Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
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
	)	
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 Services	)	RM-10593

REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

March 9, 2015

TABLE OF CONTENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
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
	)	
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 Services	)	RM-10593

REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA") hereby submits its reply comments in response to comments filed on the Notice of Proposed Rulemaking[1] issued by the Federal Communications Commission ("Commission") in the above-captioned proceeding. NTCA is a

[1] *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, *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 Services*, RM-10593, Notice of Proposed Rulemaking, FCC 14-185 (rel. Nov. 25, 2014) ("NPRM").

national association of nearly 900 members. All of NTCA's members are rural incumbent local exchange carriers ("RLECs"), many of whom also provide video, wireless, and broadband services to their rural communities.

Like NTCA, commenters agree that a proper regulatory balance is struck if fixed voice service providers are assigned responsibility for ensuring that stand-by backup power is available for consumers to make use of their communications services for, *at most*, the first eight hours during a power outage situation. Any longer time period, if achievable at all, would impose significant costs on providers that would divert resources far better spent on improving consumers' access to new services and higher-capacity broadband networks. Commenters also note that consumers have increasingly chosen mobile wireless and Voice over Internet Protocol ("VoIP") technologies with an awareness of their limitations during a power outage. Certainly, the Commission should take steps to ensure that consumers have the ability to utilize 911 services in the event of a power outage. However, those steps should be balanced against the choices that consumers themselves are affirmatively making and the significant costs that would arise should the Commission require network operators to provide stand-by backup power for periods of greater than eight hours. Instead, especially in light of the services that consumers are expressing greater interest in adopting, the Commission should focus any additional action in this proceeding on consumer education. In doing so it should allow providers to pursue such education with maximum flexibility.

Carriers large and small further question the need for and the practical effect of extending the Commission's Part 51 copper retirement rules to require notice to retail consumers in the manner proposed in the NPRM. The proposal contained in the NPRM, which would require notice to consumers "affected" by a carrier's copper retirement or who will require new

Consumer Premises Equipment ("CPE") is so amorphous that carriers are likely provide all customers with "notice" by default for fear of a charge that they had not complied with the rule. Such a result will only confuse consumers, and the cost of producing such notices may far outweigh any actual value to consumers. Thus, to the extent that the Commission adopts a retail customer notice provision, NTCA urges the adoption of flexible and minimally burdensome requirements.

Finally, NTCA urges the Commission to encourage the development of best practices that can ultimately form the foundation of clear guidance as to what constitutes a "substitute" service. The November 2014 Declaratory Ruling issued in this proceeding has confused, rather than clarified, the scope and effect of the Commission's Section 214 discontinuance rules. As a result, carriers have little to no guidance as to what this or a future Commission may consider to be a discontinuation of service and, by extension, what may be considered a substitute service for a discontinued service. This uncertainty limits their ability to respond to consumer demand for new, feature-rich Internet Protocol ("IP") services.

II. THE RECORD SUPPORTS AT MOST AN EIGHT HOUR STAND-BY BACKUP POWER REQUIREMENT; ANY COMMISSION STANDARDS ADOPTED IN THIS PROCEEDING SHOULD ALSO RECOGNIZE THE VALUE OF CONSUMER EDUCATION AND CONSUMER CHOICE

RLECs have a strong commitment to public safety and their customers' access to voice service in the event of a power outage or other emergency or disaster situation. Based in the small communities they serve, the owners, operators and employees of rural carriers have unparalleled accountability to their neighbors and a personal stake in the reliability of their networks. In that spirit of community responsibility, RLECs have taken great pains to ensure the resilience of their networks should disaster occur and to restore service as quickly as possible.

Moreover, as a number of these carriers have installed fiber-based facilities deeper into their networks over time to meet consumer demand for advanced services, they have done so with an eye towards ensuring that consumer expectations continue to be met. NTCA and its member companies share a commitment to ensuring that the ongoing transition to IP-enabled services and changes in underlying network technologies is not used as an excuse to abandon the important principles of competition, consumer protection, universal service, and public safety.

Like NTCA, commenters addressing this issue agree that fixed voice service providers should assume responsibility for ensuring that stand-by backup power[2] is available for consumers to make use of their communications services for, *at most*, the first eight hours during a power outage.[3] An eight-hour standard would appear to strike a proper balance between ensuring that consumers continue to have the ability to place 911 calls when a power outage occurs and the increased costs of mandating a longer time frame.

Beyond this standard, any additional Commission action in this proceeding must recognize the realities of consumer choice and the current marketplace, as well as the value of consumer education in light of those realities. As to the concept of consumer choice, as several commenters note, large numbers of consumers have chosen a voice service that operates without a battery backup, either a mobile wireless phone as their sole voice service or a cordless phone in

---

[2] To be clear, any references to "stand-by backup power" herein refer to backup power availability not "talk time." The NPRM correctly acknowledges this distinction and the Commission should make clear that its eight hour backup power standard is applicable to stand-by backup power only.

