

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Ensuring Customer Premises Equipment	)	PS Docket No. 14-174
Backup Power for Continuity of	)	
Communications	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement Of	)	
Copper Loops by Incumbent Local Exchange	)	RM-11358
Carriers	)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers	)	
AT&T Corporation Petition for Rulemaking	)	
to Reform Regulation of Incumbent Local	)	RM-10593
Exchange Carrier Rates for Interstate Special	)	
Access Services	)	

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES  
ON NOTICE OF PROPOSED RULEMAKING**

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**I. INTRODUCTION AND SUMMARY**

It is no coincidence that the comments of the largest carriers/network owners – AT&T, Comcast, Time Warner, Verizon – and large network owners – CenturyLink, ITTA – are opposed to the Commission's proposals designed to ensure that the nation continues to receive robust, reliable, affordable and ubiquitous telephone service. The Commission's proposals address the need to ensure that telephone service functions during power outages; that incumbent

local exchange carriers' ("ILECS") copper retirement practices do not harm either consumers or the competitors that rely on essential copper network facilities; and that proposals to discontinue service must not jeopardize the health, safety and welfare of the customers who depend on reliable, affordable telephone service.<sup>1</sup>

The largest carriers wrongly claim that the Commission's proposals would harm customer interests. For example, Verizon argues, "[S]ome of the proposals on providing back-up power would actually limit customers' choices or restrict their abilities to take advantage of the multiple options already available to them."<sup>2</sup>

One goal of the Commission's proposals is to ensure that regardless of which services customers choose, the choices will all continue to provide reliable, ubiquitous service. Network evolution should not equate to a decline in either service reliability or availability. Verizon and other network owners have obligations under federal and many state statutes to provide reliable, affordable, ubiquitous service regardless of the technology used to provide the service. The ILECs and their holding companies have benefited from decades of public interest regulation, including market monopoly and favorable access to public rights of way. While some carriers now desire to follow business plans that incorporate service that does not work during power outages, or to withdraw from providing landline service, the Commission is to be applauded for acting to ensure that the public interest obligations set forth in the Communications Act of 1934 will continue to apply as networks evolve.

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<sup>1</sup> See also Corning Comments. Corning is a major supplier of fiber optic cable to large telecommunications carriers. See, for example, <http://optics.org/news/5/12/7>.

<sup>2</sup> PS 14-174, et al., Verizon Comments at 3. (Unless otherwise mentioned, all references are to comments in these dockets.)

In its comments,<sup>3</sup> the National Association of State Utility Consumer Advocates (“NASUCA”) supported most of the proposals of the Federal Communications Commission (“FCC” or “Commission”) in the Notice of Proposed Rulemaking and Declaratory Ruling (collectively, “NPRM”)<sup>4</sup> to ensure reliable service during power outages; to allow consumers a voice in when their copper facilities are retired, and to ensure that these usable facilities are not wasted; and to open up the service discontinuance process so that it is not just a formality.

These NASUCA reply comments principally respond to industry opposition to the FCC proposals intended to preserve the enduring values of the Act – competition, consumer protection, universal service, and public safety and national security.<sup>5</sup> In particular, in response to Verizon’s claims, NASUCA proposes detailed requirements for backup power based in large part on the work of the Office of the People's Counsel for the District of Columbia (“D.C. OPC”), a NASUCA member.

USTelecom asserts that the Commission “must make sure that its policies and regulations ... reflect the importance of ensuring that technology transitions are allowed to occur unencumbered by unnecessary and unwarranted restrictions and obligations.”<sup>6</sup> From the consumer perspective, the companies should **not** be able to avoid necessary and warranted restrictions and obligations. For example, Verizon makes extensive assertions regarding the

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<sup>3</sup> NASUCA Comments (February 5, 2015).

<sup>4</sup> FCC 14-185 (rel. November 25, 2014).

<sup>5</sup> Id., ¶ 1; see NASUCA Comments at 1-2; Public Knowledge, et al. Comments at 4. (Two of the parties to the Public Knowledge comments – National Consumer Law Center and TURN (The Utility Reform Network) – are affiliate and associate NASUCA members, respectively.)

<sup>6</sup> USTelecom Comments at 2. USTelecom also asserts that “[f]axing, alarm monitoring services, and the like will continue to be available to consumers post-transition.” Id. These claims are not supported in USTelecom’s Comments.

benefits of fiber<sup>7</sup> in an effort to support its opposition to the Commission's proposed requirements for copper retirement. Verizon sidesteps very real concerns about the failure of fiber-based networks during power outages, and neglects to mention that its failure to properly test and maintain back-up power in its own central office facilities led to a lengthy 911 outage affecting millions of Verizon customers in Northern Virginia.<sup>8</sup> Advances in network technology need not and must not diminish service reliability, and the Commission's proposals are aimed at ensuring this.

