

Communications
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June 24, 2015

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

RE: Ex Parte Notice. In the Matter of Technology Transitions, GN Docket No. 13-5; Ensuring Customer Premises Equipment Power for Continuity of Communications, PS Docket No. 14-174; 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, RM-10593.

On June 22, 2015, Debbie Goldman, Telecommunications Policy Director of the Communications Workers of America (CWA), and Andrew Jay Schwartzman and Scott Rubin (via telephone), Counsels to CWA, had two separate meetings at the Commission to discuss the above-captioned proceedings. In the first meeting, the CWA representatives met with Jonathan Sallet, General Counsel, and Jennifer Tatel, Chief of Staff in the Office of General Counsel. In the second meeting, the CWA representatives met with Daniel Alvarez, Legal Advisor to Chairman Tom Wheeler, Carol Matthey, Daniel Kahn, and Deena Shetler of the Wireline Competition Bureau.

The CWA representatives urged the Commission to move forward expeditiously to update its rules regarding back-up power, copper retirement, and service discontinuance.¹ CWA emphasized that clear rules will facilitate the transition to high-speed networks, consistent with Commission policy to protect consumers, universal service, public safety and national security, and competition.²

¹ *Notice of Proposed Rulemaking*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Nov. 25, 2014 (rel).

² *Technology Transitions*, et al., Order, Report and Order, 29 FCC Rcd 1435-36 (2014).

CWA discussed our policy recommendations, previously provided in comments to the Commission, regarding copper retirement, service discontinuance, “de facto” discontinuance/retirement, and back-up power.³ I attach the hand-out that formed the basis for the discussion (Attachment 1) and summarize below the points we discussed.

Network Change Notification/Copper Retirement. CWA urged the Commission to differentiate between an upgrade in service, such as the change from copper to fiber, and a network change that represents a downgrade in service, such as the change from landline to fixed wireless. The Commission’s updated notice rules should apply to network upgrades; a network change that results in a service that is “discontinued, impaired, or reduced” should be subject to the Section 214 discontinuance rules. Because carriers may not accurately differentiate in their communication to customers as well as to the Commission between a network change and a service discontinuance or impairment, Commission rules should provide retail as well as wholesale customers the opportunity to comment on any network change that represents a downgrade in service. It is critically important that carriers provide adequate advance written notice to all retail as well as wholesale customers regarding network changes that will impact the functionality of certain CPE, such as health and security monitors. The carrier needs to explain *exactly* what will change. If the change involves electrical power, the consumers need to be informed of their options as well as what the consequences will be in a long-term power outage of not having backup power or additional charged batteries.

CWA also noted that any updating of network change/copper retirement rules should include or cross-reference the Section 68.110 provision that requires written notification to retail customers regarding any change in “facilities, equipment, operations, or procedures” that would impact CPE functionality. Notice must be given in enough time to “allow the customer an opportunity to maintain uninterrupted service.”⁴

Section 214 Service Discontinuance. In its evaluation of a Section 214 application for the “discontinuance, impairment, or reduction” in service, the Commission evaluates whether there is a reasonable substitute available; the need for the service and facilities; the existence, availability, and adequacy of alternatives; increased charges for alternative services; and the public interest.⁵

³ CWA Comments, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Feb. 2015 and CWA Reply Comments, same dockets, March 9, 2015 (“CWA Comments” and “CWA Reply Comments”).

⁴ See CWA Comments, pp. 6-12.

⁵ See CWA Comments, pp. 12-13 citing FCC, *Public Notice*, “Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services,” WC Docket No. 13-150, Comp. Pol. File No. 115, June 28, 2013. See also *In the Matter of Southwestern Bell Telephone Company, et al. Applications for Authority Pursuant to Section 14 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, Memorandum Opinion and Order, 8 FCC Rcd 2589, ¶ 65 (1993).