[3] *See*, Comments of TCA, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), pp. 2-3; Comments of USTelecom, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), pp. 4-5; Comments of Verizon, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), pp. 18-19.

their homes.[4] Presumably, the issue of consumers' use of cordless phones in their homes is not the subject of this proceeding – as carriers have no control over that – yet it does bear on the issue of the choices that consumers make in terms of battery backup power and the value that they place on it. In addition, as a number of VoIP providers state, large numbers of consumers that have chosen a VoIP service have chosen *not* to take a stand-by backup power battery even when offered one.[5] And, it should go without saying that consumers that have "cut the cord" and adopted mobile wireless as their only voice service clearly understand (or should) that their ability to dial 911 is dependent upon having a charged-up battery in their wireless device. Despite these limitations, consumers have chosen to adopt mobile wireless and/or VoIP services in large numbers.

---

[4] Comments of the American Cable Association ("ACA"), PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), p. 4 (stating that, "44 percent [of consumers] live in homes that no longer subscribe to wireline voice service"); Comments of the National Cable & Telecommunications Association ("NCTA"), PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), pp. 6-7 (citing the same 44 percent statistic and pointing to a statement by Commissioner Jessica Rosenworcel that "more than 70 percent of 911 calls originate from mobile phones"); Verizon, pp. 17-18; Comments of AT&T, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), p. 9; Comments of CenturyLink, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), pp. 45-46.

[5] Verizon, p. 18; NCTA, p. 3. The comments of Cincinnati Bell provide an interesting case study on this issue. Cincinnati Bell states that after the 2008 Hurricane Ike power outage that caused nearly 2 million people to lose power for up to nine days, they responded by attempting to market their landline services to cable and VoIP subscribers by promoting the availability of backup power. Cincinnati Bell "saw little to no uptick as a result and landline loses continued at a steady pace despite the lack of backup power with alternative services. The marketing lesson from this real-life experience was *that consumers do not place a great deal of value on backup power*."). Comments of Cincinnati Bell, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), p. 7 (emphasis added).

Moreover, as one commenter notes,[6] existing Commission rules already ensure that consumers are made aware of the backup power ramifications of choosing a VoIP service. Specifically, carriers initiating VoIP service are currently required pursuant to Commission rule to inform consumers of the "the circumstances under which E911 service may not be available,"[7] circumstances which include "loss of electrical power."[8]

This is not to say that the Commission should not take reasonable steps to ensure that consumers have the ability to utilize 911 services in the event of a power outage. However, those steps should be balanced against both the realities of the voice services market, recognizing the choices that consumers are making (as discussed above) and the significant costs that would be imposed should the Commission compel operators to provide standby backup power for periods of greater than eight hours. NTCA members report that the cost of installing backup power equipment for longer time periods would be several hundred dollars or more per customer location. By contrast, calls to require providers to assume responsibility for supplying backup power for a minimum of seven days[9] ignore both these costs and, even worse, the fact that such costs must then be recovered from a customer base that has, as noted above, "voted with their feet" and in many cases affirmatively chosen services that will ***not*** provide backup power for several days or more.[10] Thus, an eight-hour stand-by backup power standard strikes the right

---

6 NCTA, p. 5.

7 47 C.F.R. § 9.5(e)(1).

8 *Id*.

9 Comments of Public Knowledge, *et al*. ("Public Interest Commenters"), PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), p. 26.

10 *See*, note 4, *supra*.

balance between protecting consumers and imposing unnecessary mandates that would only result in higher prices for consumers with little value realized in return.

Given that consumers choosing VoIP services and wireless voice services likely understand the limitations of these services in the event of a power outage – and given that Commission rules already require consumer disclosure for VoIP services – the Commission should instead focus additional action in this proceeding on consumer education. In doing so it should allow providers to pursue such education with maximum flexibility. For example, a few commenters point to the Communications Security, Reliability and Interoperability Council ("CSRIC") Working Group 10 CPE Powering Report, which discusses "best practices" in terms of VoIP backup power and in particular discusses consumer education practices.[11] These include notifying consumers of the implications for their voice services should they choose not to take a backup battery (many consumers make this choice) and information on where replacement batteries can be purchased. While the Commission should *encourage* providers to adopt the CSRIC backup power consumer education best practices, providers should have the flexibility to tailor them based on their experience in serving their respective customer bases. RLECs have decades of experience in meeting the communications needs of their customers and should be allowed to draw on that experience in this area.