The American Cable Association (“ACA”) asserts that “[t]he vast majority of consumers ... have already demonstrated that they are willing to forgo copper facilities with line power to access emergency communications during power outages.”<sup>9</sup> And Cincinnati Bell Telephone (“CBT”) says, “This subject should be left to the market to solve.”<sup>10</sup> To the contrary, the public interest does not permit network owners to allow customers to be without adequate power backup, and, given the level of externalities and public goods involved, the market is unlikely to solve this “subject.” Further, there are efficiencies of scale and scope to be gained in requiring the industry to be responsible. Public Knowledge, et al. correctly state, “[I]f people feel assured that new technologies will be just as ubiquitous, reliable, and affordable, and will operate under

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<sup>7</sup> Verizon Comments at 4-8. “Verizon estimates it has made approximately 1.4 million fewer repair or troubleshooting dispatches than would have been required had these customers remained on copper facilities.” Id. at 5. Replacing old, deteriorated (and depreciated) copper with **any** new facilities (fiber, new copper, etc.) would lead to fewer repairs.

<sup>8</sup> Impact of the June 2012 Derecho on Communications Networks and Services, FCC (January 20, 2013), at 16, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-318331A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-318331A1.pdf).

<sup>9</sup> ACA Comments at 1; see also National Cable and Telecommunications Association (“NCTA”) Comments at 1, 3. ACA’s and NCTA’s comments address only back-up power.

<sup>10</sup> CBT Comments at 3.

the same basic consumer protections, they can transition safe in the knowledge that they will not fall through the cracks in the process.”<sup>11</sup>

ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) states that “several of the proposals in the NPRM single out ILECs for disparate regulatory treatment and would continue to place ILECs at a competitive disadvantage in comparison to their cable and wireless competitors.”<sup>12</sup> The rules on back-up power affect ILECs to the extent that they have moved to network technology that will cease to support telephone service during power outages, but are also intended to place requirements on carriers other than ILECs.<sup>13</sup> The copper retirement proposals affect ILECs **because they own the copper that they seek to retire**. Finally, in this converging world, it also makes sense to extend the facilities retirement rules to **all** types of communications networks –copper, fiber, and coax – in order to protect consumers on those interconnected networks. All such networks should be unbundled, to enhance competition and benefit consumers.<sup>14</sup> Likewise, the service discontinuance rules should apply to all providers of essential service, especially carriers that serve as Eligible Telecommunications Carriers, provide Lifeline or receive universal service support.<sup>15</sup> The answer to uneven regulation is not necessarily **less** regulation. Extending consumer protection and other regulation to newer services that consumers have come to rely on is instead the proper answer.

CenturyLink claims, “[O]utdated rules require [ILECs] to maintain abandoned facilities and increasingly obsolete services, diverting precious capital away from next-generation

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<sup>11</sup> Public Knowledge, et al. Comments at 5 (footnote omitted).

<sup>12</sup> ITTA Comments at 2; see also CenturyLink Comments at iii. .

<sup>13</sup> NPRM, ¶ 2.

<sup>14</sup> The Commission recently addressed this subject in the 2015 Open Internet Order, by forbearing from applying §§ 251 and 252 to broadband Internet access service. See <http://www.fcc.gov/document/fcc-adopts-strong-sustainable-rules-protect-open-internet> (February 26, 2015). But see Windstream petition (WC Docket No. 15-1) to ensure unbundling of the facilities it uses to provide competition.

<sup>15</sup> See ITTA Comments at 4.

networks.”<sup>16</sup> CenturyLink does not cite a single existing Commission rule that requires maintaining such abandoned facilities to support its claim. The rules proposed in the NPRM, on the other hand, prevent unnecessary abandonment and the failure to maintain and hence *de facto* “abandonment” of facilities that are still in use. The fact that next-generation networks are being developed does not make present-day facilities obsolete. Nor does it mean that either retail or wholesale customers lack good reason for continuing to prefer the present-day facilities. In distinct contrast to CenturyLink, Windstream – a similarly-sized carrier – acknowledges the importance of access to network facilities for competition.<sup>17</sup>

On the subject of competition, AT&T asserts that

[t]he Commission should not adopt a rebuttable presumption that every discontinuance of a service to wholesale customers necessarily results in a discontinuance or impairment of service to end-user customers. There is no basis for presuming this to be true; all evidence suggests that it rarely will.<sup>18</sup>

But AT&T cites no evidence in support of this contention.<sup>19</sup> AT&T also asserts that “§ 214 is not designed to protect carriers but to protect the public.”<sup>20</sup> In this particular instance, protecting the public requires ensuring that market-dominant carriers do not deny CLECs’ access through which the CLECs’ **customers** (part of the public) are served.

Finally, CBT says the Commission “should recognize that times are changing and that the vast new benefits and services being introduced by network transformation outweigh the desire

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<sup>16</sup> CenturyLink Comments at iii; see also *id.* at 7.

<sup>17</sup> Windstream Comments at 2. Windstream describes itself as the fifth largest ILEC in the nation and as “a company with interests nearly evenly weighted between incumbent and competitive local exchange carrier operations....” *Id.* at 1. CenturyLink actually describes its own reliance on wholesale access. CenturyLink Comments at 14-15.

