

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

COMMENTS OF ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES

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ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits its comments in response to the November 25, 2014 Notice of Proposed Rulemaking (“*NPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.¹ The *NPRM* seeks comment on a number of issues regarding the ongoing transition of voice networks from Time-Division Multiplexing (“TDM”) to Internet

¹ *In the Matter of 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, WC Docket No. 05-25, RM-11358, RM-10593, Notice of Proposed Rulemaking, FCC 14-185 (rel. Nov. 25, 2014) (“*NPRM*”).

Protocol (“IP”) technology, including proposals relating to wholesale access and notice when incumbent local exchange carriers (“ILECs”) seek to retire copper networks as well as the need for certain providers to supply backup power for customer premises equipment (“CPE”) when outages occur.

As explained below, several of the proposals in the *NPRM* single out ILECs for disparate regulatory treatment and would continue to place ILECs at a competitive disadvantage in comparison to their cable and wireless competitors. These and other requirements the Commission is considering in this proceeding are unwarranted and unnecessary in light of the realities of today’s communications marketplace. ITTA urges the Commission to refrain from heavy-handed regulation when it would stifle innovation and investment and undermine the Commission’s goals of facilitating the IP transition and advancing broadband deployment to consumers throughout the United States.

I. INTRODUCTION AND SUMMARY

ITTA members have been at the forefront of the TDM-to-IP transition, drawing on private capital, universal service support, intercarrier compensation, and public-private partnerships with federal and state regulators to deploy broadband networks and innovative IP-based services in the predominantly rural, high-cost areas they serve. Having deployed broadband across roughly 90% of their service footprint, ITTA members have been leaders in the TDM-to-IP transition and have a strong interest in seeing the Commission pursue regulatory policies that will promote and sustain the evolution from legacy platforms to IP-enabled networks and services. For investment in IP-based infrastructure to continue, however, it is important for the Commission to exercise a light regulatory touch and to explore ways to reduce or eliminate legacy regulations that are no longer necessary.

One of the most important principles that should guide the Commission in its evaluation of the policies and rules that will facilitate the TDM-to-IP transition is ensuring regulatory parity for all classes of providers in this new “all-IP world.” Under the Commission’s existing regulatory framework, ILECs are placed at a competitive disadvantage vis-à-vis their cable and wireless competitors because ILECs must comply with legacy obligations tied to their former dominant position in the TDM-based world while their competitors are free to transition to IP-enabled platforms without such burdensome regulatory constraints.

Unfortunately, several of the proposals under consideration in the *NPRM*, such as those relating to last-mile access and the provision of additional notice of planned copper retirements, threaten to perpetuate this inequitable treatment. These proposals are not grounded in the reality that ILECs are no longer dominant providers in the voice services marketplace, and in fact, seem designed to address hypothetical harms that there is no record evidence to support.

ITTA cautions the Commission against taking actions that would undermine its stated policy objectives. The Commission claims that the success of the transition to next-generation networks and technologies depends upon the *technologically-neutral* preservation of the core values embodied in the Communications Act.² However, adopting regulations that target ILECs exclusively and ignore the fundamental marketplace shifts that have and continue to take place, inhibits ILECs’ ability to compete and stifles investment in the networks and technologies the Commission seeks to encourage.

The deployment and adoption of broadband facilities and services ostensibly remains a central focus of the FCC’s policy agenda, yet the proposals under consideration in the *NPRM* would serve as a disincentive to fiber deployment by incumbent wireline carriers. To the extent

² *Id.* at ¶ 1.

the Commission pursues an unnecessarily intrusive regulatory approach as the industry moves forward with the technology transition, it will impede the migration to IP-enabled networks and services.

The Commission is well aware of the harms to competition, universal service, and other core values that can result when its regulatory policies stand in the way of marketplace innovation and progress. In developing the National Broadband Plan, the Commission recognized the importance of ensuring that regulation of legacy services does not become a drag on the transition to a more modern and efficient use of resources or make it difficult to achieve the Commission's public policy agenda.³

Requiring ILECs to provide equivalent last-mile access and comply with expansive notice requirements when ILECs' major competitors are not subject to similar constraints would constitute a "drag" on the transition to IP-based services. If the FCC desires to promote technology transitions and the rapid deployment of innovative services, it must steer clear of adopting rules that would increase burdens and add unnecessary complexity for ILECs on top the onerous legacy regulatory obligations they already face.

