the modem used by each subscriber describing this limitation.

⁵ See “Landline Phones are Getting Closer to Extinction,” *Time* (July 8, 2014) available at <http://time.com/2966515/landline-phones-cell-phones/#2966515/landline-phones-cell-phones/>.

⁶ In addition, it is likely that many, if not most, consumers with wireline service have only cordless phones, which either have limited battery backup or none whatsoever. See Comments of the California Public Utilities Commission, PS Docket No. 14-174 et al., at 4 (Feb. 26, 2015) (“CPUC Comments”) (“The CPUC’s advocacy division...has obtained

meet its objective. In the meantime, it should educate consumers about their options and continue to facilitate the development, and encourage the use, of industry best practices concerning backup power during outages. This approach is largely consistent with the back-up power education policies California Public Utilities Commission has already adopted, which require all facilities-based providers to inform residential and small business customers about the nature and limitations of their voice service during power outages.⁷

ACA was far from alone in voicing this position. The National Cable & Telecommunications Association, for instance, concluded its comments by stating:

In today's marketplace, consumers have numerous options for the provision of voice service and numerous ways to ensure that they have the capability to make voice calls during a commercial power outage. Mandating that providers of VoIP service provide all consumers with battery backup capability would impose an unnecessary and wasteful "battery tax" on consumers. The better approach is for the Commission to work with VoIP providers on identifying network best practices and assisting with consumer education to ensure that all customers have the information they need to determine how best to stay connected when the power goes out.⁸

This view was shared by other trade associations representing providers of fixed voice service, including, ITTA⁹ and the United States Telecom Association,¹⁰ and by individual providers.¹¹

information showing that the 'take rate' for cordless phones vastly outstrips new purchase of cordless phones. Cordless phones also are not self-powered, and fail during a power outage.").

⁷ See CPUC Comments at 2-3. In its comments (at 3), the CPUC favors the Commission's imposition of battery backup requirements based on a staff study undertaken seven years ago; but, the CPUC has not yet decided to adopt such requirements itself.

⁸ See Comments of the National Cable & Telecommunications Association, PS Docket No. 14-174 and GN Docket No. 13-5. at 14 (Feb. 5, 2015).

⁹ See Comments of ITTA – The Voice of Mid-Size Communications Companies, PS Docket No. 14-174 et al. at 20 (Feb. 5, 2015) ("ITTA Comments") ("There is every indication that marketplace pressures are sufficient to guide the industry's response to any concerns regarding backup power of CPE during power outages without the need for regulatory intervention. Furthermore, because it is standard industry practice for interconnected VoIP providers to notify consumers regarding the potential limitations of IP-enabled voice services and equipment during a power outage, consumers have been

These providers have a history of commitment to providing reasonable access to emergency communications during power outages.¹² Moreover, they operate on the frontlines of today’s highly competitive voice service landscape. Every day, they see their customers migrating to mobile service or otherwise switching providers and need to be responsive to their needs, including for emergency communications. This view also was shared by vendors that make customer premises and related equipment for a wide array of providers and thus have their “fingers on the pulse” of the market. One of these vendors, Adtran, commented, “Telephone service subscribers have ‘voted’ with their choice of service providers, services and CPE, and they overwhelmingly have chosen not to have their CPE power by telephone companies’ copper loops.”¹³ This fact is particularly true for customers of ACA members that provide VoIP service.

and continue to be in a position to make informed decisions regarding their purchase of such services and take appropriate steps to address any concerns they may have.”).

¹⁰ See Comments of the United States Telecom Association, PS Docket No. 14-174 et al., at 3 (Feb. 5, 2015) (“USTelecom Comments”) (“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 services.”).

¹¹ See e.g. Comments of CenturyLink, PS Docket No. 14-174 et al., at 48 (Feb. 5, 2015) (“There is no evidence that regulatory mandates are needed: Service providers are increasingly communicating with customers about the issue of backup power and are sometimes providing backup power equipment, including batteries...By adopting CSRIC’s best practices as the ‘baseline requirements’ for service providers, vendors and customers, the Commission can achieve the objectives outlined in the NPRM with a light touch rather than a more severe interventionist approach.”); see also Comments of AT&T Services, Inc. on Notice of Proposed Rulemaking, PS Docket No. 14-174 et al. at 7-23 and Comments of Verizon, PS Docket No. 14-174 et al., at 17-22 (Feb. 5, 2015).

¹² See e.g. Comments of USTelecom at 6 (“The communications industry has been lauded for generally being ‘diligent in deploying backup batteries and generators’ at the network level and this same commitment exists for residential CPE.”).

