

7State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : February 5, 2015

To: The Commission
(Meeting of February 12, 2015)

From: Helen M. Mickiewicz
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Subject: Filing of Comments in the FCC IP Transition-Related NPRM Seeking to Strengthen the FCC's Public Safety, Pro-Consumer and Pro-Competition Policies and Protections Regarding Emerging Wireline Networks and Services

RECOMMENDATION: The Commission should file comments in response to the *Notice of Proposed Rulemaking (NPRM)*¹ issued by the Federal Communications Commission (FCC) in its on-going docket pertaining to the transition from time-division-multiplex (TDM) protocol to Internet Protocol (IP). In this *NPRM*, the FCC is proposing rules to facilitate the TDM-to-IP transition that would do the following:

- 1) Ensure reliable back-up power for consumers of IP-based voice and data services across networks that provide residential fixed service that substitutes for and improves upon the kind of traditional telephony used by people to dial 911;
- 2) Protect consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities (e.g., copper networks) and seek to discontinue legacy services (e.g., basic voice service); and

¹ NPRM, *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; RM-11358; WC Docket No. 05-25; RM-10593 (FCC 14-185); rel. November 25, 2014. (*NPRM*).

- 3) Protect competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small and medium-sized businesses, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs.”²

Comments were due February 5, 2015, with reply Comments due March 9, 2015. The CPUC would submit late-filed comments, which we expect the FCC will accept.

BACKGROUND: In this *NPRM*, the FCC continues its focus “on the technological revolution involving the transition from networks based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to all-Internet Protocol (IP) multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure.”³ The FCC notes that in its January 2014 *Technology Transitions Order*, the FCC unanimously recognized that the success of these technology transitions depends upon the technologically-neutral preservation of principles embodied in the [federal] Communications Act. These principles, the FCC further observed, have long defined the relationship between those who build and operate networks and those who use them. These principles include competition, consumer protection, universal service, and public safety and national security.⁴ The FCC is “determined to ensure that these fundamental values are not lost merely because of technology changes.”⁵

A. Ensuring Reliable Backup Power for Consumers of IP-based Services and New Network Facilities -- Battery Back Up Power for CPE:

The FCC begins its inquiry with the observation that historically, consumers were accustomed to being able to use their landline phones even when the power went out because copper networks have “line power” - that is, the copper wire conducts “electricity from the local exchange carrier’s central office to the customer premises equipment (CPE)”. With the advent of newer technologies, consumers are migrating to IP-based facilities that provide services such as interconnected VoIP service. These newer services offer enormous advantages but they do not necessarily supply line power. In light of the need for communications networks to function at all times, and especially during emergencies, the FCC seeks comment on how it can “safeguard continuity of communications throughout a power outage.” The FCC is proposing rules that “would establish reasonable expectations in a technology-neutral fashion, and would apply to all fixed networks supplying this fundamental means of residential communication.”⁶

² *Id.*, ¶ 2.

³ *Id.*, ¶ 1.

⁴ *Id.*

⁵ *Id.*

⁶ *NPRM*, ¶ 3.

Previous to issuing this *NPRM*, the CPUC itself adopted back-up power education policies in Decision (D.) 10-01-026.⁷ There, the CPUC required all facilities-based providers of telephony services, including cable providers and facilities-based Voice over Internet Protocol (VoIP) providers of telephony services, to inform their residential and small business customers that their service requires back-up power on the customer's premises. The CPUC also mandated that service providers inform their customers of the limitations of service, including potential service failure, during a power outage. In addition, the CPUC required these voice service providers to educate customers about how best to maximize the ability to make or receive necessary phone calls during an outage. The FCC's approach is consistent with the CPUC's policies in D.10-01-026.

B. Informing and Protecting Consumers as Networks and Services Change – Legacy Voice Service Discontinuance and Copper Retirement

In order to prepare for the wide-scale technology transitions that will affect consumers, the FCC here considers two separate, but often related, parts of its rules: (1) those governing changes in network *facilities*, and in particular, retirement of copper facilities; and (2) those governing the discontinuance, impairment, or reduction of legacy *services*, irrespective of the network facility used to deliver those services.⁸

1. Copper Retirement

Currently, the FCC's rules governing *network changes* are triggered when a carrier makes a change in its network facilities - such as when a carrier retires copper facilities to move to an all fiber network. As long as no service is discontinued in the process (e.g., TDM basic voice), a carrier need only provide public notice of its intent to retire the legacy facilities (e.g., copper loops).⁹ Because it does not wish to impede the transition to new networks, the FCC proposes to retain the notice-only rule for the copper retirement process.¹⁰

The FCC is concerned, however, that its current copper retirement rules will not effectively inform consumers about the consequences of the transition.¹¹ Accordingly the FCC proposes “to provide additional notice of planned copper retirements to affected retail customers, along with particular consumer protection measures, and to provide a formal process for public comment on such plans.”¹² The FCC proposes defining “copper retirement” so that incumbent local exchange

⁷ The proceeding was in response to Pub. Util. C. § 776, which required the CPUC to consider the need for backup power systems installed on the property of residential and small commercial customers by a facilities-based provider of telephony services, and upon determining that the benefits of the standards exceed the costs, develop and implement performance reliability standards.

⁸ *Id.*, ¶ 5 [emphasis in original].

