

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

New America’s Open Technology Institute, American Civil Liberties Union, American Library Association, Benton Foundation,¹ Brennan Center for Justice, Center for Democracy & Technology, Center for Digital Democracy, Consumer Action, Consumer Federation of California, Consumer Watchdog, Defending Dissent Foundation, Electronic Frontier Foundation, Privacy Rights Clearinghouse, Public Knowledge, Sunlight Foundation, and U.S. PIRG (collectively “privacy advocates”) respectfully file these reply comments in response to the Commission’s Notice of Proposed Rulemaking on issues related to the technology transitions.² These reply

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

² *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*

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comments urge the Commission to respond to concerns regarding consumer privacy in the technology transitions, especially with respect to location information of phone customers.

In initial comments filed in this docket, Public Knowledge, et al. highlighted privacy concerns, urging the Commission to “consider how well [each new] technology enables and delivers . . . consumer protections,” including privacy.³ Public Knowledge, et al. specifically “urge[d] the Commission to consider the remaining privacy concerns that were not addressed in the recent E911 Order in addition to the privacy implications of other new phone network technologies.”

Privacy advocates agree. Indeed, privacy advocates recently filed comments and several ex parte notices regarding privacy in the proceeding on *Wireless E911 Location Accuracy Requirements*.⁴ In those filings, privacy advocates explained that it is critical for the Commission to address privacy concerns associated with E911 at this stage, before new location technology is developed and deployed, so that entities that must comply with the E911 rules can plan the development and deployment of new location technology in accordance with privacy guidelines. It would be much more difficult to implement privacy safeguards after the technology has already been deployed.

In the E911 proceeding, privacy advocates urged the Commission to update its privacy rules, including the rules pertaining to customer proprietary network information (“CPNI”), in the context of the technology transitions rulemaking.⁵

(footnote continued)

Special Access Services, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, ¶ 1 (rel. Nov. 25, 2014).

³ Comments of Public Knowledge, et al., GN Docket No. 13-5 (filed Feb. 5, 2015), at 13.

⁴ Comments of Public Knowledge, et al., PS Docket No. 07-114 (filed Dec. 15, 2014); Letter from New America’s Open Technology Institute, et al. to Chairman Wheeler and Commissioners, PS Docket. No. 07-114 (filed Jan. 13, 2015) [hereinafter Jan. 13 Letter re E911]; Ex Parte Notice of New America’s Open Technology Institute, et al., PS Docket No. 07-114 (filed Jan. 22, 2015) [hereinafter Jan. 22 Ex Parte re E911].

⁵ Jan. 13 Letter re E911 at 4; Jan. 22 Ex Parte re E911 at 5.

Specifically, privacy advocates recommended that the FCC update its privacy rules to do the following:

- Require carriers and others obligated to comply with improved E911 location accuracy requirements to treat location information derived from responsive technologies as CPNI.
- Require carriers and others obligated to comply with improved E911 location accuracy requirements to afford all entries in NEAD the same protections afforded to CPNI.
- Require telecom carriers, cable operators, and satellite operators that offer wireless consumer home products to provide consumers who purchase or use such products to opt out of including their products in NEAD.
- Require carriers and others obligated to comply with improved E911 location accuracy requirements to ensure that location information and NEAD are secure.

As privacy advocates previously explained, the Commission possesses the necessary authority to make these updates to privacy rules under the § 201(b) just and reasonable standard, its § 222 authority governing CPNI, its §§ 303(b) and (r) authority to set service rules, its § 338 satellite privacy authority, and its § 551 cable privacy authority. In addition, clarifying that carriers' CPNI obligations extend to information derived from technologies devised to respond to the Commission's E911 rules would be consistent with the Commission's June 2013 Declaratory Ruling regarding Carrier IQ, which found that "the definition of CPNI in section 222 and the obligations flowing from that definition apply to information that telecommunications carriers cause to be stored on their customers' devices when carriers or their designees have access to or control over that information."⁶

Telecommunications customers have long relied on the privacy protections of the Communications Act and the Commission's attendant rules to protect their

⁶ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Declaratory Ruling, 28 FCC Rcd 9609, 9611 (June 27, 2013) at ¶ 8.

personal information from unwanted disclosure. To ensure that consumers continue to enjoy the important protections they have come to rely on even as phone networks and location technologies change, the Commission must update its rules accordingly.

Respectfully submitted,

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American Civil Liberties Union
American Library Association
Benton Foundation
Brennan Center for Justice
Center for Democracy & Technology
Center for Digital Democracy
Consumer Action,
Consumer Federation of California
Consumer Watchdog
Defending Dissent Foundation
Electronic Frontier Foundation
Privacy Rights Clearinghouse
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For Commenters
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