



The voice of mid-size communications companies

June 23, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th 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 June 19, 2015, AJ Burton of Frontier Communications, Jeff Lanning of CenturyLink, Pat Rupich of Cincinnati Bell, and Genny Morelli and the undersigned of ITTA met separately with Daniel Alvarez in Chairman Wheeler's office and Nick Degani in Commissioner Pai's office regarding the Commission's Notice of Proposed Rulemaking ("*NPRM*") seeking comment on backup power for customer premises equipment ("CPE"), copper retirement, and related issues in connection with the ongoing TDM-to-IP transition.¹

CPE Backup Power

We expressed concern that the proposals in the *NPRM* relating to backup power for CPE are unwarranted and would result in increased costs and burdens for providers and consumers while impeding the Commission's broadband deployment goals. There is virtually no consumer demand for or expectation that providers supply backup power for CPE. Most consumers already rely on alternative (i.e., non-landline) sources for voice calls, such as wireless service, to communicate during power outages, and even those consumers that continue to subscribe to traditional landline voice service (anticipated to be only about 11% of all voice subscribers by the end of 2015) often use equipment (i.e., a cordless phone) that does not rely on a line-powered network. Indeed, it is common for providers to voluntarily make available to subscribers equipment that is capable of maintaining backup power for an extended period of time, yet in nearly all cases, customers decline the option.

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).

Cincinnati Bell's experience in the wake of Hurricane Ike in September 2008 provides a clear example of the lack of consumer interest in provider-supplied backup power options. More than 1.9 million Ohioans lost commercial power during the storm, and it disrupted electric service to 83 percent of Duke Energy's 700,000 customers in Southwest Ohio for up to nine days. After the storm, Cincinnati Bell promoted the advantage of its traditional copper-based landline service during a power outage expecting that the campaign would entice customers that had migrated to competing cable and VoIP providers to switch back. However, the company saw little to no uptick in customers as a result of the campaign, and landline losses continued despite the lack of backup power with alternative services. The lesson gained from this experience was that consumers generally do not place a great deal of value on backup power.

For the small number of consumers who may value backup power capabilities, a variety of alternatives are available, and consumers, not providers, are in the best position to determine their specific needs and take any desired precautions. Providing 8 hours of backup power for a typical fiber optic service terminal requires a 12-volt lead acid battery with a life span of 3-5 years, depending on how often it is used, and there appear to be numerous options for consumers to obtain replacement batteries of this type through standard commercial channels. An Internet search for a couple of popular models meeting these specifications revealed that they are available for purchase through various retail outlets, including Staples, Walmart, and Amazon.²

Given the lack of consumer interest in provider-supplied backup power options, requiring providers to install battery backup power for all existing customers would be a huge undertaking for providers and inconvenient and burdensome for customers. Providers would need to devote significant man hours to contact every subscriber to set up an appointment, install the equipment on site, and repeat this process for no shows, which are likely to be numerous given that most customers do not want or care about obtaining battery backup power from their provider. Customers would need to make arrangements to be home for the installation.³ The end result would be fewer available resources for broadband deployment. Retrofitting existing service deployments for customers who are not interested in battery backup power would divert resources from new deployments, thus slowing the expansion of services to customers who desire advanced broadband capabilities.

Moreover, to the extent the Commission is considering backup power requirements that would exceed the 8-hour time period suggested in the *NPRM*, there may be significant economic, environmental, and aesthetic tradeoffs. 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

² For example, the GT12080-HG, a 12-volt, 8 amp hour, sealed lead-acid battery used in CPE deployed by CenturyLink, Frontier, Cincinnati Bell, and other providers is available at amazon.com, apexbattery.com, batteryplex.com, and other commercial outlets. The CS24C12V2-E battery used in CPE deployed to Frontier customers in California is available at staples.com, walmart.com, and amazon.com, among other sources.

³ Any requirements relating to remote monitoring would add significantly to these costs. Remote monitoring would require deployment of CPE that supports that function, and the technology necessary is not yet mature enough to be reliable and efficient.

hours, does not accommodate rechargeable batteries.⁴ 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, more onerous requirements could come at a significant economic and environmental cost – more batteries consumers must purchase and more batteries in landfills. More onerous backup requirements also can increase the size of the backup power devices in consumer homes.

Rather than adopting regulations relating to CPE backup power, the Commission should look to best practices developed by the Communications Security, Reliability, and Interoperability Council (“CSRIC”). CSRIC Working Group 10 issued a report with recommended CPE backup power best practices in September 2014.⁵ The report includes recommendations for (i) disclosures to consumers about limitations of CPE supplied by the service provider; (ii) information about where and how to secure backup power functionality for such CPE; and (iii) provision of affordable battery backup power options to consumers. The report also recognizes the importance for providers to have flexibility to adopt and implement these practices due to differences in their networks and business models. The Commission should, at most, endorse these best practices, monitor industry’s response and progress, and then assess at some point in the future whether further action is warranted.

Retail Notice and Related Disclosures

We pointed out that the extensive retail customer notice requirements proposed in the *NPRM* are unnecessary. In many cases, copper retirements have little or no practical impact on retail customers and providing them notice would be unnecessary or confusing. In situations where notice to retail customers could be beneficial, such as when copper retirement requires the provider to replace or install equipment on a customer’s premises, carriers must contact consumers before proceeding.

To the extent the Commission adopts retail notice requirements, it should ensure providers have adequate flexibility to exercise their reasonable discretion. It should not specify the form, content, and timing of notices, adopt onerous document retention requirements, or require notice to additional entities.

The Commission also should refrain from placing burdensome restrictions on ILECs regarding how they interact with 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.

⁴ See Verizon, “Support: Order or Replace Battery,” available at: <http://vz.to/IT3KPK> (last accessed: June 23, 2015).

⁵ See CSRIC IV Working Group 10B, CPE Powering – Best Practices; Final Report – CPE Powering (Sept. 2014), available at: <http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf>.

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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 observed that the Commission's proposals relating to wholesale access and additional notice to CLECs are premature and inconsistent with Section 214 of the Communications Act. The Commission's comprehensive review of the special access marketplace is well underway and the Commission has indicated that it intends to complete its evaluation by the end of this year. The Commission should continue to move forward with this process. We are confident the Commission's analysis will show sufficient competition in the market for special access services, such that adopting the proposals in the *NPRM* would be premature and wholly unnecessary. Indeed, the FCC's examination could very well lead the Commission to identify areas where regulation should be removed to encourage innovation.

We also pointed out that Section 214 is not an appropriate vehicle for the Commission to adopt its proposals relating to wholesale access. It is well established that the Section 214 discontinuance process cannot be used to challenge changes in rates, terms, and conditions of service. Thus, a discontinuance process that includes an evaluation of the prices, terms, and conditions of service (e.g., by precluding ILECs from adjusting their rates for various components of the IP replacement product, requiring ILECs to offer a minimum number of bandwidth options, and limiting 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) cannot be squared with the statute.

The participants also expressed concern that the Commission's proposals 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. Given that ILECs are no longer dominant in the provision of residential or business voice services, the imposition of new wholesale 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
Nick Degani