⁹ See 47 C.F.R. §§51-325 – 51-335. Require public notice and technical description of the planned changes and the implementation date.

¹⁰ *NPRM*, ¶ 5.

¹¹ *Id.*

¹² *Id.*

carriers (ILECs) know when their responsibility to provide notice and information to customers is triggered.

The FCC also acknowledges allegations that in some cases carriers are allowing copper networks to deteriorate prior to retirement or are not adequately informing consumers about the available options before the copper networks are retired. The FCC asks “how these allegations, if true, affect consumers, and [it] suggests rule changes -- such as a definition of what constitutes ‘copper retirement’-- that could make such practices less likely to occur.”¹³

2. Discontinuance of Legacy TDM Voice Service

Section 214 of the federal Communications Act of 1934, as amended (the Act), requires carriers to obtain FCC approval before discontinuing, reducing, or impairing service to a community or part of a community. Currently, section 214 prevents a carrier from removing interstate or foreign basic voice service from the marketplace without a public review process and FCC approval. “This process allows the Commission to satisfy its obligation under the Act to protect the public interest and to minimize harm to consumers.”¹⁴

In this *NPRM* the FCC proposes that “where consumers may depend upon a service offered by a carrier, there should be a public process to evaluate a proposed discontinuance of that service *before* it happens.”¹⁵ Because consumers and industry alike benefit from predictability and certainty, the FCC also seeks comment on whether it “should establish criteria that the Commission will use in evaluating applications to discontinue retail services pursuant to section 214.”¹⁶

C. Preserving Competition by Maintaining Wholesale Access.

The FCC recognizes that, as a way to offer choice in the marketplace, competitive carriers often combine their own facilities with last-mile facilities and services purchased from ILECs. While not seeking to impose *new* wholesale obligations on the ILECs, the FCC also wants to avoid reliance on technology transitions “as an excuse to limit” existing competition.¹⁷ The FCC proposes that copper retirement -- particularly retirement on a wide scale -- should require adequate notice to all customers of the incumbent networks, including competitive carriers. Accordingly, in the *NPRM*, the FCC considers updates to the process ILECs presently use to notify interconnecting carriers of planned copper retirements. And, the FCC seeks comment on proposals by AT&T and other parties to facilitate the sale or auction of copper facilities that an incumbent intends to retire.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* [emphasis in original].

¹⁶ *Id.*

¹⁷ *NPRM*, ¶ 6 [emphasis in original]

D. FCC's Legal Authority

The FCC seeks comment on its legal authority to adopt baseline requirements for ensuring continuity of power for CPE during commercial power outages.¹⁸ As a threshold matter, the FCC proposes that any backup power requirements should apply to “facilities based fixed voice providers, such as interconnected VoIP, that are not line-powered by the provider.”¹⁹

DISCUSSION AND RECOMMENDATIONS

A. Customer Premises Equipment (Cpe) Back-Up Power /Safety Issue

Traditional telephone service was provided to customers using a pair of copper wires connected to the customer's telephone, with those same wires carrying the electricity necessary to operate the telephone itself. Because the equipment in the customer's home, the CPE, was line-powered, service continued even when the power went out. The advent of newer services using coaxial cable, fiber-optic cable and other technologies, which are not line-powered, has changed this historical dynamic.

The FCC begins its inquiry by noting that, “[i]n the past, consumers have relied upon service providers for backup power for their residential landline phones.²⁰ In light of changes in technology, the FCC asks if it is reasonable for “providers to continue to bear primary responsibility for CPE backup power.”²¹ The FCC wants to ensure that as consumers transition from legacy copper loops to new technologies, they continue to have reasonable CPE backup power alternatives to support minimally essential residential communications, particularly access to emergency communications, during power outages.²²

CPE backup power is not solely a copper retirement issue, however. Millions of consumers in communities where legacy copper networks continue to operate already rely on other networks that are not line-powered. For example, as of December 31, 2013, more than 31,000,000 end users were receiving voice service over coaxial cable, which, like fiber, depends on power supplied at the premises. The FCC therefore is proposing a framework that would establish reasonable expectations for when, and for how long, providers should bear responsibility for the provision of CPE backup power during a power outage.²³ The FCC focuses its inquiry on service provider provision both of backup batteries to residential VoIP customers, and of educational materials regarding the power issue and the need for backup batteries.

¹⁸ *Id.*, ¶ 43.

¹⁹ *Id.*, ¶ 33.

²⁰ *Id.*, ¶ 35.

²¹ *Id.*

²² *Id.*, ¶ 12; emphasis added.

²³ *Id.*, ¶ 13.

- 1) **FCC Proposal:** Any potential CPE backup power requirements would apply to facilities-based fixed voice services, such as interconnected VoIP, that are not line-powered by the provider.²⁴

Staff Recommendation: Staff recommends the CPUC support this proposal.

- 2) **FCC Proposal:** The FCC proposes that providers should assume responsibility for provisioning backup power that is capable of powering their customers' CPE during the first eight hours of an outage.²⁵

Staff Recommendation: Staff recommends that the CPUC support this proposal. Service providers should be responsible for providing customers an initial backup battery upon initiation of the voice service. Batteries should provide at least 8 hours of standby time. The CPUC previously noted that "standby time" does not equate to "talk time".²⁶ The CPUC's supporting study identified that 8 hours of backup power is reasonable under most circumstances if the battery is maintained in good condition.²⁷

The 8 hour standard should also be evaluated relative to network power availability following a power outage. Many customer premises are often served by remote terminals that themselves are battery powered during a power outage. These remote terminals, typically, do not have onsite generation capabilities to maintain network services beyond a limited amount of time.