<sup>18</sup> AT&T Comments at 2; see also *id.* at 50-52. CenturyLink, on the other hand, seeks a rebuttable presumption in favor of discontinuance. CenturyLink Comments at 20-23. That would be worse for customers than no change at all to the FCC’s retirement rules.

<sup>19</sup> See AT&T Comments at 50-52.

<sup>20</sup> *Id.* at 3. Likewise, no support for this contention.

of a few to cling to the past.”<sup>21</sup> In referring to “a few,” CBT utterly belittles the majority of consumers who reasonably continue to rely on continuing telecommunications service<sup>22</sup> under the **enduring** values of competition, consumer protection, universal service, and public safety and national security.

## II. CPE BACK-UP POWER

### A. General Comments

The NPRM correctly points out that CPE backup power is a “significant issue that must be addressed to ensure continuity of service” regardless of whether the issue arises in the context of copper retirement or customer use of services on networks that do not provide line power to the customer premises.<sup>23</sup> Consumer advocates and 911 providers emphasize the need to adopt robust backup power requirements to ensure public safety. As Public Knowledge, et al. state,

Network reliability is especially critical in the days immediately before, during, and after natural disasters or other incidents that can cause power outages, and it is crucial that people stay connected during the times they are most likely to need to call for help or contact loved ones.<sup>24</sup>

The need for backup power requirements is echoed by the National Association of State 911 Administrators:

As the NPRM noted, American consumers of traditional voice telephone services have come to rely on the fact that they will continue to have phone service even during a commercial power outage. The transition from legacy copper loops to other network technologies means that an important safety net - Central Office

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<sup>21</sup> CBT Comments at 3.

<sup>22</sup> Which now includes broadband Internet access service. per the Open Internet Order. See footnote 14, supra.

<sup>23</sup> NPRM at ¶ 6.

<sup>24</sup> Public Knowledge, et al. Comments at 30.

provisioning of line power to the customer premises - will disappear unless the Commission takes action to mitigate it.<sup>25</sup>

Some industry commenters oppose any back-up power requirements at all or, at most, suggest that the Commission take minimal action aimed primarily at customer education. For example, Corning asserts that consumers do not need backup power for landlines, because they are increasingly relying on cell phones during commercial power outages. Corning suggests that the Commission should not adopt battery requirements but, instead, should collaborate with industry to develop cooperative standards.<sup>26</sup> Similarly, AT&T argues that only minimal requirements are necessary because customers have become accustomed to using telephone services that depend on commercial power. AT&T argues that customers should be required to provision backup power.<sup>27</sup>

The argument that the national communications system, which is essential during emergencies, should be less reliable during power outages than the legacy network is short-sighted and ignores the central role that central office-powered legacy telephone networks play in ensuring public safety. For example, backup power is increasingly important as “smart grid” technology is becoming more prevalent in commercial power systems. The smart grid, however, is vulnerable to network control malfunctions and cybersecurity threats that could result in large scale service disruptions.<sup>28</sup> Americans should not also lose their telephone service when the electricity is out, especially during natural disasters or other widespread emergencies. This point

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<sup>25</sup> National Association of State 911 Administrators Comments at 1-2.

<sup>26</sup> Corning Comments at 4-7.

<sup>27</sup> AT&T Comments at 10-12.

<sup>28</sup> See, for example, Miles Keogh, Christina Cody, CYBERSECURITY FOR STATE REGULATORS, 2.0, National Association of Regulatory Utility Commissioners (Feb. 2013) <http://www.naruc.org/grants/Documents/NARUC%20Cybersecurity%20Primer%202.0.pdf>.

was addressed in the 2013 National Association of Regulatory Utility Commissioners ("NARUC") research paper:

If the industry has and relies on control systems, then it also has vulnerabilities to exploit. In addition to having electrically-dependent control systems, regulators must consider the interdependencies of their regulated entities where an electric outage affects gas, telecommunications and other rate-payer services to an exponential degree on top of the acute affects on the electric grid.<sup>29</sup>

#### B. Verizon's Backup Power Claims are Overstated

Verizon claims that companies such as Comcast, Cablevision and Cox offer batteries with eight hours of backup and Time Warner offers a battery with a choice of eight or twelve hours.<sup>30</sup> Verizon offers no evidence to support these contentions, for its FiOS service, or for services provided by other carriers.

There is reason to believe that Verizon's claims are overstated. Testimony submitted on behalf of the Office of the People's Counsel for the District of Columbia ("D.C. OPC") before the Public Service Commission of the District of Columbia ("D. C. PSC") rebuts Verizon's assertions about back-up battery life. The testimony was prepared based in part on an extensive review of discovery and other evidence pertaining to Verizon's backup batteries.

Verizon claims its FiOS backup battery lasts eight hours. In reality, Verizon's eight hours,

does not allow for any 'talking time' or usages of data and video service. A customer who actually uses the network during the grid power outage will find that he or she has less than eight hours of service before the battery discharges.<sup>31</sup>

Verizon's purported battery life is for **stand-by** time, not talk time. A fully functioning Verizon battery will provide, at most, two hours of talk time and eight hours of standby time.<sup>32</sup> As Public

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<sup>29</sup> Id., at 12.

