Public Knowledge

July 23, 2015

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

Re: 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

Dear Ms. Dortch:

On July 21, 2015, Harold Feld, Senior Vice President; Meredith Rose, Staff Attorney; Phillip Berenbroick, Counsel for Government Affairs; and Edyael Casaperalta, Internet Rights Fellow, all of Public Knowledge; as well as Danielle King, Coordinator of the Rural Broadband Policy Group, met with Rebekah Goodheart of Commissioner Clyburn's office.

The Commission's proposed rules, which would require carriers to make backup power available to residential consumers, is an important first step to ensuring broad backup power availability. The Commission must encourage the adoption of commercially available D-cell batteries as a standard, widely available backup power source. Reliance on proprietary batteries, which can only be replaced or recharged by the carrier providing them, creates a substantial threat to public safety. If the burden of providing backup power is to be placed on consumers, it must be done in such a way that users can prepare and self-provision in case of an emergency.

Moreover, current opt-in rates for proprietary customer premises equipment power solutions are not accurate predictors of real consumer need. Hurricane Sandy illustrated in striking detail that consumers grossly underestimate the need for backup power until they are left without it. Public safety dictates that backup power options be universally available, and structured in such a way that consumers may prepare and stockpile commercially available sources of power. Carriers must offer these backup options at the point of sale, and must continue to make these options available to consumers under the same terms and conditions (including price) *even if the consumer initially declined them at the point of sale.* Additionally, consumers must be able to purchase, and not merely rent, these backup options.

The broad trend of state-level deregulation means that the Federal Communications Commission ("FCC" or "Commission") plays a critical role in ensuring consumers are informed about the technology transitions broadly, and backup power issues more specifically. Although the Commission cannot be in every state, it should consider identifying areas that are at high risk of losing service during the technology transitions. The FCC should collaborate with local advocates in these areas to ensure that the challenges they encounter as telephone providers change technology are recorded, and can be resolved. Additionally, federal agencies (including the Department of Homeland Security and the Federal Emergency Management Agency) must update the guidance on their websites to reflect the fact that, in the future, wireline telephones will not be guaranteed to work in an emergency, and that consumers who plan to rely on the telephone should obtain backup power.

Companies must be responsible participants in the educational process. As companies develop their transition plans, they should be required to share information about the timeline, nature of the transition, and possible backup power concerns with effected localities and local authorities, state governments, and state public utility commissions. Direct-to-consumer letters must include meaningful informational material, including a description of the carrier's transition plan, and a description of the consumer's rights during and after the transition. Companies cannot omit critical details (such as the strengths and limitations of the new technology), and must not exploit the transition to "upsell" consumers into new packages by omitting information. Carriers should disclose to consumers which services will be available after the transition, and inform them which new service most closely mirrors their old service. Carriers must be held accountable for all statements made to consumers by their agents, contractors, sales staff, and other employees, with regards to both the technology transitions and service broadly.

Consumers dependent on Lifeline supported services must also be protected. Carriers participating in Lifeline must continue to offer Lifeline-eligible voice service post-transition, and must make clear to consumers which services are covered under the program and which are not. Consumers must not be transitioned onto a service they cannot afford.

The Commission should also clarify that when a carrier's copper network is destroyed by natural disaster, the carrier must file a 214 within an explicit timeframe if they decline to rebuild the network. The November 2014 Declaratory Ruling merely specifies that 214 applicability is not determined by the tariff involved. While it is possible to read a broad intent behind the Commission's Declaratory Ruling, the fact remains that the Declaratory Ruling does not explicitly lay out an affirmative obligation for carriers to file under section 214 following a natural disaster. Because this continues to be a point of contention among carriers and Commissioners alike, the Commission should explicitly clarify its intention in issuing the ruling.

Public Knowledge supports the establishment of clear, engineering-based metrics to determine whether substitute VoIP or wireless service is indeed comparable to TDM service that a carrier proposes to retire. Existing contracts, such as GSA contracts for IP-based voice service, can provide a useful starting point for determining appropriate standards. However, carriers have not proposed any appropriate evaluation criteria. In the absence of such proposals, the Commission should use six months of real time measurements—three months before the discontinuance of TDM service, and three months after—as an interim requirement. These criteria would clearly meet the statutory objective of ensuring that discontinuance would not "impair" service to all, or any portion of, the local community. While Public Knowledge acknowledges that a checklist of technical standards that would permit providers to certify that equipment complies with the metrics would be preferable, a manual approach requiring real-time metrics is the only substantive approach reflected in the record.[1]

Finally, Public Knowledge is supportive of efforts to preserve wholesale competition.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020x108.

Respectfully submitted,

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cc: Rebekah Goodheart

[1] The sole suggestion put forward by carriers thus far (the presence of a dial tone) is, in addition to being artificially minimal, so burdened with caveats regarding the potential expense and difficulty of obtaining even that bare minimum, that the carriers have rendered this "proposal" essentially meaningless.