The CPUC also may wish to point out the implications for the backup power issue posed by widespread use of cordless phones. The ORA has obtained information which shows that the "take rate" for cordless phones vastly outstrips new purchase of corded phones. Cordless phones also are not self-powered, and fail during a power outage. The FCC should include cordless phones in any public education plan.

- 3) **FCC Question:** The FCC seeks comment on how a provider would meet its responsibility to provide backup power for a specific duration of time.²⁸ Would it be sufficient for the provider to initially install backup power technology at the customer's residence, while leaving the consumer responsible for any associated maintenance of the

²⁴ *Id.*, ¶ 33

²⁵ *Id.*, ¶ 36.

²⁶ See CPUC Decision 10-01-026; January 21, 2010. "Standby time" refers to the amount of time the telephone can remain ready to make or receive a call. "Talk time" refers to the amount of time the telephone can remain in active use making or receiving calls.

²⁷ See *California Public Utilities Commission, Reliability Standards for Telecommunications Emergency Backup Power Systems and Emergency Notification Systems, Final Analysis Report, May 9, 2008*. The study determined that the number of customers affected by power outages lasting more than 8 hours ranges from 1% to 9.1%, with an average of 3.9%. Adopting a greater standard above 8 hours increases costs relative to the extra security provided, though subsequent battery technology improvements may change the cost/benefit analysis. The CPUC study is now relatively dated and the FCC could update its cost benefit analysis using latest battery technology.

²⁸ *NPRM.*, ¶ 37.

power supply? Should the provider have any responsibility to monitor battery status and determine whether the battery has degraded and if so, how could this responsibility be carried out?

Staff Recommendation: The FCC should require service providers to offer optional battery backup power maintenance services at cost to ensure battery backup is functional. Some customers may not be able to perform battery inspection or replacement on their own, whether disabled, not technically proficient, or disinterested. Such maintenance plans would provide on-site installation of the battery.

Additionally, Staff recommends that the CPUC support the Communications Security, Reliability and Interoperability Council's (CSRIC)²⁹ Best Practice that “service providers should work with their vendors to provide a mechanism to monitor battery status and determine whether the battery is degraded. This can be done through remote monitoring of batteries as part of the service offered to consumers or through LEDS visible to consumers.”³⁰

4) **FCC Question:** Should consumers be able to opt out of backup power?

Staff Recommendation: When service is first provisioned, consumers should be provided a free back-up power battery by the voice service provider, unless the customer utilizes CPE purchased from a vendor other than the voice service provider. Consumers should be able to opt-out of battery maintenance plans and battery replacement and avoid the charges associated with those services that can otherwise be self-provisioned or are provided by third-parties. If a customer chooses not to participate in a maintenance program, the service provider needs to inform customers of the importance of battery maintenance and implications for their voice service during power interruptions.

5) **FCC Question:** The FCC proposals are stated in terms of “standby time”, but is “talk time” the appropriate metric?

Staff Recommendation: No, “standby time” is the appropriate metric because talk time differs depending on how each customer uses the service. If the service is used via a computer, then talk time is substantially shorter. The educational material the service provider gives customers regarding the need for a backup power source should clearly state that the battery hours available are for standby time, and that the amount of talk time would be significantly less.³¹

²⁹ The Communications Security, Reliability and Interoperability Council's (CSRIC) mission is to provide recommendations to the FCC to ensure, among other things, optimal security and reliability of communications systems, including telecommunications, media, and public safety.

³⁰ CSRIC Working Group 10B Final Report – CPE Powering, New Best Practices No.14, September 2014.

³¹ A third status, called Idle Time, is when the device is in sleep mode where power usage is lowest relative to being turned off entirely. See CPUC, Final Analysis Report, May 9, 2008, pp 34- 35. The CSRIC Report on CPE Powering New Best Practices raises the possibility of a consumer toggling on and off the power to increase battery longevity.

- 6) **FCC Proposal:** The FCC next seeks comment on the extent to which consumers could self-provision CPE backup power. Under the FCC proposal, after the first eight hours of an outage, the burden to maintain continuity of power for CPE no longer would be on the provider under its rules, but would be allowed to fall on the consumer.³²

Staff Recommendation: The CPUC should comment to the FCC that expecting consumers to self-provision CPE backup power after 8 hours of standby time may be reasonable but only if the following conditions are met: (1) the FCC has conducted a public education program of consumer responsibilities to self-provision CPE power beyond the 8 hours; (2) service providers have disclosed to consumers their responsibilities and their options for replacing batteries to prolong onsite CPE power; and (3) service providers offer spare batteries at reasonable cost.

- 7) **FCC Question:** Should service providers be required to offer spare batteries at reasonable cost?

Staff Recommendation: Yes.

- 8) **FCC Proposal/Question:** The FCC seeks comment on whether it should require providers to develop and implement consumer education plans regarding the availability of CPE backup power.³³ It also seeks comment on when providers should make such information available.