CWA urged the Commission to adopt the following six criteria to be used in its evaluation of whether there is a reasonable substitute for the discontinued, impaired, or reduced service:

- 1. Reliable and accurate access to E911.**
- 2. Constant availability.** The Pennsylvania PUC requires the following minimum levels of service during peak period: 98% of calls provided a dial tone within three seconds, 97% of correctly dialed intraoffice calls are completed, and 96% of correctly dialed interoffice calls are completed. The ability to access a dial tone within three seconds 98% of the time during the busy season-busy hours should be a minimally acceptable level of service for a network. A substantially similar standard already is used for wireline networks in at least 18 states.⁶ The Commission should also adopt a metric to protect against dropped calls.

CWA also noted that battery backup of at least eight hours, moving towards a minimum of 24-hours by a date certain, should be the minimum requirement to ensure adequate service during emergency conditions.

- 3. Adequate call quality.** The Commission seeks information on specific metrics to determine call quality. CWA attaches call quality standards from Arkansas, Illinois, Kentucky, Maryland, Missouri, Nebraska, Oregon, South Carolina, Texas, Washington, West Virginia. (Attachment 2)
- 4. Compatibility with health and safety devices that use the network.**
- 5. Adequate data transmission.** The Commission must ensure that consumers have competitive choice for broadband transmission at the minimum 25 megabits per second (Mbps) download/3 Mbps upload speed benchmarks that the Commission has adopted.
- 6. Affordable to consumers.** An alternative service that charges higher rates for voice or data service (including data caps for wireless Internet access) would not be a reasonable substitute because of the increased charge for services.

⁶ 52 Pa. Code § 63.61. At least 17 other states have the same, or substantially similar, standard (98% of attempts within 3 seconds) for providing adequate dial tone service. See Ala. Admin. Code r. 770-X-5-.21; 3 Alaska Admin. Code 52.310 (98.5%); Code of Dela. Regs. 26-4000-4003; Ga. Comp. Rules & Regs. r. 515-12-1-.18; Code of Hawaii Regs. 6-80; 199 Iowa Admin. Code 22.5; Code of Md. Regs. 20.45.05.04 (98.5% year-round and 95% during busy hour); Minn. Rules 7810.5300; Mont. Admin. Rules 38.5.3371; Neb. Admin. Code Title 291, Ch. 5; 17.11.22.17 N. Mex. Admin. Code; Ore. Admin. Rules 860-023-0055; Admin. Regs. of S. Dak. 20:10:33:05; Tenn. Comp. Rules & Regs. R. 1220-4-2-.37; 16 Tex. Admin. Code § 26.54 (98% year round and 96% in busy hour); Utah Admin. Code R746-340-7; Wash. Admin. Code § 480-120-401.

De facto service discontinuance/retirement. CWA discussed the evidence provided in our initial comments regarding Verizon Communications Inc. (“Verizon”) policies and practices that have led to “de facto” copper discontinuance in multiple locations in its incumbent local exchange territories where it has not deployed its fiber-to-the-home (FiOS) network. Verizon does not adequately maintain the copper plant. When cable fails and customers report service outages or service-affecting troubles, Verizon does not provide prompt restoration and repair of service to its copper customers, frequently setting up service appointments seven to 10 days after the trouble or out-of-service reports. When technicians report that the source of the problem is faulty cable, Verizon does not allocate resources to repair the cable. Rather, Verizon instructs technicians to “jerry rig” a solution using buried service or cross-connect wire, resulting in repeated trouble and out-of-service reports. Verizon often steers customers towards accepting Voice Link service in a number of ways, including making the inferior, fixed-wireless Voice Link option immediately available while delaying the scheduling of copper line repair service.⁷

CWA supplements the evidence that we provided in our initial comments with further evidence collected from Verizon’s online peer-to-peer forum. Verizon describes the forum as an online site “where customers help other customers” with problems. We provide 21 pages of consumer complaints as evidence that Verizon is systematically letting its copper network deteriorate, does not adequately repair service to customers, does not provide prompt service, does not provide reliable systems so that customers can report service outages or noise on the line, does not replace faulty facilities, transfers customer to Voice Link without their approval, does not address dangerous pole, cable or wiring conditions, among other problems. See Attachment 3, “Public Complaints from Verizon’s Home Phone Forum.”

