

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Recommendations of the Independent Panel	)	EB Docket No. 06-119
Reviewing the Impact of Hurricane Katrina on	)	WC Docket No. 06-63
Communications Networks	)	

**COMMENTS**

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September 4, 2007

**TABLE OF CONTENTS**

II.	INTRODUCTION AND SUMMARY .....	2
III.	BACKGROUND .....	2
IV.	THE COMMISSION SHOULD REVISE ITS BACK-UP POWER RULE TO PROVIDE LECS FLEXIBILITY IN MANAGING THEIR NETWORKS DURING POWER OUTAGES .....	3
V.	THE COMMISSION SHOULD EXTEND ITS INTERCONNECTED VOIP E911 NOTICE REQUIREMENTS TO LOCAL EXCHANGE SERVICE THAT IS NOT LINE-POWERED.....	4
VI.	THE COMMISSION SHOULD GRANT CLECS' PETITION FOR RULEMAKING.....	7
VII.	CONCLUSION.....	8

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COMMENTS

I. INTRODUCTION AND SUMMARY

The undersigned competitive carriers submit these comments in response to petitions for reconsideration of the Commission's recent *Katrina Order*.<sup>1</sup> The undersigned competitive carriers support USTA's petition for reconsideration seeking flexibility to plan and design back-up power for assets that are essential to provide telecommunications service during emergency situations. The undersigned competitive carriers submit, however, that the Commission should take additional steps to ensure that consumers have information regarding back-up power that is necessary to make informed choices when selecting a telephone service. Specifically, the Commission should require ILECs replacing copper with FTTH to provide adequate advance notice to consumers that communications services, including 911 service, will be unavailable during an extended general power outage.

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<sup>1</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, EB Docket No. 06-119, WC Docket No. 06-63, FCC 07-107, June 8, 2007 ("*Katrina Order*").

## II. BACKGROUND

The Katrina Panel recommended that the Commission encourage carriers to adopt NRIC back-up power requirements as best practices. In its *Katrina Order*, the Commission went beyond that recommendation and adopted a broad rule requiring most wireline and wireless carriers to have “an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals.”<sup>2</sup> On July 31, 2007, CTIA filed for a limited stay of the back-up power rule. On August 2, 2007, the Commission stayed the effective date of the back-up power rule until October 9, 2007, to consider the issues raised by CTIA. Numerous CMRS carriers filed petitions for reconsideration specific to the impact of the rules on CMRS carriers. USTA filed a petition for reconsideration or clarification concerning the impact of the rules on wireline LECs.

## III. THE COMMISSION SHOULD REVISE ITS BACK-UP POWER RULE TO PROVIDE LECS FLEXIBILITY IN MANAGING THEIR NETWORKS DURING POWER OUTAGES

The undersigned carriers support USTA’s request that the Commission not adopt a prescriptive one-size-fits-all rule. We share the Commission’s goal of ensuring the viability of critical communications networks during a power outage. We also understand the importance of back-up power for critical facilities in the event of power outages. However, the undersigned carriers agree that a best-practices approach that preserves LEC flexibility to respond to disasters and allocates resources accordingly

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<sup>2</sup> *Katrina Order* ¶ 77.

would better serve the public need for critical communications infrastructure. The undersigned carriers are therefore encouraged that the Commission is working proactively with the industry to modify its back-up power rules.

**IV. THE COMMISSION SHOULD ESTABLISH ROBUST NOTICE REQUIREMENTS CONCERNING LACK OF LINE-POWERING FOR FTTH**

The undersigned competitive carriers request that the Commission make the back-up power requirements meaningful by extending its E911 consumer disclosure requirements to certain wireline local exchange services. In revising its back-up power requirements, the Commission must take into consideration the evolution of the wireline network. Traditional wireline local exchange service provided over copper loops is line-powered, which means that the end user's phone will continue to work in the event of a power failure. In such cases, the Commission's rules that require back-up power for LEC assets in the central office and remote terminals will ensure that the end user retains access to emergency services during a disaster.

In stark contrast, these rules will not prevent fiber-to-the-home ("FTTH") customers from losing access to emergency services in the event of a power failure. The Office of Advocacy of the U.S. Small Business Administration ("SBA Advocacy") recognized this potential problem in its May 10, 2007 letter to Chairman Martin. Specifically, SBA Advocacy asked the FCC to open a rulemaking to consider the following potential impact of removing the ILECs' copper networks: "What safeguards

will exist for small businesses in the wake of a disaster such as 911 or Katrina if the new network fails, given there is no backup system?”<sup>3</sup>