ITTA also advises the Commission to proceed carefully with respect to proposals that have no basis in law or that may lead to results the Commission suggests it does not intend for them to have. For example, the Commission contends that it wants to preserve the notice-only nature of the copper retirement process.⁴ However, the formal process for the public to comment on planned copper retirements proposed in the *NPRM* could lead indirectly to a requirement that ILECs obtain Commission approval to retire legacy copper facilities.

³ "Connecting America: The National Broadband Plan" (2010), *available at*: <http://www.broadband.gov/> ("National Broadband Plan").

⁴ *See NPRM* at ¶ 56.

Similarly, it is well established that the Section 214 discontinuance process is not an appropriate vehicle for challenging changes in rates, terms, and conditions of service. Yet, the Commission proposes to require ILECs that plan to retire copper facilities to commit to continue to provide competitive carriers equivalent wholesale access on equivalent rates, terms, and conditions as a condition for approval of Section 214 discontinuance applications. Such action cannot be squared with legal precedent that has been in place for decades. And, more importantly, it is not warranted based on market realities.

Other proposals in the *NPRM* that apply to the industry more broadly are similarly unnecessary and invasive. For example, there does not appear to be any marketplace justification to place obligations on providers to provision backup power for CPE. The industry has voluntarily adopted certain measures, including deployment of devices that are capable of maintaining standby backup power for a sufficient period of time, demonstrating that marketplace pressures have been more than adequate to address the needs of consumers.

Likewise, it does not appear there is any need for the Commission to insert itself into commercial transactions regarding the sale of copper networks that ILECs wish to retire. ILECs that retire copper would be perfectly content to sell it; there just does not appear to be much interest from other providers to purchase it.

In short, the proposals on which the Commission seeks comment in the *NPRM* in some cases would unfairly inhibit competition from ILECs based on outdated notions of their status as dominant voice service providers, and in all cases are unjustified based on current marketplace realities. Moreover, the need to comply with such requirements would divert valuable resources away from broadband investment and undermine the Commission's stated objective of facilitating the IP transition.

II. THE PROPOSALS IN THE *NPRM* DO NOT REFLECT CURRENT MARKETPLACE REALITIES

A. ILECs Are No Longer Dominant in the Provision of Residential and Business Voice Services

ILECs are no longer the market leaders in the provision of residential or business voice services. The communications marketplace has and continues to undergo a fundamental transformation as broadband networks and IP-enabled platforms are deployed and more and more consumers shift away from legacy TDM-based services to IP-based alternatives. The paradigm shift away from reliance on legacy PSTN-based services offered by ILECs to IP-enabled platforms and applications for the delivery of voice services is well-documented. In steadily increasing numbers, these IP-based alternatives are being provided by cable and wireless providers. Since their peak around the turn of the century, the numbers of ILEC switched access lines and minutes of use have fallen precipitously and continue to decline as switched access connections are displaced by wireless and VoIP subscriptions. Today, interconnected VoIP service comprises more than one-third of all wireline retail local telephone service connections.⁵ Furthermore, approximately 41% of U.S. households have “cut the cord” and rely entirely on mobile wireless for their voice service.⁶

The decline of switched access connections in the face of vibrant growth in subscribership to interconnected VoIP and mobile wireless services was confirmed in the Commission’s Local Telephone Competition Report released last fall.⁷ Out of 444 million total

⁵ *See id.* at ¶ 9.

⁶ *See id.*

⁷ *See* Local Telephone Competition: Status as of December 31, 2013, FCC, Wireline Competition Bureau, Industry Analysis and Technology Division (Oct. 16, 2014), *available at*: http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1016/DOC-329975A1.pdf (“Local Telephone Competition Report”).

retail local telephone service connections as of December 2013, there were roughly 311 million mobile telephony subscriptions, 48 million interconnected VoIP subscriptions, and 85 million ILEC end user switched access lines in service.⁸ Over a three-year period from December 2010 to December 2013, interconnected VoIP subscriptions increased at a compound annual growth rate of 15% and mobile telephony subscriptions increased at a compound annual growth rate of 3%, while ILEC retail switched access lines declined at a rate of 10% per year.⁹ Of the 48 million interconnected VoIP subscriptions, nearly all were provided by non-ILEC providers, and the vast majority of those (more than 27 million) were provided by cable operators offering digital voice service as part of a broadband bundle.¹⁰

These statistics underscore the Commission’s recognition that the regulatory system “established long before competition emerged among telephone companies, cable companies, and wireless providers” is now “eroding rapidly as consumers increasingly shift from traditional telephone service to substitutes including [VoIP], wireless, texting, and email...”¹¹ The combined effect of the increasing market share for VoIP service providers, the robust growth in

⁸ *See id.* at Figure 1.

