

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

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| In the Matter of |) | |
| |) | |
| Ensuring Continuity of 911 Communications |) | PS Docket No. 14-174 |
| |) | |

**OPPOSITION OF
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits its Opposition to the Petition for Reconsideration of the National Association of State Utility Consumer Advocates (“NASUCA”), *et al.*¹ filed in response to the August 7, 2015 *Report and Order* (“*R&O*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.² In the *R&O*, the Commission adopted certain backup power obligations for providers of facilities-based, fixed, residential voice services that are not line-powered (“covered providers”) to ensure they meet their obligation to provide access to 911 service during a power outage.

Specifically, the Commission adopted rules requiring covered providers to offer subscribers the option to purchase at least 8 hours (increased to at least 24 hours within three years) of standby power that will enable calls to 911 during a commercial power outage.³ In addition, covered providers are required to notify consumers, at the point of sale and annually, of

¹ Petition for Reconsideration of the National Association of State Utility Consumer Advocates, Maryland Office of People’s Counsel, Public Knowledge, the National Consumer Law Center, the Public Utility Law Project of New York, the Benton Foundation, the Center for Rural Strategies, the Greenlining Institute, the Broadband Alliance of Mendocino County, and Access Sonoma Broadband, PS Docket No. 14-174 (filed Nov. 16, 2015) (“Petition”).

² *In the Matter of Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order, FCC 15-98 (rel. Aug. 7, 2015) (“*R&O*”).

³ *Id.* at ¶ 31.

the availability of backup power sources, as well as information regarding service limitations, purchasing and replacement options, expected backup power duration, proper usage and storage conditions, self-testing and monitoring, and applicable warranties.⁴

NASUCA, *et al.* ask the Commission to reconsider the rules adopted in the *R&O* because they leave the choice of obtaining backup power to the consumer rather than placing such responsibility, and the associated costs, on covered providers. They contend that this approach is a departure from the proposal in the Commission's *Notice of Proposed Rulemaking* ("NPRM")⁵ and that it is inconsistent with the Commission's goal of promoting public safety.⁶

Contrary to NASUCA, *et al.*'s arguments, the Commission should maintain its consumer-driven approach with respect to backup power options for customer premises equipment ("CPE"). The Commission sought in the *NPRM* to implement a framework to delineate the lines of responsibility for both providers and consumers for provisioning CPE backup power during power outages.⁷ As explained below, the requirements adopted in the *R&O* establish clear expectations for both providers and consumers and are more than adequate to promote public safety by ensuring consumers have information to empower them to make informed decisions about backup power options and to exercise such options if they choose to do so. Transferring responsibility to the provider would remove this choice and lead to increased costs and burdens

⁴ *Id.* at ¶ 60.

⁵ *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").

⁶ *See* Petition at 2.

⁷ *See NPRM* at ¶¶ 31-48.

for both providers and consumers. The Commission was correct in its conclusion to avoid placing undue burdens on providers to offer backup power solutions that provide little real benefit, given marketplace developments and consumer preferences.

As ITTA previously has explained, there is virtually no consumer demand for providers to supply backup power for CPE.⁸ 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 this year) often use equipment (i.e., a cordless phone) that does not rely on a line-powered network.⁹ Indeed, it is common for providers to 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.¹⁰

⁸ See, e.g., Letter from Micah M. Caldwell, ITTA, to Marlene H. Dortch, FCC, PS Docket No. 14-174, *et al.* (filed Apr. 30, 2015).

⁹ See, e.g., Comments of Verizon, PS Docket No. 14-174, *et al.*, at 17 (filed Feb. 5, 2015) (stating that “[n]otwithstanding the availability of backup batteries, many customers today choose not to obtain a battery, given the growing reliance on wireless or the customers’ use of handsets or other devices that themselves require commercial power to operate.”); Letter from the National Cable & Telecommunications Association to Marlene Dortch, FCC, PS Docket No. 14-174, *et al.*, at 2 (filed May 18, 2015) (“NCTA *Ex Parte*”) (attributing the lack of consumer demand for backup power to the fact that “customers rely on alternative means of communicating (i.e., mobile devices and services) if the voice equipment in their home is not working”); CSRIC Working Group 10 Report at 19 (September 2014), *available at*: <http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf> (noting that “the need for back-up power is evolving, as consumers increasingly rely on their cell phones and other portable devices for emergency communications during a commercial power outage”).