<sup>30</sup> Verizon Comments at 18.

<sup>31</sup> D.C. Public Service Commission, Formal Case No. 1102, Exhibit OPC (A ), Direct Testimony and Exhibits of Peter M. Bluhm, Esq., Robert Loube, Ph.D., David J. Malfara, Sr. on Behalf of the Office of The People's Counsel for The District of Columbia, September 3, 2014 at 45. ("OPC Direct") (Redacted version).

Knowledge et al note, "the actual duration time of the battery depends on its use - the more calls placed, the more quickly the backup power is depleted."<sup>33</sup>

Moreover, batteries deteriorate as they age. As batteries deteriorate, failure becomes an issue. Verizon has claimed that backup batteries are expected to last for approximately seven years at room temperature, but in other proceedings Verizon has stated that batteries will last between one and four years.<sup>34</sup> When batteries deteriorate, the length of time for which backup power is provided declines, as explained in D.C. OPC testimony:

This reliance on customer-provided power poses a significant risk to the effectiveness of emergency response efforts in general. The Verizon representation that 'up to 8 hours' of continued operation is made possible by use of the BBU, is most likely based on the performance expectations for a new, unused battery. However, it is likely that in the normal lifetime of a battery, there are several electric utility power outages, and several times when the backup battery is fully drained. This affects later performance. During a subsequent extended outage, such a battery may provide a period of backup time somewhat less than its assumed performance, if it were new. If the practical, operational life of such 'seasoned' batteries should degrade over time to four hours (or less), customers could easily find themselves without voice telephone access to emergency services during a natural disaster.<sup>35</sup>

Backup batteries are vulnerable to both technical failure and human error. As noted in the D.C.

OPC testimony:

Of particular concern is when there is a loss of power, a battery failure and human incapacity at the same time. That combination of circumstances can be common in any natural disaster - precisely when call and response capabilities for emergency services are most critical.<sup>36</sup>

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<sup>32</sup> Id., Exhibit OPC (2A); and Rebuttal Testimony and Exhibits of Dr. Robert Loube and Messrs. Peter M. Bluhm and David J. Malfara, Sr. on Behalf of the Office of The People's Counsel for The District of Columbia, October 24, 2014 at 20. ("OPC Rebuttal") (Redacted version).

<sup>33</sup> Public Knowledge, et al., Comments at 26.

<sup>34</sup> OPC Direct, at 44-45.

<sup>35</sup> Id., at 62-63.

<sup>36</sup> Id., at 62.

Verizon now informs the FCC that it is "rolling out a new approach that uses standard D-Cell batteries that are more readily available and replaceable than 12 volt batteries and that provides back-up power for up to 24 hours (which can easily be extended by customers)."<sup>37</sup> As stated in the OPC testimony, Verizon calls this the D-Cell Power Reserve system. Once again, Verizon provides no information about its new approach but asks this Commission to take the statement on faith.

The D.C. OPC expert witnesses examined Verizon's new approach in great detail and concluded that the D-Cell approach has significant problems. The D-Cell system cannot be recharged. It does not use rechargeable batteries or lithium batteries. As explained in the OPC testimony,

Unlike the existing battery backup system, the D-Cell system apparently does not recharge batteries drained during a grid power outage. This reduces battery life and increases the chances that a slightly inattentive customer will be without voice service during the next succeeding grid power outage.<sup>38</sup>

As further stated in the OPC testimony, "the Alarm Industry Communications Committee ('AICC') has taken the position that D-cell batteries are unreliable and that the alarm industry stopped using such batteries by the early 1970's."<sup>39</sup> The D-cell system appears

incapable of power-failure automatic cut-through, a capability that would allow the unit to sense the interruption of commercial power and automatically activate the battery system. Instead, the instructions advise the customer to turn the unit on when a commercial power failure occurs. In other words, manual intervention of the customer is required to activate the backup power. Presumably, the customer must also remember to turn the unit off when commercial power is restored in order to disengage the battery system.<sup>40</sup>

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<sup>37</sup> Verizon, Comments at 18.

<sup>38</sup> OPC Rebuttal at 35

<sup>39</sup> *Id.*, at 34. *See*, also, AICC, Comments, at 7.

<sup>40</sup> *Id.*,

The evidence before the D.C. PSC showed that this Commission should not rely on Verizon's assertions regarding backup battery life, or the sufficiency of its D-cell backup battery system.