Staff Recommendations: The CPUC should recommend that service providers give customers educational materials consistent with existing CPUC adopted requirements. In D.10-01-026, the CPUC adopted rules requiring VoIP providers as well as those using other technologies needing backup power on the customer's premises to educate customers upon service initiation and annually thereafter regarding backup power. Attachment A to this memo contains the list of information the CPUC requires these voice providers to include in their educational material.

The CPUC should urge the FCC not to preempt consistent State requirements for notification or education regarding backup power. Further, as it did with cramming rules, the FCC should allow states to adopt more extensive backup power requirements. Also consistent with California's backup power education rules, the CPUC should recommend that the FCC require service providers to send an annual reminder to customers to check the status of their battery.

Service providers have a responsibility to inform their customers about backup power. However, like the large federal and private education plan undertaken for the transition to Digital Television (DTV), staff recommends that the FCC adopt a plan that includes widespread public education prior to any IP transition cut over effective date.

- 9) **FCC Question:** The CSRIC report observes that, because of the wide variety of backup power options and interfaces individual service providers and CPE vendors offer, "some level of standardization is needed of . . . power systems and interfaces, if VoIP services

³² *NPRM.*, ¶ 38.

³³ *Id.*, ¶ 39.

are to meet the reliability that consumers expect in the United States.” Should the FCC charge CSRIC or another of its advisory bodies with addressing this issue? ³⁴

Staff Recommendation: Yes. Some level of standardization is preferable so customers will know what to expect and to facilitate availability of batteries from commercial retail outlets, so that customers would be able to easily obtain and replace batteries.

B. Proposed Rules On Copper Retirement

The FCC recognizes that the frequency and scope of copper retirements is increasing, and believes that this change should prompt reconsideration of key assumptions on which the Commission based its existing copper retirement rules. In the *NPRM*, the FCC proposes steps to maintain the vitality of its core values of consumer protection, competition, public safety, and national security through the forthcoming technology transitions.³⁵ **The FCC emphasizes that, it is not seeking in this *NPRM* to revisit or alter its earlier decision to allow states to have their own copper retirement rules.**³⁶

a) Definition of “Copper Retirement”

- 10) **FCC Proposal:** While the FCC’s current rules require ILECs to comply with network change requirements (public notice and technical description of the planned changes and the implementation date³⁷) before retiring any copper loops or subloops, those rules do not define “copper retirement”. The FCC proposes a definition of copper retirement that would provide parties with guidance on when a network change notification must be filed.³⁸ The FCC proposes that copper facilities included within the concept of “retirement” should include copper loops, subloops, and the feeder portion of the loop. Current rules do not include the feeder portion of the loop.³⁹

Staff Recommendation: Staff recommends that the definition of copper retirement should include all three components – loop, subloop, and feeder portion of the loop. A CLEC’s use of an ILEC’s facilities for provisioning service may depend on access to all three components.

- 11) **FCC Question:** The FCC seeks comment on defining “copper retirement” as the “removing or disabling of” copper loops, subloops, and the feeder portion of loops.⁴⁰ Should “removing” refer only to the physical removal of copper? Should “disabling”

³⁴ *Id.*, ¶ 46.

³⁵ *Id.*, ¶ 49.

³⁶ *Id.*, ¶ 54. Footnote 144 :*See Triennial Review Order*, 18 FCC Rcd at 17148, para. 284 (“[W]e stress that we are not preempting the ability of any state commission to evaluate an incumbent LEC’s retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements.”).

³⁷ *See* 47 C.F.R. §§51-325 – 51-335.

³⁸ *NPRM*, ¶ 50.

³⁹ *Id.*, ¶ 51.

⁴⁰ *Id.*, ¶ 52.

mean rendering the copper inoperable? Should “disabling” constitute retirement only if it is intended to be long-term or permanent?

Staff Recommendation: The CPUC should recommend that physical removal of the copper constitutes “copper retirement”. The disabling of the copper line should be included only if it is intended to be long term or permanent. Loops etc. may be disabled after a disaster which damages facilities but the provider could intend to repair them. In cases such as this the inoperability of the copper line for a certain amount of time should not be considered “copper retirement”.

b) Revision of Copper Retirement Processes to Promote Competition and Protect Consumers

The FCC tentatively concludes that the foreseeable and increasing impact that copper retirement is having on competition and consumers warrants revisions to its network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection.⁴¹

At the same time, the FCC recognizes that requiring ILECs to obtain FCC approval before retiring copper could “harm incentives for fiber deployment”. Further, the FCC does not want to impose a mandate that copper be maintained indefinitely. Accordingly the FCC proposes not to change its current notice-based process for copper retirement. To respond to competitors’ concerns, the FCC will develop a separate proposal for continued access to wholesale services.⁴²

(1) Competition: Expansion of Notice Requirements

- 12) **FCC Proposal:** To ensure that CLECs are fully informed about the impact that copper retirements will have on their businesses, the FCC proposes requiring that ILECs provide a description of the expected impact of the planned changes, including, but not limited to, any changes in prices, terms, or conditions that will accompany the planned changes.⁴³ The FCC further proposes clarifying that ILECs must provide direct notification of planned copper retirements to each telephone exchange service provider that interconnects with the ILEC’s network and must file a certificate of service to the FCC confirming the provision of such notice regardless of the timing of the retirement. Currently only public notice is required.⁴⁴

Staff Recommendation: Staff recommends the CPUC support these proposals. This expansion of the notice requirement would help competitors to plan accordingly.