¹³ See Comments of Adtran, Inc., PS Docket No. 14-174 et al., at 17-18 (Feb. 5, 2015) (“Adtran Comments”); see also *id.* at 19 where Adtran rebutted the NPRM’s use of a survey by Public Knowledge to justify its proposal (“Citing a Public Knowledge survey, the *NPRM* asserts that ‘45% of consumers surveyed keep their landline in addition to their cell phone because their landline continues to function during power outages.’

As explained in these comments, VoIP providers are required by Commission regulations to notify their customers that their CPE will not work during power outages.¹⁴ Yet, these customers still chose to subscribe to this service, even in the many instances where they had to incur an additional cost to obtain a battery or UPS device.

In contrast to the data-driven arguments of the opponents, the proponents of the proposed “battery backup” regulatory requirements skirt, if not completely ignore, the fundamental points that ACA explained at the outset of these comments: we are not at the beginning of the technology transition nor even at the mid-point; and consumers have been informed about the “power” capabilities of CPE used to access VoIP service and understand that mobile handsets require frequent charging and, even with these limitations, have elected to move in droves from

Actually, according to the description of the survey results, what that particular survey indicated was that of the consumers surveyed who had both a cell phone and a landline phone, 45% stated that ‘*a reason* you keep your landline phone at home, given that you also have a cell phone’ is that ‘[l]andline works when there’s an electric outage’. So, it is ‘a reason,’ not necessarily ‘the reason’ or a ‘primary reason.’ Moreover, it is not 45% of customers surveyed, but 45% of a subset of the customers surveyed (those that have both a cell phone and a landline, which is 47.7% of the households in the survey). So, assuming *arguendo* the validity of the Public Knowledge survey, *one* of the reasons 21.5% (45% x 47.7%) of those surveyed keep their landline is because it works when there is an electric outage. The Public Knowledge survey thus confirms consumers’ preferences as reflected in their purchase of services and CPE that do not rely upon telephone company-supplied power – the vast majority of consumers apparently do not view it as essential.”); Comments of Corning Incorporated, PS Docket No. 14-174 et al. at 5, 7 (Feb. 5, 2105) (“It would be a mistake for the Commission to ground a new [battery backup] rule in assumptions from the ‘past,’ instead of acknowledging and accounting for modern realities...Instead of adopting the proposed rule, the Commission should promote the development and implementation of CPE backup power solutions in cooperation with industry, perhaps through CSRIC. There are two advantages to this approach. First, a cooperative industry standard would...allow for the Commission to account for new challenges as consumers increasingly substitute wireless services for landlines...[and] to better account for improvements in battery design...Second, a cooperative standard gives providers the ability to preserve consumer choice.”); Comments of the Fiber to the Home Council Americas, PS Docket No. 14-174 et al., at 17-22 (Feb. 5, 2015).

¹⁴ See 47 C.F.R. § 9.5(e)(1-3).

line power copper to other networks without any demonstrable concern.¹⁵ Proponents of regulation, like the Commission, also fail to acknowledge the extent to which consumers rely – and will rely – solely or largely on mobile wireless service and that this service provides a reasonable backup during power outages even where consumers have not “cut the cord. Because they do not acknowledge these realities, proponents of regulation have no foundation upon which to base their support for the Commission’s proposals – and especially to call for more onerous regulations.

Not only is there no immediate and substantial problem to address – and not only does a solution directed only at fixed providers head in the wrong direction – but the Commission’s proposal regulatory regime for fixed providers raises many problems. Specifically, the Commission’s proposal to require that wireline providers be responsible for eight hours of

¹⁵ See *e.g.* Public Knowledge Comments at 5 (“some consumers have already decided they are willing to switch to new technologies.”). The Pennsylvania Public Utility Commission, for instance, fails to acknowledge this fact. It leads its arguments by submitting “that consumers receiving voice telephone service over legacy copper networks rightly became accustomed to retaining the ability to use their landline phones even when in the midst of a commercial power outage,” and that “even in a prolonged outage lasting days or weeks, central offices typically backup power capabilities that can ensure continuous voice service over copper to residences for the duration of the outage.” See Comments of the Pennsylvania Public Utility Commission, PS Docket No. 14-174 et al. at 4 (Feb. 5, 2015). But, as discussed herein, only about 25 percent of voice service customers still use legacy copper facilities and a similar number have willingly moved to either mobile wireless or non-line power VoIP service. In addition, many of line power subscribers use only cordless handsets. Thus, only a fraction of consumers, a number which continues to dwindle, may have an expectation about their voice line working during power outages. As for central office power, as the California Public Utilities Commission notes in its comments (at 4), “many customer premises are often served by remote terminals which themselves are battery-powered during a power outage.” The National Association of State Utility Consumer Advocates (“NASUCA”) at least admits “the crucial fact that more consumers rely now on ‘network alternatives’” without line power, although it does not discuss the great extent to which this has occurred. Moreover, NASUCA ignores that the fact VoIP consumers have done so with knowledge that this service will not work without commercial power. See Comments of the National Association of State Utility Consumer Advocates on Notice of Proposed Rulemaking and Declaratory Ruling, PS Docket No. 14-174 et al. at 9 (Feb. 5, 2015).