### C. Conclusion on Backup Power

Under the Commission's proposed requirements, providers would be responsible for providing CPE backup power during the first eight hours of an outage.<sup>41</sup> Upon reviewing other comments and evidence from the D. C. PSC proceeding, NASUCA agrees with other parties that the eight hour requirement is insufficient. The Ad Hoc Telecommunications Users Committee, representing business customers, urge the Commission to adopt a standard that obligates carriers to provide backup power for at least 24 hours.<sup>42</sup> Based on the fact that network reliability is particularly critical in the days immediately following natural disasters and on a review of the recommendations of natural disaster preparedness guidelines, Public Knowledge, et al., "believe that **seven** days is a reasonable backup time requirement that helps consumers remain safe before and during a natural disaster, and rebuild after the event."<sup>43</sup> Further, based on its review of evidence regarding long-term power outages after large-scale extreme weather events, the Environmental and Energy Study Institute recommends a CPE backup system that lasts a minimum of 10 days, and perhaps longer in "communities that are particularly reliant on landline service, or experience more frequent outages than average."<sup>44</sup>

The Commission should adopt a standard that takes the rapid evolution of battery technology into account, and provides incentives for further improvement. For example, the OPC testimony identified a lithium battery with an advertised capacity of 25 Amp-hours, three

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<sup>41</sup> NPRM, ¶ 35.

<sup>43</sup> Public Knowledge et al, Comments at 25-26 (emphasis added).

<sup>44</sup> Environmental and Energy Study Institute, Comments at 3.

times the capacity of Verizon's current sealed lead acid backup battery, which also weighs less than Verizon's current lead acid battery. This battery currently costs \$399.95<sup>45</sup>

NASUCA recommends that the Commission establish an initial requirement that for all new installations carrier provided backup batteries should have the ability to provide 8 hours of talk time and 24 hours of standby time<sup>46</sup> and be provided with the 25 amp lithium ion battery identified in OPC's testimony. At a minimum, first responders and customers who have medically certified disabilities, described by OPC as Government Emergency Telecommunications System (GETS) eligible individuals, should be receive the 25 amp lithium ion battery free of charge.<sup>47</sup> The Commission should monitor advances in battery technology. As soon as battery technology permits - immediately, if the technology is available now at a cost deemed reasonable by the Commission - the Commission should require providers to furnish backup batteries with 7-day stand-by time and 24 hour talk time. Other battery backup requirements should include:

- 1) The ability to be recharged<sup>48</sup>;
- 2) The ability for the system to signal to customers that the battery needs to be replaced;
- 3) After three years, the carriers should be required within six months to replace the battery back-up systems with new systems that match the requirements for all first responders and Government Emergency Telecommunications System (GETS) eligible individuals.<sup>49</sup>
- 4) After three years, the carriers should have two years to replace the battery back-up systems for all other customers;

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<sup>45</sup> OPC Rebuttal, at p. 35.

<sup>46</sup> OPC Direct, at p. 101.

<sup>47</sup> Id., at p. 100-101, OPC Rebuttal, at p. 36.

<sup>48</sup> OPC Rebuttal, at p. 35, Line 1.

<sup>49</sup> OPC Direct, at p. 101, Line 10.

5) The FCC standards should be minimum standards. State should be allowed to authorize additional standards.

These reasonable regulations should be adopted.

### **III. COPPER RETIREMENT**

Contrary to CenturyLink's contention that the FCC's concern with consumer disclosures is based only on "anecdotal" evidence,<sup>50</sup> Public Knowledge, et al. state, "the number of complaints we have already seen from consumers reporting that they were told they had to transition to new technologies or could not opt for the basic service anymore is alarming."<sup>51</sup> And as Public Knowledge, et al. also state,

Copper retirement can significantly alter the functionalities consumers have relied upon for decades. When carriers implement changes that can impact the reliability or functionality of the network, customers should have notice of what changes are going to happen and be given time to comment on those changes before the Commission.<sup>52</sup>

Network owners tend to minimize the public value of their copper facilities.

For example, CBT describes "several scenarios where a retirement in place may occur."<sup>53</sup> Those facilities should not be wasted. They should be usable by competitors, i.e., be unbundled or be sold at net book value.<sup>54</sup> In some instances, e.g., where the copper to be retired is the last copper in a wire center,<sup>55</sup> the FCC should closely scrutinize the proposal.

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<sup>50</sup> CenturyLink Comments at 44.

<sup>51</sup> Public Knowledge, et al. Comments at 30.

<sup>52</sup> Id. at 32.

<sup>53</sup> CBT Comments at 11-12.

<sup>54</sup> See CenturyLink Comments at 13-14.

<sup>55</sup> See GN Docket No. 13-5, et al., NASUCA Renewed and Revised Motion (July 7, 2014).

CenturyLink asserts that the Commission's authority to order notice of copper retirement for retail customers is "highly questionable,"<sup>56</sup> citing the *Second Local Competition Order* from 1996.<sup>57</sup> CenturyLink claims that the notice requirement is inconsistent with § 251(c)(5), which requires only notice to carriers.<sup>58</sup> But as the Commission states,

Section 251(c)(5) requires 'reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'"<sup>59</sup>

The statute does not restrict "public" notice to competitors.