⁴¹ *Id.*, ¶ 55.

⁴² *Id.*, ¶ 56.

⁴³ *Id.*, ¶ 57.

⁴⁴ The ILEC provides public notice by either a) filing a public notice with the Commission; or b) providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. See 47 C.F.R. §51.329.

- 13) **FCC Question:** Would it be helpful for ILECs to provide annual forecasts of expected copper retirements or other network changes; if so, to whom should they provide such forecasts? Should the FCC act to ensure that ILECs provide notifications of copper retirement in a uniform format, and if so how can the FCC best achieve that goal? Current FCC rules require ILECs to give CLECs at least 90 days advance notice of planned copper retirements to CLECs. Is this long enough or too long? ⁴⁵

Staff Recommendations: Staff recommends that the CPUC support a requirement that ILECs make annual forecasts of expected copper retirements and provide those forecasts to the FCC, to State Commissions in relevant states and to affected competitors. This information would be helpful to states and competitors for their own planning and enforcement purposes.

Notices provided in a uniform format pose some advantages, but such a format may not cover all aspects of each provider's copper retirement. Staff recommends the FCC require that all necessary components of the ILEC's planned retirement be contained in any notice, but also allow each provider to include other information.

Finally, Staff recommends that in instances where the service provider initiates the copper retirement, the FCC require 6-months' notice to both wholesale customers and retail customers, so that both have a long enough lead time to plan for the change. If the replacement is initiated because the copper lines have been destroyed by an act of nature or other disaster, the 6-month notice time would not apply.

(2) Consumer Protection

(a) Notice to Retail Customers

The FCC notes that consumers and other retail customers need to understand what a copper retirement means for them, and they need to understand their service choices. The FCC acknowledges complaints from multiple sources that in some cases ILECs "are moving customers of legacy services onto IP-based and triple play services during copper retirements, with no procedures in place for customer notice or choice."⁴⁶ These allegations underscore the FCC's proposal to extend notice obligations to retail customers, including residential users, and non-residential users such as businesses and anchor institutions.⁴⁷

The FCC also believes that it is important to give retail customers a voice in the copper retirement process. (Currently only wholesale customers can comment.) The FCC therefore proposes revising its network change disclosure rules to address the form, timing, and content of notice to retail customers, as well as to educate subscribers about copper retirements that may affect them.⁴⁸

⁴⁵ *Id.*, ¶ 59.

⁴⁶ *Id.*, Footnote 154, p. 30.

⁴⁷ *Id.*, ¶ 60.

⁴⁸ *Id.*, ¶ 60.

- 14) **FCC Proposal:** The FCC proposes to require an ILEC planning to retire copper to directly notify all potentially affected retail customers either by electronic or postal mail unless the FCC authorizes in advance, for good cause shown, use of another form of notice. The FCC asks whether this proposal strikes the correct balance between the benefits to retail customers of notification and the costs of providing the notification.

The FCC proposes that the ILEC must notify those customers who will need new or modified CPE, or who will be negatively affected by the planned network change. Does this proposal capture the correct population?

The FCC asks how significant of a negative impact is necessary to trigger a notice requirement, and from whose perspective should the impact be evaluated. Should the FCC adopt different or more limited criteria? Should the proposed notice requirement apply only to instances in which a technician would need to obtain access to the customer's premises?

Further, the FCC proposes the form of notice should be both efficient for ILECs to distribute and effective in educating retail customers. The FCC contemplates allowing ILECs to use postal mail or e-mail to notify retail customers of a planned copper retirement.⁴⁹

Staff Recommendation: The CPUC should recommend that the customer notice need not depend on the extent of negative impact. It is both good business practice and makes business sense to inform customers of changes that may affect them. The notice requirement should apply to all customers whose premises are connected to a copper loop that is going to be retired.

The CPUC should recommend that the ILEC provide notice to the retail customer in the same manner that the ILEC bills the customer.

- 15) **FCC Proposal re Content of Notice:** The FCC proposes a requirement that notices to customers affected by copper retirements state clearly and prominently that the customer "will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases" if that statement would be accurate. If the statement would not be accurate, then the FCC proposes requiring the ILEC to include a statement identifying any changes to the service(s), including functionality and features.⁵⁰

Staff Recommendation: The CPUC should recommend that if the customer does not currently subscribe to VoIP service and then the copper is retired, the service provider must inform the subscriber about the need for backup power.

- 16) **FCC Request for Information:** If the ILEC cannot state accurately that the service(s) available to consumers will not change, then the ILEC may need to file an application to discontinue service(s) pursuant to section 63.71 of FCC rules. In this context, the FCC also seeks comment on allegations that in some cases, ILECs are misleading retail

⁴⁹ *Id.*, ¶ 63.

⁵⁰ *Id.*, at ¶ 65.

customers into believing that they cannot keep their legacy services (e.g., POTS). The FCC also seeks comment about whether incumbent LECs are failing to advise retail customers that their legacy service remains available over fiber.⁵¹ This is known as “forced migration”.

Staff Recommendation: Staff recommends that the CPUC provide to the FCC information gathered on customer complaints involving allegations that the carrier migrated the customer’s voice service to VoIP without the customer’s knowledge and/or refused to restore the copper TDM service once changed – i.e., possible incidences of forced migration.

