

July 27, 2015

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, NW
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 24, 2015, the undersigned met with Travis Litman of Commissioner Rosenworcel's office to discuss matters in the above-captioned proceeding.

We discussed several issues related to residential service. First, I explained that the Commission's proposal on back-up power for residential customers should require carriers to provide a commercially available back-up power option, such as D cell batteries, so that customers can stockpile batteries ahead of power outages. Customers seeking to ensure they have adequate back-up power should have options other than purchasing a proprietary battery from their service provider; additionally, customers should not be reliant on carriers to recharge their back-up power source. Relegating customers to relying exclusively on their carrier for proprietary batteries and recharging is a significant threat to public safety. Carriers should also be obligated to offer residential customers the option to purchase back-up power at any time, not just at the point of sale, not as rental or subscription service, and not with the condition that the customer renews the service or purchases additional services or upgrades.

Second, I reiterated Public Knowledge's concern with reports of carriers allowing copper networks to degrade to the point of *de facto* discontinuance of service, without seeking approval from the Commission under 214. Verizon and CenturyLink continue to maintain that *de facto* copper retirement is a "myth" and that a *de facto* retirement standard is unnecessary.¹ To the contrary, as Public Knowledge and others have explained, and the record clearly demonstrates, *de facto* copper retirement is real and is harmful to consumers.² Additionally, there continue to be reports of carriers forcing customers off traditional copper-based telephone service and on to non-comparable and more expensive fiber or IP-based services.³ Thus, Public Knowledge supports

¹ Notice of Ex Parte of Verizon, GN Docket No. 13-5 and RM-11358, at 3 (filed July 15, 2015) ("Verizon Ex Parte"); Notice of Ex Parte of CenturyLink, GN Docket No. 13-5 and RM-11358, at 2 (filed July 24, 2015).

² See Letter from Public Knowledge et. al.; to Julie A. Veach, Chief, Wireline Competition Bureau, Federal Communications Commission; GN Docket No. 12-353, GN Docket No. 13-5, RM-11358, WC Docket No. 10-188, GN Docket No. 09-51 (filed May 12, 2014).

³ See Letter from Eric J. Branfman, Counsel for Xchange Telecom LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission; GN Docket No. 13-5, GN Docket No. 12-353, RM-11358 (filed July 21, 2015).

defining *de facto* retirement as "retirement" to prevent carriers from retiring their networks by neglect.

In circumstances Verizon describes where an individual customer repeatedly has trouble with a copper connection,⁴ unrelated to the carrier's purposeful neglect of the network, Public Knowledge does not oppose allowing the carrier to seek the customer's permission to move the customer to fiber. However, when seeking the customer's permission in these instances, the carrier should be obligated to fully inform the customer of his/her rights under the Communications Act and the Commission's rules, explain that the customer is not required to migrate to fiber, disclose any functional disparities between copper and the replacement fiber service, and be forbidden from harassing or otherwise unduly pressuring customers who choose to remain on the copper network. Additionally, the Commission must be wary that this process is not used to circumvent the general Section 214(a) notice requirement. The Commission should make clear that a pattern of "isolated applications" that appears to circumvent the protections adopted in the notice provisions, or designed to legitimize a *de facto* abandonment, will potentially result in enforcement proceedings and forfeitures.

Third, I emphasized that the Commission should clarify when a carrier's obligations under Section 214 are triggered following the destruction of copper facilities due to natural disaster. The Commission's Declaratory Ruling discusses the destruction Hurricane Sandy caused to Verizon's network on Fire Island, NY and Verizon's subsequent 214 filing;⁵ however, consumers and carriers require greater clarity regarding when Verizon's obligation to make the 214 filing was triggered.

Finally, I restated Public Knowledge's position that the Commission should establish appropriate technical standards to define "comparable" service for the purpose of copper retirement and Section 214. Public Knowledge supports the establishment of clear, engineering-based metrics to determine whether new technologies are comparable to the TDM service that a carrier proposes to retire.⁶

⁴ Verizon Ex Parte at 2.

⁵ Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593; *Notice of Proposed Rulemaking and Declaratory Ruling*, 29 FCC Rcd 14968, 15015 ¶ 116 (2014).

⁶ See e.g., Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Tom Wheeler, Chairman, Federal Communications Commission; GN Docket No. 13-5 (filed July 27, 2015); Comments of Public Knowledge, et. al.; PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1; at 8-10 (filed Feb. 5, 2015); Reply Comments of Public Knowledge; PS Docket No. 14-174, GN Docket No. 13-5, FM-11358, WC Docket No. 15-1, WC Docket No. 09-109, CC Docket No. 95-116; at 3-6 (filed Mar. 10, 2015); Letter from Jodie Griffin, Senior Staff Attorney, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-353 et. al., at 1 (filed Sept. 17, 2014); Letter from Harold Feld, et. al., Senior Vice President, Public Knowledge, to Tom Wheeler, Chairman, FCC, GN Docket No. 12-353 and 13-5, at 3 (filed Jan. 13, 2014).

In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please contact me with any questions regarding this filing.

Sincerely,

/s/ Phillip Berenbroick
Counsel, Government Affairs
Public Knowledge