¹⁰ See, e.g., Comments of Cincinnati Bell, PS Docket No. 14-174, *et al.*, at 7 (filed Feb. 5, 2015) (observing little to no increase in subscribership following a winback campaign promoting the advantages of line-powered service in the wake of a hurricane that caused significant outages); NCTA *Ex Parte* at 2 (pointing out that “an exceedingly small percentage of cable voice customers purchase batteries for their CPE when offered and that there is no demonstrable increase in demand for batteries following extended power outages.”); Reply Comments of

There also is no evidence that consumers have come to rely on providers for backup power options in connection with the migration to IP-based voice products. In fact, the opposite is true. According to the FCC, consumers have expressed frustration over the lack of information from providers on how to *self-provision* backup power, which indicates that consumers have a clear understanding that it is up to them to take steps to address any risks associated non-line powered service during a power outage.¹¹

Given consumer expectations and the lack of consumer interest in obtaining backup power from their voice provider, the costs and burdens associated with NASUCA, *et al.*'s proposal would be tremendous. Under this approach, covered providers would be required to supply backup power to all voice customers, regardless of whether they want it. This would be a huge and costly undertaking for providers and inconvenient and burdensome for customers. As the Commission observes, “batteries or other potential substitutes for line powering carry a not insignificant additional cost over an entire network,” which is why the Commission concluded “that it is not unreasonable to permit providers to recoup those additional costs from those subscribers who have need for the additional coverage.”¹²

There would be substantial non-monetary costs associated with NASUCA, *et al.*'s proposal, as well. Providers would need to devote significant man-hours to contact every

Bright House Networks, PS Docket No. 14-174, *et al.*, at 2 (filed Feb. 5, 2015) (stating that after Bright House Networks made batteries optional for new installations at approximately \$35 plus shipping, “[a] truly negligible number of customers decided to purchase a battery after receiving notice that the service will not function without power”); Letter from Mary McManus, Comcast, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 14-174, *et al.*, at 1-2 (filed June 8, 2015) (stating that “for the year 2014, less than 1 percent of new Xfinity Voice customers purchased a backup battery,” and that approximately 13 percent of customers obtained a replacement battery after being notified that their existing battery was depleted).

¹¹ See *R&O* at ¶ 53.

¹² *Id.* at ¶ 44.

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 battery backup power. Customers would need to make arrangements to be home for the installation. Requiring backup power for consumers also would divert valuable resources from broadband deployment, thus slowing the expansion of services to customers who desire advanced broadband capabilities.

Additionally, there would be environmental costs associated with the NASUCA, *et al.*'s proposal. 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 3-4 years, depending on how often it is used. If providers were required to supply backup batteries for every customer, the quantity of batteries likely to end up in landfills would be significant.

Given these facts, the Commission took the correct approach in enabling consumers to make their own choices regarding battery backup options based on their individual needs and preferences. As the Commission recognized, "there are technical, operational, and cost considerations that must be balanced against" any theoretical desire to impose a battery backup mandate on covered providers.¹³ Therefore, the Commission wisely chose to avoid a path that would entail unnecessary burdens and excessive costs for providers and consumers with comparatively little public safety benefit.

Pursuant to the *R&O*, no provider is required to install backup power unless the consumer so requests. More importantly, no subscriber is forced to purchase unwanted equipment. Rather, the rules the Commission adopted ensure that subscribers who desire to obtain backup power from their provider can do so simply and conveniently. Moreover, the disclosure obligations for

¹³ *Id.* at ¶ 36.

covered providers ensure that consumers understand the risks associated with non-line-powered service, know how to protect themselves from such risks, and have a meaningful opportunity to do so.

As Chairman Wheeler pointed out, “[a] safe consumer begins with an informed consumer.”¹⁴ By imposing detailed disclosure obligations on providers as to the availability of backup power sources, purchasing and replacement options, service limitations, proper usage and storage conditions, and other important information, the Commission made sure that subscribers understand their options with respect to backup power and are aware of the consequences of their decisions as to whether, and to what extent, to purchase backup power capabilities.

Indeed, even if a consumer opts not to purchase backup power, the Commission’s rules ensure that he/she will not have the expectation of relying on an IP-based service that may not work when trying to make a 911 call during a power outage. Thus, the approach the Commission adopted not only promotes the availability of 911 service during commercial power outages, but also promotes the “safety of life and property through the use of wire and radio communications” consistent with the Commission’s statutory mandate.¹⁵

In sum, the Commission’s decision to adopt a combination of performance and disclosure obligations for covered providers promotes clear expectations and consumer choice and empowers consumers to understand the backup power options available to maintain continuity of 911 service and to obtain the equipment necessary to provide such service, if they so desire. The Commission should therefore reject NASUCA, *et al.*’s arguments to reconsider the backup power rules and instead retain the consumer-driven approach adopted in the *R&O*.

¹⁴ Statement of Chairman Wheeler at 1.

¹⁵ 47 U.S.C. § 151.

Respectfully submitted,

By: /s/ Micah M. Caldwell

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

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Certificate of Service

I, Micah M. Caldwell, hereby certify that on this 31st day of December 2015, I have caused a copy of the foregoing Opposition to be served by electronic mail upon the following:

David C. Bergmann
3293 Noreen Drive
Columbus, OH 43221
Phone: (614) 771-5979
david.c.bergmann@gmail.com

Counsel for NASUCA, et al.



Micah M. Caldwell

ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
mcaldwell@itta.us