- 17) **FCC Proposal:** The FCC proposes minimum requirements for the content of notices to subscribers. Further, the FCC proposes requiring that the notice provide sufficient information and that it contain a clear statement of the customer’s rights and the process by which the customer may comment on the planned copper retirement.⁵²

Staff Recommendation: Staff recommends support for this proposal as long as the FCC does not preempt a State’s own notice requirements re: copper retirements in that State. (As noted above, the FCC has stated it will not preempt state requirements.)

- 18) **FCC Question:** Are any different or additional notice requirements necessary for certain populations, such as those who are not proficient in English or consumers with disabilities?⁵³

Staff Recommendation: Consistent with the CPUC’s Limited English Proficiency (LEP) decision, D.08-10-016,⁵⁴ which established telephone marketing regulations, staff recommends that the FCC require the service provider to notify customers in the same language in which it marketed the service to the customer. The FCC should ensure that any notice and public education program include special materials for the disabled, including distribution of material in Braille, by text message, and by e-mail, all of which are formats heavily used by disabled populations.

- 19) **FCC Question:** The FCC also seeks comment on whether, in instances where an ILEC technician must visit the customer’s premises to retire the copper, the ILEC should be required to make additional efforts to contact those retail customers who do not contact the ILEC to schedule a service visit.⁵⁵

⁵¹ *Id.*

⁵² *NPRM*, ¶ 66.

⁵³ *Id.*, ¶ 67.

⁵⁴ Phase II Decision Addressing In-Language Market Trials, Fraud Notification and Reporting, and Consumer Complaint and Language Preference Tracking For Limited English Proficient Telecommunications Consumers, D.08-10-016, October 2, 2008.

⁵⁵ *Id.*

Staff Recommendation: Staff recommends that the FCC require the carrier to attempt to contact these retail customers by telephone at least two or three times.

- 20) **FCC Proposal:** The FCC proposes requiring that ILECs give subscribers the same amount of notice that they give now to other service providers which the FCC believes provides sufficient time for subscribers to become educated about the proposal. The FCC asks, if this time period is not sufficient, what period would be appropriate.⁵⁶

Staff Recommendation: Staff recommends that the FCC should set a notice period for affect customers of a planned copper retirement at 6 months. This would be consistent with staff's recommendation that the FCC increase notice to affected CLECs of a copper retirement from the current 90 days to six months.

(b) Upselling and consumer education

In the *NPRM*, the FCC acknowledges concerns from Public Knowledge and NASUCA that ILECs may take advantage of copper retirements to “upsell” subscribers—i.e., try to convince customers to purchase more profitable bundles of services while the ILEC is supposed to be preparing the customer for a change in *facilities* only (e.g., copper to fiber). The FCC is “concerned by a number of consumer allegations that copper retirements have resulted in changes to their service may stem from aggressive or confusing upselling” [sic].⁵⁷

- 21) **FCC Proposal:** The FCC proposes requiring ILECs to give customers a neutral statement of the various choices that the ILEC would make available to retail customers affected by the copper retirement. The FCC anticipates that a neutral statement “would enable consumers to make informed choices and to have the tools to determine for themselves what services to purchase.”⁵⁸

Staff Recommendation: Staff recommends the CPUC support this proposal, but permit the carrier to discuss other products if the customer initiates an inquiry about other products. For instance, if the customer’s telephone service is being changed to VoIP because of a copper retirement, the customer may wish to subscribe to a bundle of services – VoIP, Internet access and video – at the same time as the new VoIP service is initiated. Or the customer may simply wish to subscribe to a service ancillary to the voice service (a “vertical” service), such as Caller ID or Call Waiting.

- 22) **FCC Question:** The FCC further asks what kinds of services it should require the ILEC to identify, such as services reasonably comparable to those to which the retail customer presently subscribes, or should a different standard apply? The FCC asks whether it should require ILECs to specifically identify services designed for people with disabilities.⁵⁹

⁵⁶ *NPRM*, ¶ 68.

⁵⁷ *Id.*, ¶ 71.

⁵⁸ *Id.*, ¶ 72.

⁵⁹ *Id.*, ¶ 73.

Staff Recommendation: Staff recommends that the carrier be required to identify services reasonably comparable to those to which the retail customer presently subscribes. This requirement is consistent with the CPUC’s requirement in its decision D.08-11-033⁶⁰: “When retiring copper loops, ILECs shall also offer to their retail end-user customers a comparable service over fiber that the customer was previously receiving.”

Staff also recommends that the CPUC alert the FCC to information received from the administrative vendor for the Deaf and Disabled Telecommunications Program. The DDTP has provided anecdotal information regarding customers using captioned telephones. Some users have reported to the DDTP that their service has been changed from TDM to VoIP, and they discover the change when the captioned telephone no longer works, because it is designed to use a TDM connection. In addition, captioners with the DDTP have informed CPUC staff that they use TDM lines to transmit closed captioning service to local television stations. These are issues the FCC should address in developing rules for the transition.

