



The voice of mid-size communications companies

July 23, 2015

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication: PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, and RM-10593**

Dear Ms. Dortch:

On July 21, 2015, Jeff Lanning of CenturyLink, Pat Rupich of Cincinnati Bell (by phone), AJ Burton of Frontier, and Genny Morelli and the undersigned of ITTA met separately with Rebekah Goodheart in Commissioner Clyburn's office and Travis Litman in Commissioner Rosenworcel's office to discuss the Commission's proposals relating to copper retirement and customer premises equipment ("CPE") backup power in connection with the ongoing TDM-to-IP transition.<sup>1</sup> The same individuals of ITTA and its member companies also met jointly with Daniel Alvarez in Chairman Wheeler's office and Daniel Kahn in the Wireline Competition Bureau regarding such issues on July 22, 2015.

### ***CPE Backup Power***

We reiterated that the Commission's proposal to adopt an affirmative requirement for providers to offer backup power capability to customers is unwarranted and unnecessary. It is common within the industry for providers to offer at least 8 hours of standby backup power capability to subscribers today, and there is virtually no consumer demand for it. Cincinnati Bell, for instance, has less than a 1 percent take rate for the backup power option it offers to subscribers. Other ITTA members have had a similar experience when offering backup power options to customers.

Should the Commission move forward with its proposal, however, it is imperative that providers be allowed maximum flexibility in its implementation, particularly with respect to the form, content, and means of customer notifications and the requirement to offer 24 hours of backup power capability within 3 years. A mandate to offer in excess of 8 hours of battery backup capability could result in significant economic, environmental, and aesthetic tradeoffs if it necessitates changes to existing infrastructure; deployment of different, additional, or larger equipment; or leads to

---

<sup>1</sup> "Fact Sheet: Chairman Wheeler's Proposals to Protect Consumers & Promote Competition and Public Safety in the Technology Transitions," *available at*: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0710/DOC-334325A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0710/DOC-334325A1.pdf) (rel. July 10, 2015) ("Fact Sheet"). Mr. Lanning participated by phone in the meeting with Mr. Litman. Ms. Morelli was not present in the meeting with Ms. Goodheart.

unnecessary environmental waste.<sup>2</sup> Providers should be able to determine, based on the unique attributes of their networks and the preferences of their customers, how to comply with any battery backup power requirements adopted by the Commission.

### ***Copper Retirement Notifications***

ILECs also should have maximum flexibility with respect to providing notices to retail and wholesale customers relating to copper retirement. In many cases, copper retirements have little or no practical impact on customers (e.g., when carriers retire middle mile facilities), and providing customer notice in those circumstances would be unnecessary and confusing. We urged the Commission not to dictate the form, content, and means of customer notices relating to copper retirement, as those matters are best left to carriers' reasonable discretion.

The Commission also should refrain from placing burdensome restrictions on ILECs regarding how they interact with retail customers about the services available for purchase as a result of the transition to upgraded facilities. The presence of significant competition from other voice providers provides sufficient marketplace constraints to address any concerns relating to "upselling." Placing additional restrictions specifically on ILECs would diminish competition by inhibiting their ability to compete, particularly given that 60%-70% of households do not purchase ILEC voice services today. Such requirements also could be detrimental to consumers by limiting transparency and increasing their costs. For example, to the extent ILECs cannot inform customers about new products and services when they are retiring copper, customers would likely encounter separate install charges should they decide to upgrade to those services at some point in the future.

### ***Wholesale Access***

We were pleased to see that the Commission's proposal that carriers offer wholesale access to competing providers on a reasonably comparable basis is only an *interim* measure pending completion of the Commission's special access proceeding.<sup>3</sup> We urged the Commission to consider a sunset of 2-3 years to ensure that this measure is, indeed, temporary. In the meantime, the Commission should move forward with its comprehensive review of the special access marketplace. We are confident the Commission's analysis will show sufficient competition in the market for special access services, rendering this requirement wholly unnecessary. When the Commission does

---

<sup>2</sup> For example, Verizon's Backup PowerReserve device, which relies on twelve D-Cell batteries to provide backup power for basic voice services for up to twenty hours, does not accommodate rechargeable batteries. See Verizon, "Support: Order or Replace Battery," available at: <http://vz.to/IT3KPK> (last accessed: June 23, 2015). Thus, while the device is capable of providing twenty hours of backup power, the consumer must continue to restock D-Cell batteries to power the device after they are depleted. As this example shows, there are trade-offs with different approaches, and mandates could increase economic and environmental costs – in this case, more batteries consumers must purchase and more batteries in landfills. This is not to say that the solution provided by Verizon is not a good one. Rather, the Commission should allow customers and providers to experiment and work with different solutions rather than mandating a single solution for the nation.

<sup>3</sup> See Fact Sheet at 2.

find sufficient competition, the fact that there is no need for further action could leave measures intended as interim preservations of the status quo in place indefinitely without some form of sunset mechanism.

We raised concerns regarding implementation of the proposal that ILECs undertake a “meaningful evaluation” to determine whether the Section 214 process is triggered when they plan to discontinue service to carrier-only customers.<sup>4</sup> In some cases, it may not be readily apparent to the wholesale provider whether its changes will impact retail end users served by carrier customers. Thus, we believe the Commission should adopt a safe harbor to limit liability for ILECs in this context. More specifically, if the ILEC determines in the process of conducting its evaluation that the copper retirement would not impact its own retail end users (assuming, hypothetically, that it had retail end users that would be implicated), then no discontinuance application would be required. It is inappropriate for the Commission to use this proceeding to adopt new discontinuance obligations in the wholesale context, or to institute requirements that will make ILECs feel compelled to file a discontinuance application in every circumstance in an abundance of caution simply because the change relates to a wholesale customer. Such a result would be time consuming and burdensome for both ILECs and the Commission.

The participants also continue to be concerned that the Commission’s proposals single out ILECs for disparate regulatory treatment and will continue to place ILECs at a competitive disadvantage in comparison to their cable and wireless competitors. Given that ILECs are no longer dominant in the provision of residential or business voice services, the imposition of new copper retirement obligations only on ILECs is unwarranted. The Commission should refrain from adopting regulations that are not technology neutral and that contravene its longstanding goals of promoting regulatory parity, facilitating the IP transition, and creating incentives for broadband investment and deployment.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



Micah M. Caldwell

Vice President, Regulatory Affairs

cc: Daniel Alvarez  
Rebekah Goodheart  
Travis Litman  
Daniel Kahn

---

<sup>4</sup> See *id.*