⁹ *See id.* at 2.

¹⁰ *See id.* at Figures 5 and 6.

¹¹ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 9 (rel. Nov. 18, 2011).

mobile wireless subscribership, and the overall shrinking of the wireline voice services market has had a dramatic impact on ILECs that the Commission cannot ignore.¹²

Given that ILEC-provided services are one of many communications service options available to today's consumers, it makes no sense to continue to saddle ILECs with regulatory obligations that do not apply to other service providers.

B. Adopting Unnecessary Regulations That Perpetuate Competitive Disparities and Ignore the Current State of the Marketplace Would Undermine the Commission's Technology Transition and Broadband Deployment Goals

As long as the Commission persists in imposing or maintaining unnecessary regulatory obligations on ILECs, it will continue to exacerbate marketplace distortions, create disincentives for broader investment in next-generation networks and services, promote inefficient allocation of valuable investment dollars, and delay the transition to all-IP networks.

The Commission has already recognized that regulatory obligations essentially requiring ILECs to maintain two different network architectures subject them to disproportionate regulatory burdens in relation to their competitors and reduce their incentives to invest in upgrades to IP-enabled facilities and services. The Commission stated in the National Broadband Plan that "requiring an incumbent to maintain two networks... reduces the incentive for incumbents to deploy" next-generation facilities, "siphon[s] investments away from new networks and services," and results in significant "stranded" investment in outdated facilities and technologies that are not sustainable.¹³

It is incumbent on the Commission to ensure "that legacy regulations and services [do] not become a drag on the transition to a more modern and efficient use of resources... or make it

¹² The Commission also cannot ignore the availability and popularity of over-the-top voice applications, such as Google Voice, Skype, and Face Time that countless consumers use to make phone calls, in considering the current competitive landscape for voice services.

¹³ National Broadband Plan at 49, 59.

difficult to achieve certain public policy goals.”¹⁴ Requiring incumbent carriers to maintain their TDM-based wireline infrastructure when the industry is moving to next-generation platforms requires continued ILEC investment in legacy facilities when those dollars could more efficiently be used to more rapidly deploy next-generation networks and services.

These concepts apply not only with respect to obligations tied to legacy networks and services, but also with respect to an unnecessarily invasive regulatory approach more generally. To the extent the Commission continues to regulate TDM-based services when IP-based alternatives are available, or determines that any legacy (or new) obligations are applicable in an IP-based environment, it should impose only those regulations that are proven to be both necessary and useful and apply them in the same manner to all classes of providers. Should the Commission continue to endorse policies that subject ILECs to disproportionate regulatory burdens in comparison to their wireless and cable competitors, or pursue more broad-based industry regulations that are unwarranted based on marketplace realities, it will discourage the very investment in next-generation networks and services it seeks to promote with its aggressive broadband policy agenda.

III. THE COMMISSION’S PROPOSALS RELATING TO COMPETITIVE ACCESS ARE UNWARRANTED

A. Proposals That Would Require ILECs to Provide Wholesale Access and Additional Notice to CLECs Are Premature and Inconsistent with the Statute

The *NPRM* seeks comment on proposals that would require the provision of equivalent wholesale access and additional notice to competitive carriers when ILECs seek to retire their legacy copper networks. Specifically, the Commission tentatively concludes that an ILEC must commit to providing CLECs with equivalent wholesale access on equivalent rates, terms, and

¹⁴ *Id.* at 59.

conditions to receive authority to discontinue, reduce, or impair a legacy service that is used as a wholesale input by competitive providers.¹⁵ The Commission also proposes requiring ILECs to provide interconnecting carriers with additional information regarding the expected impact of planned copper retirements, including a description of any modifications in the prices, terms, or conditions of service in connection with copper retirements.¹⁶ Such requirements could trigger an obligation to file a Section 214 application in connection with incremental changes to term discount plans, among other things.¹⁷

As explained below, any Commission action regarding wholesale access or notification to competitive carriers would be premature given that the Commission is currently examining such issues in the special access data collection proceeding. Furthermore, Section 214 is not an appropriate vehicle for the Commission to adopt wholesale access obligations of the nature proposed in the *NPRM*. It is established law that the Section 214 discontinuance process cannot be used to challenge changes in rates, terms, and conditions of service.