- 23) **FCC Question:** The FCC further asks whether it should require ILECs to take additional steps beyond the contemplated customer notice to educate retail customers about planned copper retirements that might affect them, and, if so, what should those measures be? ⁶¹

Staff Recommendation: Staff recommends that the FCC require the ILECs to put educational material about copper retirement and network transition on their websites. In addition, in conjunction with any planned mass retirements in specific geographic areas, the ILECs should be required to prepare and distribute public service announcements via television and other mass media during the 6-month period (per our timing-of-notice recommendation) between notice of and the effective date of the transition.

(3) Expansion of Right to Comment

Under current FCC network change disclosure rules, “only information service providers and telecommunications service providers that directly interconnect with the incumbent LEC’s network have the right to object to planned copper retirements, and they can only delay implementation for up to six months and seek technical assistance from the incumbent LEC.” ⁶²

- 24) **FCC Proposal:** The FCC proposes revising its rules to provide the public, including retail customers and industry participants, with the opportunity to comment publicly on planned network changes. The FCC recognizes that permitting the public to comment would be beneficial for the following reasons:

- Since copper retirements may have a significant impact on the public, members of the public should have the opportunity to comment publicly on such retirements.

⁶⁰ Decision Adopting Process Governing Retirement By Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services, D.08-11-033; November 6, 2008.

⁶¹ *NPRM*, ¶ 74.

⁶² *Id.*, ¶ 77.

- FCC expects that public comments would help inform it about circumstances in which ILECs are not complying with their obligations.
- The FCC anticipates that being able to use the public comments as a way to monitor for circumstances in which an ILEC's proposed copper retirement is accompanied by, or is the cause of, a discontinuance, reduction, or impairment of service provided over that copper -- but the incumbent LEC has failed to seek the necessary authority, contrary to the requirements of section 214(a) and FCC rules.⁶³

Staff Recommendation: Staff recommends the CPUC support this FCC proposal to permit the public to comment on carrier notices of planned copper retirement.

(4) Notice to States and the Department of Defense

- 25) **FCC Proposal:** The FCC proposes requiring that ILECs provide notice of planned copper retirements to the public utility commission and to the Governor of the State(s) in which the network transition is proposed, as well as to the Secretary of Defense.⁶⁴

Staff Recommendation: Staff recommends support of this proposal. The CPUC already requires ILECs to file concurrently with the CPUC Communications Division a copy of the notice of the network change regarding copper loops that they file with the FCC. (*See* CPUC D.08-11-033.)

(5) Certification

- 26) **FCC Proposal:** The FCC proposes requiring ILECs to certify their compliance with any new rules the FCC adopts at the conclusion of this *NPRM*. Because the FCC proposes creating one comprehensive rule containing all requirements applicable to copper retirements, the FCC anticipates that it would be most efficient for an ILEC to submit a single certification confirming that it has fulfilled its various responsibilities.⁶⁵

Staff Recommendation: Staff recommends the CPUC support this proposed certification requirement.

a) Sale of Copper Facilities That Would Otherwise Be Retired⁶⁶

In May 2014, AT&T submitted to the FCC a general proposal to offer for sale on commercial terms to competitive carriers copper loops being retired under the network change disclosure rules.⁶⁷ The FCC believes that sale of copper facilities could be a win-win proposition,

⁶³ *Id.*, ¶ 78.

⁶⁴ *Id.*, ¶ 79.

⁶⁵ *Id.*, ¶¶ 80-83.

⁶⁶ *Id.*, ¶¶ 84-91.

⁶⁷ *Id.*, ¶ 86.

permitting ILECs to manage their networks while ensuring that copper remains available as a vehicle for competition.

- 27) **FCC Proposal:** The FCC seeks comment on whether and how it should take action to promote the sale or auction of copper prior to retirement.⁶⁸ The FCC tentatively concludes that the FCC should pursue a voluntary approach, rather than impose a requirement for sale or auction of copper facilities.⁶⁹

The FCC also asks if there is a role for state public utility commissions in encouraging sale or auction of copper that an incumbent LEC intends to retire.⁷⁰

Staff Recommendation: Staff recommends that the FCC promote the sale or auction of copper prior to retirement. This approach would be consistent with the CPUC's copper retirement rules. In CPUC D.08-11-033, issued in 2008, the CPUC adopted a process for CLECs to purchase or lease the copper lines upon ILEC retirement. The CPUC Decision requires the following:

- c. Any CLEC that seeks to use that copper loop facility shall provide to the incumbent carrier within 20 days of the FCC notice a request for negotiations in writing either to purchase or lease the loop facilities and file a copy of its request with the Communications Division. The CLEC shall include in its request for negotiations the following information:
 - i) Whether the CLEC seeks to purchase the copper loop facility, or whether the CLEC seeks only to have the ILEC maintain access to a loop facility;
 - ii) the number of current or planned customers on the copper loop;
 - iii) the services that the CLEC provides over the loop facility or plans to provide over the loop;
 - iv) the number of UNEs that the CLEC currently purchases
- d. Upon receipt of the CLEC's request for negotiations, the ILEC shall negotiate in good faith with the CLEC for a period of 60 days either to:
 - i) sell the copper loop facility to the CLEC; or
 - ii) reach a fair and equitable agreement with the CLEC on price and terms to ensure access to loop facilities."

Staff Recommendation: The CPUC should recommend to the FCC that State requirements should govern sale of retired copper facilities where such regulations exist or are adopted subsequent to issuance of an FCC order in this docket.

⁶⁸ *Id.*, ¶ 87.