Finally, providers large and small caution the Commission against adopting a requirement that carriers monitor and/or replace backup batteries.[12] AT&T correctly notes that "[r]equiring service providers to monitor and maintain backup power for CPE would harm,

---

11 CenturyLink, pp. 47-48; AT&T, p. 13.

12 Cincinnati Bell, p. 10; AT&T, p. 10; Verizon, p. 19, ACA, p. 13.

rather than benefit, consumers. In particular, it would impose enormous burdens on service providers that would significantly raise the cost of the service."[13] Verizon too states that "providers' systems and equipment may not be currently designed to monitor the status of batteries, and it would be a massive and costly shift in technology to implement new monitoring capacity."[14] Indeed, Verizon is also correct that "[n]ot only are providers not equipped to act as supply chains for batteries throughout their footprint, but such a monitoring and re-supply requirement would go far beyond any reasonable expectation for a service provider."[15]

Here too, however, consumer education is the best and most effective solution. As Verizon correctly notes, [c]onsumers' role in monitoring and replacing batteries is similar to the role they are already accustomed to for such other important devices as smoke detectors and fire alarms."[16] The Commission should, as suggested above, encourage providers to educate their customers as to how to replace their backup batteries and where to obtain replacements.

The Commission can also facilitate consumers' ability to more easily obtain backup batteries by encouraging CSRIC to develop a set of best practices in terms of backup batteries. As NTCA noted in initial comments, such best practices are likely to spur battery manufacturers to move to a greater degree of standardization, thereby driving down costs to providers and consumers and making it more likely that consumers will have the ability to replace batteries with commercially available batteries (*i.e.*, D-cell batteries commonly available to consumers at

---

13 AT&T, p. 10.

14 Verizon, p. 19.

15 *Id.*

16 *Id.*

retail stores of all kinds). While the NPRM states that certain nationwide carriers may be moving to such types of backup batteries, a lack of standardization in backup power technology may mean that the widespread availability of such technology may be several years away or may be cost-prohibitive for RLECs to deploy at present. RLECs serving a very small percentage of the nation's subscribers are unlikely, on their own, to possess the economies of scope and scale necessary to affordably obtain backup power equipment using batteries commonly available to consumers. As a result, a Commission mandate at this time would impose substantial costs on RLECs at a time when substantial investments are needed to improve the quality and availability of their broadband networks. Development of CSRIC "best practices" would enable providers and manufacturers to engage the Commission and each other to create affordable and implementable backup power solutions that minimize costs to carriers and consumers alike.

III. THE RECORD SUPPORTS FLEXIBLE NOTICE-BASED COPPER RETIREMENT PROVISIONS THAT ALLOW CARRIERS TO TAILOR NOTICES TO THEIR RESPECTIVE CUSTOMER BASES

As NTCA noted in its initial comments, the Commission's copper retirement rules should continue as "notice-based" provisions instead of far more burdensome and unnecessary approval requirements.[17] The NPRM is correct in stating that "an approval requirement would undesirably harm incentives for fiber deployment."[18]

Having said that, representatives of carriers large and small question the need for and the practical effect of extending the Commission's Part 51 copper retirement rules to require notice

[17] NPRM, ¶ 56.

[18] *Id.*

to retail consumers in the manner proposed in the NPRM. For example, as TCA states:

> [t]o the extent applicable to rural LECs, these proposals are both onerous and unnecessary. Customers of locally-owned, rural LECs are typically very knowledgeable—well in advance—of planned upgrades of copper facilities to fiber. In the case of cooperatives, capital budgets are typically approved by a board of directors comprised of members. Privately-owned rural LECs typically keep their customers informed of capital projects through newsletters, press releases, mailings and postings on their websites.[19]

CenturyLink adds:

> ILECs possess strong incentives to notify affected retail customers of a transition from copper to fiber. Intense competition from cable, wireless and CLEC competitors give ILECs further motivation to ensure that their retail customers are adequately informed and educated about network upgrades that might require new or modified CPE or will negatively affect them.[20]

In addition, AT&T is correct that the proposal contained in the NPRM, which would require notice to consumers "affected" by a carrier's copper retirement or who will require new CPE is so amorphous and ill-defined that "ILECs would simply default to giving notice to every customer, so as to avoid a challenge that they had not complied with the rule."[21] Such a result is to no one's benefit, as consumers may be confused by such notices, and the cost of producing such notices may far outweigh any actual value to consumers.

Moreover, Verizon rightly points out that when migrating customers from copper-based to fiber-based services, carriers "almost always need to communicate with customers directly. But because each will present its own unique set of issues, providers need flexibility in

---

19 TCA, p. 4.

20 CenturyLink, p. 39.

21 AT&T, p. 40.

determining how to most effectively communicate with their customers."[22] "One-size-fits-all" notice provisions, on the other hand, would not allow carriers to account for unique circumstances or tailor the content of notices in a manner that gets to the heart of how an individual customer or group of customers may be affected.