The Commission acknowledges that it has undertaken a mandatory data collection to obtain comprehensive information on dedicated services that will enable a robust analysis and evaluation of competition in the market for special access services.¹⁸ This comprehensive review is intended to aid the Commission in ensuring that its special access rules “reflect the state of competition today and promote competition, investment, and access to dedicated communications services [that] businesses across the country rely on every day to deliver their

¹⁵ *NPRM* at ¶ 92.

¹⁶ *Id.* at ¶¶ 57-59.

¹⁷ *See id.* at ¶104

¹⁸ *Id.* at ¶ 6.

products and services to American consumers.”¹⁹ To inform this analysis, the mandatory data request required submission of a vast array of data, information, and documents regarding market structure (e.g., the location and type of facilities capable of providing special access and the proximity of such facilities to sources of demand), pricing, demand (i.e., observed sales and purchases), information on terms and conditions in special access contracts, and decision data (e.g., detailed information regarding recent successful and unsuccessful RFPs).²⁰

The Commission’s evaluation of the special access marketplace is well underway, as the deadline for numerous affected entities to respond to the mandatory data collection recently passed. As Chairman Wheeler observed, “[t]hat means in 2015 we can dig deeply into critical questions.”²¹ Based on the information the Commission has collected, it will closely examine access to last-mile facilities and address important questions about the state of competition for special access services. Thus, any regulations of the nature proposed in the *NPRM* are at best premature. Further, given that the Commission’s analysis will likely show sufficient competition in the market for special access services, such regulations likely will never be necessary. Indeed, it is likely the FCC’s examination will lead the Commission to identify areas where regulation should be removed to encourage innovation.

Moreover, Section 214 is not an appropriate vehicle for the Commission to adopt its proposals. The Commission’s proposal regarding equivalent wholesale access for CLECs, in

¹⁹ See *In the Matter of 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*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, ¶ 1 (2012).

²⁰ See *id.* at ¶¶ 30-46.

²¹ See Chairman Tom Wheeler, Speech at COMPTTEL Fall Convention & Expo, at 3 (Oct. 6, 2014), available at: <http://www.fcc.gov/document/chairman-wheeler-comptel-fall-convention-expo-dallas-tx>.

particular, is inconsistent with the statute and would subvert the intent of Section 214. As indicated above, the Commission tentatively concludes that it should require ILECs to commit to providing equivalent wholesale access on equivalent rates, terms, and conditions as a condition for FCC approval of discontinuance authority for TDM services.²²

However, it is well settled that “use of the Section 214 discontinuance process to challenge changes in rates, terms, and conditions of service would be inappropriate.”²³ The Commission nonetheless seeks comment on a number of principles that would guide its evaluation of what would constitute equivalent wholesale access for CLECs within the context of the Section 214 approval process, nearly all of which relate to the prices, terms, and conditions of service. Among other things, these principles would preclude ILECs from adjusting their rates for various components of the IP replacement product, require ILECs to offer a minimum number of bandwidth options, and limit changes ILECs may wish to make with respect to service delivery options and other terms and conditions that take into account the nature of the IP replacement product.

The Commission’s proposal to require wholesale last-mile access in the context of a Section 214 application simply cannot be squared with precedent that has existed for 35 years. The Commission’s suggestion that approval may be required for ILECs to discontinue certain term discount plans suffers from similar flaws.

²² *NPRM* at ¶ 92.

²³ *Western Union Telegraph Company Petition for Order to Require the Bell System to Continue to Provide Group/Super group Facilities*, Memorandum Opinion and Order, 74 FCC.2d 293, 295, ¶ 6 (1979).

B. Commission Intervention in the Sale of Retired Copper Facilities is Unnecessary

The Commission also explores in the *NPRM* whether and how it should take action to promote the sale or auction of copper by ILECs prior to retirement.²⁴ According to the Commission, CLECs have demonstrated “at least some interest” in purchasing retired copper facilities, so this would allow ILECs to offload unwanted copper while giving competitors or other entities the ability to continue using the facilities to provide copper-based services as an additional competitive alternative for consumers.²⁵

The Commission’s suggestion that it may have some role in facilitating the sale of copper when ILECs retire legacy facilities is misguided. There is no evidence that ILECs have refused to sell their retired copper or that they would not sell their copper infrastructure on reasonable terms and conditions in the future should marketplace demand exist. The limited number of copper sales that have occurred is due to the fact that there is no overwhelming desire by other providers to purchase retired copper facilities as the industry transitions to next-generation technologies and services. Thus, regulatory oversight of these transactions is not necessary and would not provide a demonstrable public benefit.