⁶⁹ *Id.*, ¶ 89.

⁷⁰ *Id.*

C. SECTION 214 DISCONTINUANCE

The FCC has rules regarding discontinuance of service, which derive from § 214(a) of the Communications Act. The rules governing the discontinuance process require that telecommunications carriers -- other than CMRS (wireless) providers -- and interconnected VoIP providers must obtain FCC authority to discontinue interstate or foreign service to a community or part of a community. Pursuant to § 214, the FCC has discretion in determining whether to grant a provider authority to discontinue, reduce, or impair service. The carrier request must go through a public review process to ensure that the public interest—encompassing consumer protection, competition, public safety, and other statutory responsibilities—is protected.⁷¹

In the *NPRM*, the FCC focuses on three key issues regarding service discontinuance:

- (1) ensuring that consumers receive adequate substitutes for discontinued services;
- (2) further defining the scope of its section 214(a) authority, focusing in particular on the context of wholesale services; and
- (3) ensuring competitive availability of wholesale inputs following discontinuance of incumbent LECs' TDM services on which competitive LECs currently rely.⁷²

- 28) **Staff General Recommendation:** Regarding § 214 discontinuance, Staff recommends that the CPUC reserve its right to comment on those issues at a later date, such as in the Reply round.

D. LEGAL AUTHORITY

FCC Proposal: The FCC includes in the *NPRM* a discussion of its analysis of its legal authority to adopt the rules it proposes, and asks for comment specifically on its legal authority.

Staff Recommendation: The CPUC should comment that generally, the FCC has the authority to adopt rules “pursuant to express statutory authority to promulgate regulations addressing a variety of designated issues involving communications...or pursuant to ancillary jurisdiction.”⁷³ This authority derives from its long-time statutory authority under Title II of the Communications Act over common carriers, including ILECs, as well as more recent statutory authority over provision of 911 service. In addition, the FCC has the option of relying on its “ancillary” authority, set forth in Title I of the Communications Act. In order for the FCC to regulate under its ancillary jurisdiction, “the subject of the regulation must be covered by the FCC’s general grant of jurisdiction under Title 1 of the Communications Act” and “the subject of the regulation must be ‘reasonably ancillary’ to the effective performance of the Commission’s various responsibilities.”⁷⁴ The Commission’s proposed actions in the *NPRM* are directly tied to its authority “to promote the safety of life, and property through the use of wire and radio communications,” which includes interconnected VoIP.⁷⁵

⁷¹ *NPRM*, ¶ 23.

⁷² *Id.*, ¶¶ 24-27.

⁷³ *American Library Ass’n v. FCC* 406 F.3d 689, 693 (D.C. Cir. 2005).

⁷⁴ *Id.*

⁷⁵ 47 USC §151.

Assigned Staff:

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HMM/RLS/nas

Attachment

ATTACHMENT A

Per the CPUC Decision 10-01-026, at a minimum, the following elements should be included in a customer education program:

- Customers should be informed that their service utilizes a backup battery located on the customer's premises to provide service during a power outage.
- Customers should be told that cordless phones will not work during a power outage.
- Customers should be informed of the limitations of the backup battery's ability to provide service during a power outage and how to maximize the customer's ability to make necessary calls during a power outage. This includes the fact that the backup battery cannot power a cordless phone or other equipment connected to the telephone line that requires electricity from the customer's premises, such as telecommunications devices used to assist customers with disabilities.
- Customers should be informed of the service provider's and customer's responsibilities regarding battery monitoring and replacement. This should include information on the limitations of the service provider's liability as it relates to backup power.
- Information should be provided about the customer's options regarding where to place the backup battery unit on the customer's premises.
- If the service provider is responsible for battery monitoring and replacement, information should be provided on how customers can contact the service provider for information about the battery or if the customer believes the battery is not working properly.
- If the service provider is responsible for battery replacement but does not monitor battery condition, customers should be told that age and temperature impact battery performance, and provided information on how customers can monitor battery condition and how to contact the service provider if the battery needs replacement. This should include information on indicators (lights, audible tones, etc.) on the BBU that indicate battery condition.
- If the service provider is responsible for battery monitoring and/or replacement, information should be provided on how customers can contact the service provider for information about obtaining additional backup power capability such as additional batteries.
- If the customer is responsible for battery monitoring and replacement, customers should be told that age and temperature impact battery performance, how to determine whether replacement is needed, how to obtain replacement backup batteries and how to install them. This includes information on indicators (lights, audible tones, etc.) on the BBU that indicate battery condition. This also includes whether the service provider can supply replacements and how to get them. If backup batteries are available from other sources, sufficient battery specifications should be provided to identify an appropriate replacement battery. In addition, customers should be told of possible sources or types of sources for the batteries, such as local hardware stores, etc.

- If the customer initiates service at a location that previously had service (e.g. in the case of a renter), and the service provider is not responsible for battery monitoring and replacement, the service provider should notify the customer if it does not install a new backup battery.
- If the service provider is not responsible for battery replacement, but offers battery replacement or other related services, information should be provided on what services are available, their cost to the customer and how to obtain them.
- If backup power can be supplied from a source other than the backup battery, the customer should be told of this fact and how to request additional information from the service provider. Upon request, information should be made available on the other types of backup power, to the extent the service provider has the information, and how to connect the backup power source to the telephone equipment.