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March 27, 2015

**Via ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Filing of the American Cable Association on Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, PS Docket No. 14-174, and Technology Transitions GN Docket No. 13-5**

Dear Ms. Dortch:

On March 25, 2015, representatives of the American Cable Association (ACA) had the following meetings with staff of the Public Safety and Homeland Security Bureau and with Legal Advisors to Chairman Wheeler and Commissioners Rosenworcel and O'Rielly to discuss the specific proposals in the Notice of Proposed Rulemaking in the above-referenced dockets regarding the provision of backup power for customer premises equipment (CPE):<sup>1</sup>

Robert Gessner, Chairman, ACA (and President, MCTV), Matt Polka, President, ACA, Ross Lieberman, Senior Vice President of Government Affairs, ACA, and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with David Simpson (Bureau Chief), David Furth (Deputy Bureau Chief), and Bill Lane (Chief Engineer) of the Public Safety and Homeland Security Bureau.

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<sup>1</sup> 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 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).

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Ross Lieberman and Thomas Cohen met with Daniel Alvarez, Legal Advisor, Wireline, Public Safety, and Homeland Security, to Chairman Wheeler.

Ross Lieberman and Thomas Cohen met with Priscilla Argeris, Legal Advisor to Commissioner Rosenworcel.

Thomas Cohen met with Amy Bender, Legal Advisor, Wireline, to Commissioner O’Rielly.

At these meetings, ACA representatives made the following points about (1) how best to ensure that consumers have reasonable access to 911, emergency alerts, and related emergency communications services during power outages and (2) the Commission’s proposals to impose on facilities-based providers of fixed voice services CPE backup power requirements.

ACA representatives began each meeting by stating that they share the Commission’s objective to provide consumers with reasonable access to emergency communications during power outages. They added that to achieve this aim most effectively and efficiently, any policies the Commission develops should be based upon market realities, including the various types of providers offering voice services, consumer expectations of service capabilities, and consumer subscription preferences. More specifically, the ACA representatives explained that the market for voice communications has changed fundamentally over the past 20 years.<sup>2</sup> Where once virtually every voice subscriber used line power copper facilities and a corded phone – and had no wireless service – today only about one percent of subscribers are in that category.<sup>3</sup> Almost half of the households in the country have “cut the cord,” and over 90 percent of households have a device connected to wireless service. In fact, there is every indication that consumers will continue to migrate to wireless only for their voice service. In addition, consumers not only rely on wireless for everyday voice communications but for emergency communications during power outages as well.<sup>4</sup>

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<sup>2</sup> All statistics used herein can be found in Comments of American Cable Association, PS Docket No. 14-174 *et al.* (Feb. 5, 2015), Reply Comments of American Cable Association, PS Docket No. 14-174 *et al.* (Mar. 9, 2015), and “Survey of Consumers Regarding Telephone Use and Emergency Calling Issues,” prepared for the FTTH Council Americas and appended to the Comments of the Fiber to the Home Council Americas, PS Docket No. 14-174 *et al.* (Mar. 9, 2015).

<sup>3</sup> Approximately 50 percent of subscribers use only cordless phones.

<sup>4</sup> Wireless service would be used first in three out of four instances.

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As for wireline service, consumers have moved from line power copper providers to cable and other VoIP providers. Today, VoIP providers serve approximately 25 percent of the total voice market, approximately the same share as copper providers. ACA representatives emphasized that consumers taking VoIP service have done so willingly and with notice that the CPE will not work during power outages without a backup power source. ACA representatives remarked that to the best of their knowledge, cable VoIP subscribers have not expressed concern about not having line power during a power outage or with having to use some type of backup power supply, including one they supply themselves, during a power outage. Finally, although VoIP subscriptions have increased over the past decade, for most ACA cable operators growth has leveled off, and in fact many operators are beginning to lose voice subscribers as consumers increasingly “cut the cord.” This trend would only accelerate if the Commission adopts its battery backup proposal since the new regulations would impose additional costs on VoIP providers that would be passed along to retail consumers.

ACA representatives next explained that cable operators providing voice service are acting responsibly to provide subscribers with the ability to make 911 calls and receive alerts during power outages. As required by Commission regulation, ACA members are informing VoIP subscribers that their CPE will not work during power outages.<sup>5</sup> Many also provide battery backup or inform customers about accessing UPS devices. Some ACA members additionally monitor the charge on batteries and replace them when they no longer hold a charge.

ACA representatives then summed up the discussion by submitting that given the shift to wireless for voice service, imposing a battery backup mandate on cable operators would not only waste resources but not solve the problem the Commission seeks to address: providing consumers access to emergency communications during power outages. They urged the Commission to step back and reassess the premise of its proposals if it truly wants to provide all consumers with emergency communications capabilities as effectively and efficiently as possible. In the meantime, ACA representatives suggested that the Commission work with industry, consumer groups, and communities to educate consumers about their options and continue to facilitate the development, and encourage the use, of industry best practices concerning backup power during outages.<sup>6</sup>

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<sup>5</sup> See 47 C.F.R. § 9.5(e)(1-3). VoIP providers 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.

<sup>6</sup> This approach is largely consistent with the backup power education policies California Public Utilities Commission has already adopted, which require all facilities-based

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Finally, in the meeting with the leadership of the Public Safety and Homeland Security Bureau, in response to an inquiry about how to address much longer term (multi-week) power outages, ACA representatives expressed the view that responding to such a situation is a major undertaking that requires all stakeholders from a community (as well as the state and federal governments) to be involved. After all, if the outage were caused by a natural disaster for instance, it is most likely that all major electrical and wireline communications networks will be damaged (*e.g.* because of downed wires or flooded facilities) and incapable of operating, and completing major repairs to this basic infrastructure will take weeks, if not longer. To address such an eventuality, the Commission should support efforts to enable or encourage stakeholders to develop a targeted, workable solution that could be implemented quickly and account for those most in need of emergency communications. ACA representatives committed themselves to working with the Commission, industry, and others to fashion such a solution.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



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providers to inform residential and small business customers about the nature and limitations of their voice service during power outages. *See* Comments of the California Public Utilities Commission, PS Docket No. 14-174 *et al.*, at 2-3 (Feb. 26, 2015).