IV. THE COMMISSION’S PROPOSALS RELATING TO CONSUMER NOTICE ARE UNWARRANTED

ITTA agrees with the Commission that consumers and other retail customers need to understand how copper retirements may affect them.²⁶ Because the Commission’s current rules make no provision for notice to retail end users when ILECs retire legacy copper networks, the

²⁴ See *NPRM* at ¶¶ 84-91.

²⁵ See *id.* at ¶¶ 81-82.

²⁶ See *id.* at ¶ 60.

Commission proposes to extend the notice obligations of its network change disclosure rules to retail customers.

Specifically, the Commission proposes to revise its network change disclosure rules to address the form, timing, and content of notice to retail customers.²⁷ Under the proposed rules, ILECs would be required to directly notify retail customers affected by the planned network change when such customers will need new or modified CPE or will be negatively impacted by the planned network change.²⁸ ILECs would be required to provide such notices in written or electronic form, use specific language relating to service functionalities, features, and other information, and notify consumers sufficiently in advance to allow at least 30 days for public comment.²⁹ The Commission would require ILECs to maintain records of retail customer notifications for a minimum period of time, and proposes that ILECs should be obligated to provide notice to additional entities, including the public utility commission and governor of the state in which the network change is proposed as well as to the Secretary of Defense.³⁰

In addition, the Commission seeks comment on placing limitations on the information that ILECs may provide to consumers during network transitions that would prevent them from selling new services to customers in connection with copper retirements.³¹ It proposes to require ILECs to supply a neutral statement of the various choices that the ILEC makes available to retail customers affected by the planned network changes to address purported concerns that

²⁷ *See id.* at ¶¶ 61-68.

²⁸ *Id.* at ¶ 61.

²⁹ *Id.* at ¶¶ 65-66

³⁰ *Id.* at ¶¶ 64, 79.

³¹ *Id.* at ¶¶ 71-73.

copper retirements may provide an opportunity for ILECs to “upsell” customers by encouraging them to purchase more profitable bundles of service.³²

As explained below, to the extent the Commission determines to impose obligations on ILECs to provide notice to retail customers in connection with copper retirements, it is completely unnecessary for it to go to the lengths described in the *NPRM*. Rather, the Commission should ensure that any measures it adopts would actually be useful and would afford providers adequate flexibility to exercise reasonable discretion in providing such notice. Moreover, the Commission should refrain from placing burdensome restrictions on ILECs with respect to how they interact with customers regarding 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 discipline any questionable behavior by ILECs. The Commission should take care not to diminish competition by inhibiting the ability of ILECs to compete.

A. To the Extent the Commission Adopts Additional Consumer Notification Requirements, They Must Be Implemented a Flexible Manner That Does Not Impede Competition

The Commission correctly observes that in some cases, copper retirements have little or no practical impact on retail customers such that providing them notice would be unnecessary or confusing.³³ However, there are certain circumstances where notice to retail customers could be beneficial, such as when copper retirement requires the provider to replace or install CPE on a customer’s premises or eliminate line power.

To the extent the Commission determines to impose affirmative notice obligations on ILECs in such circumstances, carriers should be afforded sufficient flexibility to comply. The

³² *Id.* at ¶ 67.

³³ *Id.* at ¶ 62.

Commission should avoid placing undue burdens on providers by specifying the form, content, and timing of notices, adopting onerous document retention requirements, and expanding the requirement for ILECs to provide notice to additional entities. Indeed, there does not appear to be a need to require ILECs to file notices of network changes with state authorities or other federal agencies. States public service commissions have the ability to require some form of notice relating to copper retirements if they believe it is necessary. Although the Department of Defense's ("DOD") authority to require such notification is less clear, nowhere in the record has it been established that the agency actually desires to collect such information or that such information is necessary for DOD to perform its regular functions.

The Commission should be careful not to adopt any approach that would undermine competition and the rapid transition to next-generation technologies. The proposed restrictions on "upselling" in the context of copper retirements would do exactly that. Limiting ILECs' ability to educate consumers on services that may be available as a result of the network transition unfairly targets one industry segment and would be a disincentive to deploy fiber.