There are three dominant themes in these complaints.

1. Every time it rains, the phone goes out of service. But when the customer reports the trouble, Verizon tests the line (after the weather has dried out), says the line is OK, and doesn’t dispatch a technician. Next time it rains, the line goes out again.

Explanation: First, Verizon’s automated systems “scrub” the trouble report, finding no trouble when the weather dries out. The automated system drops the trouble report from the system, so there is no dispatch. Second, Verizon doesn’t replace the faulty cable, so next time it rains, there is another trouble on the line. Third, Verizon no longer does preventive maintenance to repair defective facilities before trouble on the line occurs.

2. The customer can’t reach a live human being to report a trouble or no dial tone.

Explanation: Verizon encourages customers to report troubles using an online system.

⁷ See CWA Comments, pp. 22-31.

The system frequently doesn't work. The system drops customers' trouble reports. Due to insufficient staffing, the customer can't reach a live human being to report a trouble or find out when a dispatch will occur.

3. Long delays in restoration of service.

Explanation: Verizon prioritizes service on its fiber/FIOS lines, and pushes back dispatch appointments to copper customers.

Metrics and Policies to Identify “De Facto” Discontinuance. The Commission currently collects customer complaints and outage reports which can be used to provide preliminary evidence of “de facto” discontinuance. Consumer or third party complaints can also prompt a Commission investigation. In response to Commission inquiry regarding metrics and methodologies to identify “de facto” service discontinuance, CWA suggests the following :

1. **Retail Service Quality metrics.** Traditional retail quality-of-service measures provide important information regarding the quality of the network; high frequency of initial and repeat out-of-service and trouble reports indicate whether the carrier adequately maintains and services the infrastructure. These measures generally report separate metrics for residential and business customers and urban and rural areas. Metrics include: average installation interval in days, % of installation commitments met, out-of-service repair intervals in hours, repeat out-of-service calls, total number of trouble reports and repeat trouble reports per month per 100 lines, number of consumer complaints, and average time to reach a repair bureau or customer service representative.⁸ CWA can provide the Commission with specific benchmarks to use for these metrics.
2. **Wholesale Service Quality metrics.** States continue to measure the service that incumbent local exchange carriers provide to competitors. Wholesale metrics generally include installation intervals, repair intervals, repeat out-of-service calls, and other critical quality measures that affect both wholesale and retail end users. These metrics often include information on network quality, and therefore may be useful in assessing how well the incumbent is maintaining its network.⁹
3. **Customer Complaints.** The FCC as well as state Commissions collect customer complaints.
4. **Policies and procedures regarding repair, maintenance, installation, and construction of plant and facilities.**

⁸ See Sherry Lichtenberg, Ph.D., “Evaluating Telecommunications Service Quality: Can Consumers Really ‘Vote With Their Feet’ Or Do We Need Regulatory Oversight,” National Regulatory Research Institute, Feb. 10, 2011.

⁹ *Id.*

5. Policies and procedures regarding fixed wireless substitution (e.g. Voice Link) for wireline service.
6. Policies and procedures regarding dispatch of technicians, availability of equipment for the maintenance, repair, and installation of plant and facilities.
7. Employment information by function
8. Expenditures for plant additions, plant retirements, plant in service, actual and projected spending for capital, system maintenance, and service expansion.
9. Policies and procedures for trouble and out-of-service reporting and dispatch
10. Service outage reports
11. Customer surveys

Finally, CWA provided two recent *Wall Street Journal* articles that provide additional information regarding Verizon's de facto discontinuance and failure to meet its obligations to expand FiOS throughout New York City. (Attachment 4)

Sincerely,



Debbie Goldman
Telecommunications Policy Director
Communications Workers of America

cc: Jonathan Sallet, Jennifer Tatel, Daniel Alvarez, Daniel Kahn, Deena Shetler

Attachments

1. CWA Outline: Ex Parte Meeting, June 22, 2015
2. State Telephone Call (Loop) Service Quality Standards
3. Public Complaints from Verizon's "Home Phone Forum"
4. *Wall Street Journal* articles