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June 24, 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 June 22, 2015, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (ACA), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Daniel Alvarez, Legal Advisor for Wireline, Public Safety, and Homeland Security to Chairman Wheeler, and made the following points about the proposals in the Notice of Proposed Rulemaking (“NPRM”) in the above-referenced dockets regarding the provision of backup power for customer premises equipment (CPE):¹

Offer of Battery Backup Capability – ACA does not oppose the Commission imposing a mandate on cable operators to offer to provide new customers for voice service with reasonable battery backup capability. However, the Commission should only require that an operator’s

¹ 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).

Marlene H. Dortch
June 24, 2015
Page Two

offer be made only once at the point of sale of the voice service by a representative of the operator, who is charged with taking orders for service.²

Small Provider Transition – To give smaller operators (with fewer than 100,000 voice service customers) adequate time to obtain devices with battery backup capability for voice service and account for possible equipment shortages, the obligation to offer battery backup capability should not become effective until 180 days after operators with more than 100,000 voice customers are required to come into compliance.³

² ACA members may decide to have a technician install the battery in the device with battery backup capability at the time of installation of the voice service or have a battery sent to the customer and provide to the customer specific instructions of how to install the battery in the device with battery backup capability. ACA believes either method is reasonable and will accomplish the Commission’s objective.

³ ACA submits the Commission has sufficient precedent to support defining smaller voice providers as those with fewer than 100,000 voice service customers for purposes of granting special consideration. *See e.g. Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-135, WC Docket No. 13-39, ¶ 19 (rel. Nov. 8, 2013). In addition, the Commission has sufficient precedent to give these smaller operators a longer time to comply than larger operators. *See e.g. Accessibility of User Interfaces, and Video Programming Guides and Menus et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-138, MB Docket Nos. 12-107 and 12-108 ¶¶ 111, 114 (rel. Oct. 31, 2013) (“We set a compliance deadline of three (3) years from the date the *Report and Order* is published in the Federal Register by which covered entities must comply with the requirements of Sections 204 and 205... We set a later compliance deadline of five (5) years from the date the *Report and Order* is published in the Federal Register by which certain mid-sized and smaller MVPD operators and small MVPD systems must comply with the requirements of Section 205.”). *See also* Comments of American Cable Association, MB Docket No. 12-108 at 10-13 (July 15, 2013) (“The Commission has repeatedly recognized that companies of this [smaller] size do not drive equipment or software markets; at best, technologies developed by and for a handful of the largest cable operators are eventually made available on the market to smaller providers. For example, the Commission has found in several proceedings that small cable operators receive technology later than larger operators who are typically the only ones with the scale and volume to demand manufacture of devices at affordable price points and therefore may need additional time to come into compliance [citing as examples the TiVo Waiver order (27 FCC Rcd 14875), the Basic Tier Encryption order (27 FCC Rcd 12786), and the Emergency Broadcast System order (12 FCC Rcd 15503)].”).

Marlene H. Dortch
June 24, 2015
Page Three

Compensation for Battery Backup – ACA supports the Commission’s proposal that “providers would be entitled to commercially reasonable compensation in exchange for providing this service.”⁴ This is not only equitable, but it also would not put cable operators at a competitive disadvantage, especially when voice service is rapidly migrating from wireline to mobile wireless providers and the Commission has not required and is not considering requiring in this proceeding an offer to provide mobile backup batteries by mobile wireless carriers to their customers.

Battery Backup Capability – Cable operators offering battery backup capability generally provide batteries with 8 hours of stand by time. ACA thus believes the Commission’s proposal in the *NPRM* for provisioning battery backup “during the first eight hours of an outage” is reasonable.⁵ During the meeting, Mr. Alvarez raised the possibility that the Commission may want to require the provision of batteries with 24 hours of stand by time. ACA has since determined that batteries with 24 hour stand by capability can be ordered from at least one vendor but are not immediately available because they are not widely used. ACA therefore has no problem with adopting this mandate provided there is a sufficient transition, especially for smaller operators, to obtain both batteries with 24 hour stand by time and devices that can accommodate either a 24 hour battery or multiple batteries that in aggregate enable 24 hour stand by time.

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

Sincerely,



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⁴ See *NPRM*, n. 109.

⁵ See *id.*, ¶ 35.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
June 24, 2015
Page Four

cc: Daniel Alvarez