Corning argues, "Congress did not enact this statute for the benefit of consumers or governmental entities, none of which care about the 'transmission and routing of services' on the ILECs' networks."<sup>60</sup> The NPRM provides compelling reasons about why consumers have a profound interest in copper retirement, including de facto retirement resulting from failure to maintain copper facilities.<sup>61</sup> The Communications Workers of America ("CWA") provide extensive support for the level of de facto retirement that is taking place.<sup>62</sup> NASUCA, its members and other consumer advocates have provided extensive evidence to the Commission about the importance of copper networks to customers, including concerns about reliable service

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<sup>56</sup> CenturyLink Comments at 36.

<sup>57</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Red 19392, (1996) ("*Second Local Competition Order*"), ¶ 171 (which did **not** say that the law allowed only carrier notice).

<sup>58</sup> CenturyLink Comments at iv; see also Verizon Comments at 10.

<sup>59</sup> NPRM, ¶ 58.

<sup>60</sup> Corning Comments at 18. Interestingly, Corning's argument conflicts with AT&T's position that § 214's purpose is to protect consumers, See footnote 20, supra.

<sup>61</sup> NPRM, ¶ 53.

<sup>62</sup> CWA Comments at 20-34.

during power outages.<sup>63</sup> Customers care about their services, which depend on transmission and routing.

CenturyLink states that “[i]t is not surprising that the Commission's copper retirement rules are ill-suited for ensuring that retail customers receive appropriate notice...”<sup>64</sup> NASUCA agrees with CenturyLink's assessment. The Commission needs to adopt new rules that ensure that retail customers receive appropriate notice.

CenturyLink asserts that it “already voluntarily fulfills most of the requirements proposed in the NPRM regarding disclosure to interconnecting CLECs and retail customers.”<sup>65</sup> That statement raises two questions: First, if CenturyLink already follows these practices, why would it object to making them rules unless a) it holds these minimal requirements as a quality edge over competitors, and is opposed to others improving their service, or b) it plans to abandon the practices? Second, which of the NPRM requirements does CenturyLink not currently follow?

As for notice to carriers, CBT states, “Since these interconnected carriers are the ILEC’s clients, it is only a matter of good business sense for the ILEC’s internal account management team to individually contact these clients to assist them in finding appropriate alternative arrangements.”<sup>66</sup> Yet the interconnected carriers are also the ILEC’s **competitors**. Thus, it may not be “good business sense” to assist CLECs to find “appropriate alternative arrangements.” Indeed, CBT itself disputes the need to contact CLECs.<sup>67</sup>

CBT acknowledges the need for retail customer notice, but disputes the need for regulations requiring such notice:

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<sup>63</sup> NASUCA Comments at 13.

<sup>64</sup> CenturyLink Comments at 37-38.

<sup>65</sup> Id. at iv, 28-29.

<sup>66</sup> CBT Comments at 12-13.

<sup>67</sup> Id. at 13.

In any case, the carrier will necessarily try whatever means are required to reach its customers in order to schedule the appointment necessary to transfer their service to the new facilities. It is irrational to think that a carrier would install fiber loops in a neighborhood and simply turn off service to its customers without reaching out to them. What would be the purpose of deploying fiber if the company has no customers left at the end of the process?<sup>68</sup>

The “purpose” has been clearly identified in evidence submitted to the Commission and in several states, regarding Verizon's business practices in particular. ILECs and others benefit financially when they eliminate copper and force customers to migrate to fiber-based services because of the potential for up-selling, that is, convincing customers to purchase more expensive bundles – which in some cases, include less-regulated VoIP service – and eliminating the ability to purchase stand-alone copper based telephone service.<sup>69</sup>

Notice to both retail and wholesale customers should be required. Providers should have the flexibility to exceed minimum standards, but should not be permitted to avoid providing notice.<sup>70</sup>

CBT also cites the “reasonable” ILEC’s view of the sale of copper:

Any reasonable company would not and should not ignore a reasonable bid for retired network assets, but it should also be allowed the latitude to select the bid from prospective purchasers that offers it the best overall value (e.g., a purchaser who wishes to purchase – for whatever purpose – a bundle or lot of assets as opposed to a high bidder on a single asset).<sup>71</sup>

If the provider seeks to retire its copper, a mandated (rather than voluntary<sup>72</sup>) sale at net book value prevents the ILEC from denying the sale and wasting the facilities based on such

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<sup>68</sup> Id. at 14; see also CenturyLink Comments at 39.

<sup>69</sup> See, for example, <http://www.fiercetelecom.com/story/verizons-fios-growth-continued-cushion-blow-wireline-revenue-declines-q4/2015-01-22> and <http://www.nbcwashington.com/news/local/Verizon-Fios-Phone-Copper-Customers-Say-They-Felt-Pressured-Into-Fios-235098041.html>

<sup>70</sup> See Verizon Comments at 14-16.

<sup>71</sup> CBT Comments at 19.

<sup>72</sup> See Verizon Comments at 17.