Recent press reports show that Verizon’s notices to its FiOS customers contain vague and confusing disclosures about removal of the copper wire and backup batteries that affect an end user’s ability to access 911/E911 services.<sup>4</sup> End users often do not understand that: (1) the copper wire will be removed from their NID; and (2) the service, which requires commercial AC power at the customer premise, will revert to a limited battery back-up in the event of a power outage. In the case of Verizon’s FiOS service, the battery back-up only lasts seven hours, with an additional hour that the customer may trigger in the case of an emergency.<sup>5</sup>

As the Commission recognized in its *VoIP E-911 Order*, “consumers in many cases may not understand that the reasonable expectations they have developed with respect to the availability of 911/E911 service via wireless and traditional wireline telephones may not be met when they utilize” newer technologies, such as VoIP. As SBA Advocacy recognized, that same concern holds true for newer technologies such as FTTH.

When Verizon removes the copper wire from the NID, the end user loses the ability to rely on line-powered service in the event of an emergency during a power

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<sup>3</sup> Letter from Thomas M. Sullivan and Cheryl M. Johns, Office of Advocacy, U.S. Small Business Administration, to The Honorable Kevin J. Martin, RM-11358, pg. 3 (May 10, 2007).

<sup>4</sup> Verizon’s copper cutoff traps customers, hampers rivals, *The Seattle Times* (July 10, 2007) (“Copper Cutoff”); *Copper Conundrum: Signing up for FiOS could mean the end of the old-style wire going to your house*, *Pittsburgh Post-Gazette* (Aug. 3, 2007) (“Copper Conundrum”).

<sup>5</sup> *See* *Copper Conundrum*.

outage. Moreover, Verizon's disclosures, in fine print and often delivered after the service is installed, do not provide the consumer sufficient prior notice of this fact in plain and unambiguous language.

In clarifying its back-up power rules, the Commission should ensure that customers understand these commercial AC and battery back-up limitations by requiring LECs to prominently disclose them. We therefore propose that the Commission adopt in this proceeding as a clarification to its back-up power rule robust disclosure requirements applicable to ILECs replacing copper loops with FTTH. The rule should require ILECs to provide advance, clear, and complete notice to consumers that communications services, including 911 service, will be unavailable to FTTH premises during an extended power outage that lasts beyond the limited battery capacity provided by Verizon. This would substantially enhance the possibility that consumers served by FTTH will be more likely to plan adequately for emergency preparedness.

## **V. THE COMMISSION SHOULD GRANT CLECS' PETITION FOR RULEMAKING**

On January 18, 2007, the undersigned competitive carriers filed a Petition for Rulemaking and Clarification to establish strengthened safeguards to protect against ILEC anticompetitive copper loop retirement.<sup>6</sup> The Commission should grant that Petition for all the reasons argued therein. The Commission should also grant it to ensure

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<sup>6</sup> Petition of BridgeCom International, Inc. *et al.* filed January 18, 2007 ("Petition"); Pleading Cycle Established for Comments on Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper SubLoops, Public Notice, RM-11358, DA 07-209, released January 30, 2007.

that end users have the option of returning to line-powered service to obtain access to telecommunications services in the event of an extended emergency.

As the Katrina Panel recognized, nearly 90 percent of wireline customers in the Gulf region who had lost service during Katrina had their service restored within ten days.<sup>7</sup> However, hurricane Katrina also knocked out commercial power for an extended period of time.<sup>8</sup> Therefore, if an end user in the Gulf had FTTH service, it is likely that even if the LEC had restored service, the FTTH service would not have worked because of the lack of commercial power at the customer's premises.

In similar extended power outages caused by natural or man-made disasters, it is conceivable that end users with FTTH service would be without wireline telephone service and access to 911 for weeks or months even in some cases if the line serving the customer's premises is undamaged. The availability of copper provides an additional option for restoration of service that does not depend on commercial power at the customer's premises. And, if the customer had been served by a CLEC using copper, it is possible that the customer would never have lost service because the CLEC's more robust back-up power capabilities would have been able to continue line powering of the customer's telephone equipment even though power was lost at the customer's premises. Adopting the strengthened retirement rules proposed would ensure that ILECs are not able to retire copper for anticompetitive reasons as well as that retirement notices are

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<sup>7</sup> *Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission, June 12, 2006, "Katrina Panel Report"*), p. 9.

<sup>8</sup> *Katrina Panel Report*, p. 6.

**Broadview, Bridgecom, Cavalier, Deltacom, Eureka, IDT  
Integra, McLeodUSA, Mpower, Norlight, Pacific Lightnet, RCN, RNK  
Talk America, TDS Metrocom, Telepacific  
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evaluated for their potential impact not only on competition, but also on end user access  
to emergency services.

**VI. CONCLUSION**

The Commission should reconsider and revise the *Katrina Order* as discussed herein.

Respectfully submitted,

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