

Hearing requesting that the Commission “refresh the record” and make certain changes to its copper retirement rules.² NASUCA supports the request for the Commission to refresh the record and revise the copper retirement rules as proposed by TelePacific et al.

NASUCA believes that the Letter and its attachments, which include data regarding competitive carriers using Ethernet-over-copper to provide broadband, voice and other communications services, is important information that should be included in the record in each of the dockets referenced in the letter. NASUCA supports the Commission’s goal of ensuring ubiquitous broadband. The extensive use of Ethernet-over-copper in California, as documented in the showing of TelePacific, demonstrates that Ethernet-over-copper is a viable means of providing broadband to customers who are either not served by fiber networks, including rural areas, or who wish to utilize a less expensive competitive alternative.

TelePacific et al. requested specific revisions to the copper retirement rules.³ These are:

- Reverse the “deemed denied” standard – i.e., where copper is being used to provide broadband service to existing customers, permission to remove or permanently disable shall only be given by the Commission upon an affirmative finding that the particular disabling or removal is in the public interest;
- Clarify that “retirement” does not permit physical removal;
- Separately define the standard for removal, and permit removal only in a very narrow range of circumstances rather than with broad applicability, as is currently the case;
- Apply the copper retirement rules to the feeder portion of the loop;
- Make copper retirement/removal data easily accessible and searchable;
- Clarify that state commissions may adopt restrictions on disconnection, removal or disabling of copper loops that are stronger than the Commission’s rules; and

² Letter of US TelePacific Corp et al. al. Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules to Promote Affordable Broadband Over Copper, WC Docket Nos. 10-188; 12-353; GN Docket Nos. 09-51, 13-5; RM-11358, January 25, 2013. (filed January 25, 2013) (“Letter”)

³ Letter, at 21-22.

- Deny the US Telecom petition requesting that the notice time period for retiring copper loops begins with the ILEC notice to interconnecting carriers rather than the Commission’s public notice.

NASUCA supports these proposed revisions to the copper retirement rules.

Copper retirement is an issue that is of fundamental importance to NASUCA and the consumers we represent. As explained in previous filings in other dockets, NASUCA is gravely concerned about network reliability and the continued operation of communications services during power outages. Most or all non-copper based methods of communication available to consumers – whether over a fiber-to-the-home connection or wireless – depend in large part on the availability of back-up battery power. As the Commission’s Public Safety and Homeland Security Bureau acknowledged with its questions set forth in a request for comments on the impact of the Derecho storms,⁴ the ability of the public to access 9-1-1 services may be harmed as electric and communications system outages extend beyond hours and into days in duration.

The copper-based public telecommunications system is well known for its reliability during extended power outages. As a 2012 NRRI Report noted,

The most notable engineering shortcoming of the new technologies is the movement away from reliance on the common battery and the adoption of terminal equipment, such as the cordless phone and the computer, which are more likely to fail during a power outage than equipment powered through the central office.⁵

Verizon and AT&T have competitive reasons for desiring to retire copper plant as early and often as possible, even when that plant is still useful for providing communications services. These carriers are required to give Competitive Local Exchange Carriers (“CLECs”) access to

⁴ DA 12-1153 (rel. July 18, 2012). Comments of the National Association of State Utility Consumer Advocates, PS Docket No. 11-60, August 17, 2012, at 2.

⁵ NRRI 12-12 Report at 30.

copper facilities, while no such requirement exists for fiber.⁶ Consequently, Verizon and AT&T have every incentive to retire copper plant even in situations where the plant is being used to serve existing customers. When copper plant is retired, the result is to force customers to use wireless or fiber-based services when fundamental issues such as network reliability and consumer protection have not yet been adequately addressed. If a customer with full knowledge of the potential consequences chooses to switch from a service provided via copper to a wireless or fiber-based service, that is the customer's decision.⁷ However, when functional copper is retired, customers are deprived of the ability to choose a service that is far more likely to function during prolonged power outages. Thus, allowing unwarranted retirement of copper plant is not in the public interest.

Moreover, there is evidence that Verizon and AT&T have embarked on business strategies that involve allowing copper plant to deteriorate and using the resulting deterioration in service quality as an excuse to migrate customers to wireless and/or fiber-based networks. For example, the Office of the Attorney General for the State of New York addressed these concerns in its Petition to Modify Verizon's Service Quality Improvement Plan and in a subsequent letter to the New York Public Service Commission responding to statements of Verizon's intent made on an investor's conference call by Verizon Chairman and Chief Executive Office Lowell

McAdam:

The foregoing statements by Mr. McAdam contradict Verizon's assertions in this proceeding regarding investment in its landline network. Verizon avowedly intends to abandon substantial portions of its existing copper plant, rather than

⁶ See *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 581 (D.C. Cir. 2004).

⁷ The fact that customers choose to subscribe to wireless or fiber-based offerings does not lessen the need for the Commission to work with states to develop standards and requirements to improve the reliability of these networks, including during emergency situations.

maintain it. It further appears ... that during the years before the companies FiOS and LTE systems are fully built out Verizon will defer maintenance of its copper network, only to "focus the investment to improve the performance of it" at a later date. Moreover, Verizon's stated intention to force urban landline customers onto FiOS and rural customers onto wireless plans will put basic voice service beyond the economic reach of a significant portion of the company's current customers who do not wish to or cannot pay for these services at current prices that far exceed current landline voice service. Finally, Verizon's intention to move rural customers from landline onto wireless ignores the fact that the company has not committed to extending its LTE network to reach 100% of customers.⁸

Recent experience with Hurricane Sandy and the Derecho shows that the reliability of the copper-based Public Switched Telephone Network (PSTN) furthers the public interest.

Allowing Verizon and AT&T to engage in premature retirement of copper plant, or to render the plant non-functional, thus forcing customers to migrate to fiber-based networks before technical solutions are in place to ensure IP networks will continue to operate in the face of power loss, is not sound public policy. Reliable telecommunications is a national imperative, mandated by the Communications Act. This was recognized in the recent FCC report on the impact of the Derecho on communications networks and services:

Congress has given the Commission the responsibility under the Communications Act to ensure that communications networks of all types "promote[e] safety of life and property." Central to this important responsibility is promoting the reliability, resiliency, and availability of communications networks at all times, including in times of emergency or a natural disaster such as the derecho.⁹

Reasonable copper retirement rules, that ensure customers are not deprived of reliable service and that clarify states have authority to establish conditions for copper retirement, are part and parcel of the national effort to ensure that communications services are reliable, resilient

⁸ See Letter from Keith H. Gordon, New York Assistant Attorney General to Jaclyn Brillling, New York Public Service Commission, Case 10-C-0202, Petition of Attorney General Eric T. Schneiderman to Modify the Verizon Service Quality Improvement Plan, July 30, 2012 ("NY AG Letter").

⁹ FCC Derecho Report at 5 (footnote omitted).

and available at all times. NASUCA supports the proposed revisions to the Commission's copper retirement rules.

Respectfully submitted,

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