battery backup for CPE¹⁶ has numerous shortcomings beyond the fact that its costs substantially exceeds any benefit: it ignores the fact in most instances the provider does not have access to or control of this customer equipment, especially after the initial point of sale; it does not account for the fact that consumers can (and do) readily purchase more capable UPS devices; it makes most customers (those who do not see the need for this capability) shoulder the burden for the limited group that wants battery backup; and, it may limit the development of better solutions.¹⁷

As such, this specific proposal should be rejected.

The FCC's other proposals also are flawed. ITTA, for instance, pointed out:

- Although the Commission suggests affected providers would only be required to provide sufficient power for “minimally essential” communications during power outages, as a practical matter there is no way to maintain power continuity for some, but not all services...It would be technically difficult, if not impossible in some cases, for providers to distinguish among certain types of calls or functions in a way that would allow them to rapidly load-shed non-essential communications services to conserve backup power for minimally essential communications.¹⁸
- The Commission's suggestion that affected providers should somehow be involved in ensuring consumers can self-provision CPE backup power...is particularly overreaching. Carriers typically have no role in the market for battery backup equipment.¹⁹

¹⁶ See NPRM, ¶ 35.

¹⁷ NCTA in its comments elaborates on the many concerns with battery backup requirements. See NCTA Comments at 10-12. In addition, the flaws in the battery backup proposal are compounded by the proposals of parties, such as Public Knowledge, that seek to have the Commission mandate even greater battery lifetime. See Comments of Public Knowledge *et al.*, PS Docket No. 14-174 et al. at 6 (Feb. 5, 2015) (“Public Knowledge Comments”) (“at least seven days of backup power”). These proposals ignore the high costs of such a requirement along with the many logistical and sustainability issues. See also CPUC Comments, n. 9. The CPUC staff found in 2008 that “[a]dopting a greater standard above 8 hours increases costs relative to the extra security provided. The CPUC in its comments suggests that battery technology may have improved and that the Commission may wish to conduct a new analysis. ACA supports additional fact-gathering and analysis, which, as discussed herein, is not contained in the NPRM or comments of proponents of the Commission's proposals.

¹⁸ See ITTA Comments at 20-21; see also NCTA Comments at 12 (“VoIP providers cannot control how a phone is used when it is running on battery power, nor do they know which communications are essential to each customer.”).

¹⁹ See ITTA Comments at 21; see also NCTA Comments at 11 on the related point that even if the provider supplies a battery, the customer often does not install it (“Experience

Additionally, NCTA submitted that the Commission’s proposal to standardize CPE power, while theoretically possible, is speculative and provides no support for current regulation and “could thwart beneficial development by diverting significant resources to the replacement of current equipment or provisioning of new equipment.”²⁰

In sum, ACA along with many other commenters support the Commission’s aim that consumers have access to emergency communications for 911 service and to receive alerts during power outages. But, they oppose its proposed regulatory regime based on legitimate and substantial concerns that it does not account for market facts and that the costs for specific proposals far outweigh their benefit. Instead, they provide the Commission with a path forward by supporting greater consumer education and by offering industry support for the development of best practices. ACA looks forward to working with the Commission on this basis.

has shown that many customers will not install a replacement battery even if the operator sends it directly to customer.”).

²⁰ See NCTA Comments at 12-13; *see also* Adtran Comments at 20-21, where it questions a number of the proposals in the NPRM, *e.g.* “[FCC Proposal:] Should providers be expected to standardize CPE power supplies and connector interfaces across network devices and CPE, so that a common battery backup unit can be used in the home with multiple devices.’ [Adtran Question:] How are carriers supposed to require standardized CPE when carriers have no control over what CPE a customer buys or installs?”

Respectfully submitted,



AMERICAN CABLE ASSOCIATION

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Senior Vice President of
Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

Thomas Cohen
Kelley Drye & Warren LLP
Suite 400
3050 K Street, NW
Washington, DC 20007
Tel. (202) 342-8518
Fax (202) 342-8451
tcohen@kelleydrye.com
Counsel to the
American Cable Association

March 9, 2015