“latitude.” As Sprint states, “The nation’s copper phone network is a valuable asset that should not be abandoned if there is a company willing to assume operation and maintenance.”<sup>73</sup>

AT&T claims that “[t]he available evidence shows that as ILECs have provided notice of copper retirements over the years, only a handful of objections have been filed under those existing rules, and those few issues have been resolved by the parties without regulatory mandates.”<sup>74</sup> AT&T’s historical comment ignores the increasing scope and size of current retirements, and the concerns they have raised for consumers, as acknowledged by the NPRM.<sup>75</sup>

CenturyLink objects to rules controlling “upselling.”<sup>76</sup> Contrary to CenturyLink’s claim,<sup>77</sup> the Commission’s proposals to require carriers to provide clear and accurate information to their customers (and to ensure that customers have the right to purchase only the services they desire) when copper is planned for retirement “easily pass muster” under the First Amendment, even if such disclosures constitute some sort of “forced speech,” and do not violate the carriers’ First Amendment rights.<sup>78</sup> It is long established that reasonable consumer disclosures do not violate a vendor’s First Amendment rights, and indeed that consumers themselves have First Amendment rights to *receive* truthful information about the services they are receiving.<sup>79</sup> Disclosure requirements necessary for consumer protection therefore face a

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<sup>73</sup> Sprint Comments at 9.

<sup>74</sup> AT&T Comments at 28-29.

<sup>75</sup> NPRM, ¶¶ 17-18.

<sup>76</sup> CenturyLink Comments at 39-44.

<sup>77</sup> Id. at 41-44.

<sup>78</sup> *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 652 (1984) (requirement that attorney disclose the risks of a contingent fee agreement “easily passes muster” under First Amendment standards. Commercial speech may be regulated, and disclosures required, if three criteria are met: (a) the government has a substantial interest in supporting the regulation; (b) the regulation directly advances that interest; and (c) the regulation is no more intrusive than necessary to serve that interest).

<sup>79</sup> See, e.g., *Milavetz, Gallop, & Milavetz v. U.S.*, 559 U.S. 229, 250 (2010), citing *Zauderer*, *supra*, 471 U.S. at 651 (noting that “*First Amendment* protection for commercial speech is justified in large part by the information’s value

lower hurdle, and pass First Amendment review more easily, than the speech prohibitions at issue in the *Central Hudson* case cited by CenturyLink.<sup>80</sup>

CenturyLink further argues,

Over time, as more and more customers leave the legacy copper network, the cost of maintaining that network will eventually exceed the revenues it generates. At that point, it is logical to transition the remaining customers to the fiber network and retire the copper facilities.<sup>81</sup>

CenturyLink offers no evidence to show when this tipping point would occur, nor does the company provide a basis or criteria for assessing when it might occur. Moreover, a conclusion that the cost of maintaining the network exceeds the revenues generated by the network must be based on an appropriate allocation of costs and revenues among all of the services provided over the copper network.<sup>82</sup> The Commission has an obligation to ensure that when copper is retired, all customers will continue to receive affordable, reliable service.

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to consumers,” and concluding an attorney’s “constitutionally protected interest in *not* providing the required factual information is ‘minimal’”); *see also Red Lion v. FCC*, 395 U.S. 367, 371 (1969); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575-76 (1980) (“In a variety of contexts this Court has referred to a First Amendment right to ‘receive information and ideas’”); *compare California Public Utilities Code § 2896 (carriers must provide sufficient information for consumers to make informed market choices)*.

<sup>80</sup> *Central Hudson v. Gas & Electric v. PSC*, 447 US 557, 566 (1980) involved a prohibition on utility advertising even after a fuel shortage had passed; *compare FCC’s Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges, et al.*, Report and Order and Further Notice of Proposed Rulemaking in CG Docket No. 11-116, et al., 27 FCC Rcd 4436 (2012) (Anti-Cramming Order): at ¶ 130:

Where the required disclosure involves “only factual and uncontroversial information,” the required disclosure “does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests.” To the contrary, because “the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides,” a person’s “constitutionally protected interest in *not* providing any particular [noncontroversial] factual information . . . is minimal.” The Supreme Court thus has held that the *Zauderer* standard [*supra*], and not the intermediate *Central Hudson* standard, applies to the required disclosure of purely factual, non-controversial information that does not suppress speech.

<sup>81</sup> CenturyLink Comments at 29.

<sup>82</sup> See the New York Public Utility Law Project-sponsored paper, “It’s All Interconnected,” <http://utilityproject.org/2014/06/24/its-all-interconnected-oversight-and-action-is-required-to-protect-verizon-new->

AT&T argues that the Commission **may not** disapprove a carrier's copper retirement.<sup>83</sup>

AT&T's arguments are unavailing. As the Commission stated, the NPRM does "not propose any change to the **notion** that an incumbent carrier has the right to cease operating its copper network."<sup>84</sup> But Section 214 does not **grant** any such right. Section 214(c) states,

The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it **for a portion or portions of a line**, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate **such terms and conditions as in its judgment the public convenience and necessity may require**.

(Emphasis added.) Nothing in the statute requires the Commission to issue any such certificate.