Thus, to the extent that the Commission adopts a retail customer notice provision, NTCA urges the adoption of flexible and minimally burdensome consumer notice requirements. Providers should have the flexibility to determine the most effective form by which to deliver copper retirement notifications. For example, some carriers may find that bill inserts are more effective for their particular customer base, as opposed to emails. Bill inserts may also be more effective – and less expensive – than separate mailings that may be simply ignored by consumers. Others may find that local news publication or other methods of outreach are more effective based upon the communities they serve. In short, RLECs as members of the communities they serve and with decades of experience serving these communities are in the best position to determine the way in which to notify consumers.

IV. THE COMMISSION'S SECTION 214 DISCONTINUANCE RULES MUST PROMOTE, RATHER THAN INHIBIT, THE IP TRANSITION

NTCA has consistently stated that "clear rules of the road" are an important component of promoting the IP transition. Clear rules provide carriers with certainty and therefore the incentive to invest, while ensuring that consumer needs are satisfied as networks continue to evolve. Thus, the Commission is correct to consider whether the replacement of legacy services with IP-based services protects consumers in times of emergency or continues to support features they have come to depend on. The transition to IP networks should never be used as an excuse

[22] Verizon, p. 15.

to back away from the fundamental values of consumer protection, competition, public safety, and universal service. At the same time, the Commission's Section 214 discontinuance rules must avoid the creation of "regulatory tripwires" or protracted and expensive proceedings that hamper their ability to plan for investments and rapidly respond to consumer demand.

In initial comments, NTCA stated that the Commission must not continue down the mistaken path created by its November 2014 Declaratory Ruling issued in this proceeding, which has confused, rather than clarified, the scope and effect of the Commission's Section 214 discontinuance rules. GVNW, a firm providing services to a large number of small and rural carries summarizes the effect of the Declaratory Ruling best, stating that, "a carrier cannot know whether it will have to subject itself to section 214 review as it attempts to plan upgrades to its facilities and services [and] the unnecessary regulatory risk imposed by the new section 214 standard discourages providers from making such changes designed to benefit consumers."[23]

Unfortunately, as a result of the Declaratory Ruling, carriers have little to no guidance as to what this or a future Commission may consider to be a discontinuation of service, and by extension, what may be considered a substitute service for a discontinued service. This uncertainty limits their ability to respond to consumer demand for new, feature-rich IP services.

Going forward, NTCA urges the Commission to encourage the development of best practices that can ultimately form the foundation of clear guidance as to what constitutes a

[23] Comments of GVNW, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), p. 11. *See also*, Comments of TIA, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (fil. Feb. 5, 2015), p. 7 ("The likely consequence of the Commission's declaratory ruling is the creation of a very significant new regulatory hurdle for the technology transition. Lack of clarity about whether a new investment might also be ruled a service discontinuance requiring prior Commission approval operates as a disincentive to investing in fiber or other new technologies.").

"substitute" service. As an example, as the NPRM notes, alarm manufacturers are working with providers to develop standards to ensure that the transition to IP does not limit consumers' ability to rely on their alarm services during emergency situations.[24] Similar efforts are likely underway all across the industry and across various technologies. In a similar vein, AT&T notes its "work with the disabled community during and after the TDM-to-IP transition to understand how best to meet the needs of the community."[25] The Commission should encourage and learn from similar efforts that are likely taking place on several fronts and that can provide the Commission and the rest of the industry with insight into what consumers might consider a substitute service in an all IP environment and what features they no longer deem necessary. This will enable the Commission to create standards that offer carriers the appropriate level of guidance necessary to invest in new technologies and services without fear of "regulatory tripwires" or protracted and expensive Section 214 proceedings that hamper their ability to plan for investments and rapidly respond to consume demand.

V. CONCLUSION

The record in this proceeding supports *at most* an eight hour stand-by backup power requirement. Any Commission standards adopted in this proceeding should also recognize the value of consumer education and consumer choice and decline to adopt longer backup power standards that consumers clearly do not value based upon their actual purchase preferences.

To the extent that the Commission adopts a retail customer notice provision, NTCA urges the adoption of flexible and minimally burdensome consumer notice requirements. Providers

---

[24] NPRM, ¶ 101.

[25] AT&T, p. 48.

should have the flexibility to determine the most effective form by which to deliver copper retirement notifications.

The Commission should encourage the development of best practices that can ultimately form the foundation of clear guidance as to what constitutes a "substitute" service. Carriers at present have little to no guidance as to what may be considered a discontinuation of service, and by extension, what may be considered a substitute service for a discontinued service. This uncertainty limits their ability to respond to consumer demand for new, feature-rich IP services.

Respectfully submitted,

By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

By: /s/ Brian J. Ford
Brian J. Ford
Regulatory Counsel
bford@ntca.org

4121 Wilson Blvd, 10th Floor
Arlington, VA 22203
(703) 351-2000

March 9, 2015