Moreover, such a requirement would 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.

In other words, carriers should be allowed to comply with any notice requirements in a manner within their discretion, so long as it is reasonable. The underlying goals of such notice should be for carriers to provide transparency that allows consumers to make informed decisions regarding their choices for telephone service. Customers should have clarity regarding the

services available to them and understand the practical consequences of copper retirement. These principles should guide not only aspects of copper retirement relating to changes in facilities, but also to consumer education regarding any new services that may be available to retail customers as a result of the transition.

The Commission also should be careful not to adopt regulations that would, in effect, compel the results the Commission states it wishes to avoid. For instance, the Commission emphasizes in the *NPRM* that it believes copper retirement should remain a notice-based process rather than triggering the requirement for Commission approval pursuant to the Section 214 discontinuance process.³⁴ Under the FCC's current rules, carriers are required to provide notice when they make a change in network facilities, such as by retiring the legacy copper network to move to an all-fiber network.³⁵ When carriers seek to discontinue, reduce, or impair service to a community, in contrast, they must file an application initiating a public review process and obtain an affirmative Commission decision that grant of the application is consistent with the public interest.³⁶

The Commission maintains that it does not intend to establish an approval requirement for copper retirements because it “would undesirably harm incentives for fiber deployment.”³⁷ At the same time, however, the Commission proposes to revise its rules to provide the public with an opportunity to comment on planned network changes to identify potential harms associated with copper retirements and guide the Commission in its decision making.³⁸

³⁴ *See id.* at ¶ 56.

³⁵ *See* 47 C.F.R. §§ 51.325, 51.333.

³⁶ 47 U.S.C. § 214(a).

³⁷ *NPRM* at ¶ 56.

³⁸ *Id.* at ¶ 78.

Establishing a formal process for the public to comment on planned copper retirements could in effect serve as a mechanism to require ILECs to obtain Commission approval to retire legacy copper facilities. The Commission should be careful that any adoption of this requirement does not in practical effect have the very consequences the Commission seeks to avoid.

B. There is no Factual Basis for the Commission to Adopt Rules Relating to *De Facto* Copper Retirement

The Commission indicates that there have been allegations that ILECs are in some cases not adequately maintaining their copper facilities such that they have essentially been retired without undergoing the Commission's existing copper retirement procedures.³⁹ The Commission suggests that it define copper retirement to address such circumstances by including within the scope of the definition *de facto* retirement (i.e., failure to maintain copper that is the functional equivalent of removal or disabling).⁴⁰

The Commission has not established a factual basis for new rules in this area. State and local governments continue to play a vital role in overseeing carriers' service quality and network maintenance and ensuring that consumers continue to have meaningful access to reliable and affordable communications services. Without evidence of a systemic problem that is having a deleterious impact on consumers, competition, or public safety, federal rules and oversight in this area are unnecessary.

V. THE COMMISSION'S PROPOSALS RELATING TO CPE BACKUP POWER ARE UNWARRANTED

The Commission notes that it is considering the adoption of baseline requirements for ensuring continuity of power for CPE during commercial power outages and seeks comment on a framework for delineating the lines of responsibility for both providers and consumers for

³⁹ *Id.* at ¶ 53.

⁴⁰ *Id.*

provisioning CPE backup power during power outages.⁴¹ Under the proposed framework, the Commission would require providers of facilities-based fixed voice services that are not line-powered by the provider (e.g., interconnected VoIP) to supply sufficient power for so-called “minimally essential” communications (e.g., 911 calls) for the first eight hours of an outage.⁴² Affected providers also would be required to undertake a comprehensive consumer education plan, and could bear some responsibility for ensuring consumers have access to affordable options for battery backup power through standard commercial outlets during prolonged outages.⁴³ According to the Commission, establishing clear expectations for both providers and consumers as to their responsibilities for provisioning CPE backup power throughout the course of an outage would minimize the potential for lapses in service due to consumer confusion or undue reliance on the provider.⁴⁴

There does not appear to be any marketplace justification to place affirmative obligations on affected providers to provision backup power for CPE. As the Commission observes, “[m]illions of consumers in communities where legacy copper networks continue to operate already rely on other networks that do not provision line power to the customer premises.”⁴⁵ For example, as of December 31, 2013, more than 31 million end users were receiving voice service over coaxial cable, which depends on power supplied at the premises.⁴⁶

Although continuity of communications is an important issue as consumers transition from legacy copper loops to new technologies, there is no demonstrated need for the

⁴¹ *See id.* at ¶¶ 31-48.