AT&T states:

[A]lthough the proposed rule change gives customers the right to submit "comments" to the Commission concerning the proposed copper retirement, it limits the right to "object" to those changes to interconnecting LECs. But no matter the substance of the retail customers' comments, they would have no greater rights to stop a network change than the competitive providers have under the rules.<sup>85</sup>

The Commission's proposal is problematic and should be revised.<sup>86</sup> Because the statute mandates Commission approval for retirement of facilities, customers and carriers should have the right to convince the FCC that retirement should not be allowed.

AT&T continues its argument by stating:

[T]he Commission must resist the temptation to subject sales or auctions of retired copper facilities to some form of regulation. The transition to all-IP networks is already proving to be a complicated process.... [T]he best

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York-telephone-customers-and-expand-broadband-services/, and subsequent New Networks studies. See [newnetworks.com](http://newnetworks.com).

<sup>83</sup> AT&T Comments at 36-41; see also USTelecom Comments at 7.

<sup>84</sup> NPRM, ¶ 6 (emphasis added).

<sup>85</sup> AT&T Comments at 40.

<sup>86</sup> NASUCA Comments at 5.

mechanism for expeditiously resolving issues as they arise is to permit industry participants to develop and apply **market-based** solutions.<sup>87</sup>

The Commission would be wise to reject the notion that “market-based solutions” would address the public interest goals described in the NPRM. Network owners should not be able to use their market dominance to control the market for retired copper. Adopting “rules on the commercial sale of facilities that properly have been retired in compliance with the Commission’s rules” is not “micromanagement.”<sup>88</sup> The far greater concern, actually, is the potential for dominant carriers that provide essential services over copper, which has been nearly (or fully) depreciated, to use their market power to prevent viable competitors from using the copper to provide service desired by customers.

#### **IV. SERVICE DISCONTINUANCE**

Public Knowledge, et al. “urge the Commission to establish strong and comprehensive metrics to evaluate new technologies put forward by carriers as potential replacements for existing phone service.”<sup>89</sup> NASUCA agrees. And, as noted in the initial comments, NASUCA supports requiring a “neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change.”<sup>90</sup>

As the NPRM clearly demonstrates, these proposed regulations are designed to address the world of 2015 and going forward,<sup>91</sup> despite attempts by dominant carriers to portray them as relics suitable only in a bygone age. These regulations address an interconnected world where

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<sup>87</sup> Id. at 40-41 (emphasis added).

<sup>88</sup> Id. at 41; see also Verizon Comments at 22.

<sup>89</sup> Public Knowledge, et al. Comments at 6.

<sup>90</sup> NASUCA Comments at 17; see also Public Knowledge, et al. Comments at 33, quoting NPRM, ¶ 72.

<sup>91</sup> Like the regulations adopted in the Open Internet Order. See footnote 14, *supra*.

consumers depend and rely on voice and broadband services. They are not mere “exit restrictions.”<sup>92</sup> Thus the NPRM’s break with precedent<sup>93</sup> is fact-driven and timely. Such regulations on service discontinuance should be extended to all providers. Contrary to Verizon’s assertion,<sup>94</sup> this would not make discontinuance “unnecessarily” difficult.

AT&T asserts that “[t]he combined effect of a broad presumption that § 214 applies to the discontinuance of wholesale services and a sweeping replacement-services mandate would be to force incumbent carriers to provide services to retail competitors in circumstances where the obligation is **unneded to protect** retail customers’ access to service.”<sup>95</sup> Contrary to AT&T’s claim, the FCC’s proposals would **enhance** retail customers’ access to service by ensuring continued service and by preserving access to copper that is essential for competitors to provide innovative services to retail customers, including services that do not require additional back-up power during power outages.

Verizon asserts:

[S]ection 214(a) seeks to protect communities and to ensure that the public convenience and necessity are not harmed by any service discontinuance. It should not be used by the Commission as a tool to enshrine wholesale competition in its current state indefinitely.<sup>96</sup>

A service discontinuance that harms wholesale competition harms the community that was served by the competitors. Thus Verizon’s citation to *Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221, 1233 (D.C. Cir. 1980)<sup>97</sup> is unavailing: This is not a mere elimination of a rate discount.

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<sup>92</sup> See CenturyLink Comments at 6.

<sup>93</sup> See *id.* at 16-17; see also AT&T Comments at 24-25.

<sup>94</sup> Verizon Comments at 28.

<sup>95</sup> AT&T Comments at 58 (emphasis added).

<sup>96</sup> USTelecom Comments at 11.

<sup>97</sup> Verizon Comments at 23.

## V. CONCLUSION

USTelecom asserts,

It is in everyone's best interest that the Commission help the public to understand that the benefits of allowing technology transitions to happen unimpeded by unnecessary regulation vastly outweigh the minimal burdens that some customers may (but need not with proper notice and education) experience.<sup>98</sup>

From the consumer perspective, to the contrary, it is vital that the network owners understand that regulation to protect the enduring values of competition, consumer protection, universal service, and public safety and national security is necessary. Therefore, NASUCA respectfully urges the Commission to adopt the proposed rules, incorporating the modifications proposed in our comments and reply comments.

Respectfully submitted,

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<sup>98</sup> USTelecom Comments at 3.