⁴² *See id.* at ¶¶ 33-35.

⁴³ *See id.* at ¶¶ 38-40.

⁴⁴ *See id.* at ¶ 32.

⁴⁵ *Id.* at ¶ 13.

⁴⁶ *See* Local Telephone Competition Report at 17, Table 6.

Commission to adopt rules in this area. The industry has responded to marketplace demand and consumer needs by voluntarily deploying devices that are capable of maintaining standby backup power, typically for up to eight hours.⁴⁷ Indeed, one of the largest providers of IP-based voice service in the country has deployed devices that are capable of providing backup power for up to twenty-four hours.⁴⁸ There is every indication that marketplace pressures are sufficient to guide the industry's response to any concerns regarding backup power of CPE during power outages without the need for regulatory intervention.

Furthermore, because it is standard industry practice for interconnected VoIP providers to notify consumers regarding the potential limitations of IP-enabled voice services and equipment during a power outage, consumers have been and continue to be in a position to make informed decisions regarding their purchase of such services and take appropriate steps to address any concerns they may have. There is no evidence that migrating to VoIP and IP-based voice products has resulted in consumer confusion or that consumers have placed undue reliance on their provider. There is no evidence that additional consumer education would be helpful or necessary. Under the circumstances, rules that would impose an affirmative legal obligation on affected providers to provide CPE backup power or undertake a comprehensive consumer education plan are unwarranted and a waste of resources that would be better directed toward broadband deployment and adoption.

The Commission also underestimates the broad impact such requirements would have. Although the Commission suggests affected providers would only be required to provide

⁴⁷ See CSRIC IV Working Group 10B, CPE Powering – Best Practices; Final Report – CPE Powering, at 9-11 (Sept. 2014), *available at*: <http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf>.

⁴⁸ See Verizon, Order, Replace, Install and Dispose of ONT Batteries, *available at*: <http://www.verizon.com/battery>.

sufficient power for “minimally essential” communications during power outages, as a practical matter there is no way to maintain power continuity for some, but not all, services.⁴⁹ Consumers generally use residential services for a wide range of communications needs. While power during an outage is a valuable resource, it is misguided to think that backup power can reliably be prioritized or conserved for a limited subset of services. It would be technically difficult, if not impossible in some cases, for providers to distinguish among certain types of calls or functions in a way that would allow them to rapidly load-shed non-essential communications services to conserve backup power for minimally essential communications.

The Commission’s suggestion that affected providers should somehow be involved in ensuring consumers can self-provision CPE backup power, such as by being required to make affordable options for battery backup of CPE available to consumers, is particularly overreaching.⁵⁰ Carriers typically have no role in the market for battery backup equipment. Consumers in most cases are more than capable of acquiring replacement batteries or other backup power technology through standard commercial outlets, just as they do with respect to alarm clocks, flash lights, radios, and other equipment often needed or utilized during power outages or times of emergency. Therefore, as a general matter, the availability and cost of CPE backup power through standard commercial supply chains is beyond the scope of influence and control of affected providers.

Finally, ITTA has concerns that the proposed backup power requirements are not technologically neutral, as it is unclear based on the *NPRM* the extent to which such requirements would apply to fixed wireless services.⁵¹ Should the Commission determine to

⁴⁹ *NPRM* at ¶ 34.

⁵⁰ *See id.* at ¶¶ 38, 40.

⁵¹ *See id.* at ¶ 33.

move forward with invasive regulations in this area, it must ensure they are applied in a competitively neutral manner.

VI. CONCLUSION

In sum, the Commission should refrain from adopting regulations that would unfairly burden ILECs and hamper their ability to compete against their cable and wireless rivals. Continuing to saddle legacy providers with onerous regulatory obligations that reflect a bygone era in which they were monopoly providers ignores the realities of today's communications marketplace. The Commission's primary objective must be to ensure regulatory parity for all providers and to identify ways to reduce or eliminate regulation and uncertainty that would impede investment in IP-based infrastructure and services. By exercising a light regulatory touch that emphasizes competitive neutrality, the Commission can minimize marketplace distortions, create incentives for broader investment in next-generation networks and services, promote efficient allocation of valuable investment dollars, and promote the transition to all-IP networks.

Respectfully submitted,

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