

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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

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, ON BEHALF
OF ITS LOW-INCOME CLIENTS, 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, ACCESS SONOMA BROADBAND**

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I. INTRODUCTION

Pursuant to 47 C.F.R. § 1.429, the National Association of State Utility Consumer Advocates (“NASUCA”),¹ The Benton Foundation², The Maryland Office of People’s Counsel, Public Knowledge, The National Consumer Law Center (on behalf of its low-income clients), The Public Utility Law Project of New York, The Center for Rural Strategies, The Greenlining Institute, The Broadband Alliance of Mendocino County and Access Sonoma Broadband (“Joint Consumer Advocates”) herewith respectfully request the Federal Communications Commission (“FCC” or “Commission”) to reconsider the Report and Order in this docket.³ Reconsideration is requested because the rules adopted in the Report and Order depart from the approach taken in the Notice of Proposed Rulemaking (“NPRM”),⁴ transfer the responsibility for ensuring the reliability of 911 and other emergency voice communications from the provider to the consumer, and undermine the public safety and other policy goals set forth in 47 U.S.C. § 151.

NASUCA and Joint Consumer Advocates request reconsideration of the conclusion in

¹ NASUCA is a voluntary association of 44 consumer advocate offices in 41 states and the District of Columbia and additional associate members, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates for utility ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

² The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

³ *In the Matter of Ensuring Continuity of 911 Communications*, FCC 15-98, PS Docket No. 14-174(rel. Aug. 7, 2015). Notice was published in the *Federal Register* on October 16, 2015. 80 F.R. 62470.

⁴ *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications Technology Transitions*, FCC 14-185, PS Docket No. 14-174 (rel. Nov. 25, 2014).

the Order that carriers are not required to provide back-up power, and need only make back-up power available at the customer's option and expense.⁵

The long-term consequences of this docket will substantially impact the reliability of the transitioned telecommunications network in the United States -- and the expectations of the American people that their 911 and other emergency calls will complete.⁶ For the reasons here stated, the Order is insufficient to fulfill the Commission's obligation to protect the public health and safety and otherwise to achieve the fundamental values to which the Commission aspires.⁷

The Commission concludes that a "one-size-fits-all" solution for back-up power would disserve customer interests.⁸ This conclusion is erroneous. It rests on an observation that many customers rely on wireless and cordless phones and an inference that consumers have come to prefer the minimal backup-power afforded by the charge on a wireless phone or the convenience of a cordless phone without backup power.⁹ There is no basis for this inference.

II. Background

As the Commission observed in opening this docket, the American people need reliable access to emergency communications service when electric power fails.¹⁰ Power

⁵ Report and Order, ¶ 3.

⁶ *Id.*, ¶ 13.

⁷ *Id.*, ¶ 2.

⁸ *Id.*, ¶31, citing Hawaiian Telecom Reply Comments at 4.

⁹ *Id.*, ¶37.

¹⁰ NPRM, ¶ 3.

failures often occur in times of disaster, when consumers are most likely to need to make emergency calls (e.g., to 911), communicate with loved ones, and receive incoming emergency notifications (such as evacuation orders).¹¹ In the 20th Century, consumers rightly became accustomed to being able to use their landline phones when the power failed. This was possible because traditional copper networks possess electrical “line power.”¹² Today, however, many consumers are subscribing to interconnected voice-over-Internet-protocol (VoIP) service that does not necessarily supply line power.¹³ The customer premise equipment (CPE) used for such VoIP service typically requires a backup power source (such as batteries) to function in the event of a power outage. Therefore, it is important for consumers to have a means to ensure continuity of communications during a power outage.¹⁴

In the NPRM, the Commission addressed this challenge and reaffirmed its mission and responsibility to ensure that the core values embodied in the Communications Act of 1934, as amended – public safety, universal service and reasonable charges among them – endure as the nation embraces modernized communications networks.¹⁵ The Commission acknowledged it “must ensure that technology transitions do not diminish access to critical communications services,

¹¹ *Id.* See also *id.*, ¶ 31: “The ability to communicate during power outages remains critical, particularly during prolonged outages caused by catastrophic storms or other major disasters. In such situations, consumers have a heightened need to be able to communicate with public safety officers, first responders and other response workers in order to convey or receive lifesaving information.”

¹² *Id.*, ¶ 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, ¶ 7.

especially 911.”¹⁶ The Commission expressed the determination to “[e]nsure reliable back-up power for consumers . . . across networks.”¹⁷

In the NPRM, the Commission proposed a “technology-neutral” framework,¹⁸ applicable to all fixed networks supplying emergency voice communications,¹⁹ with “backup power requirements . . . sufficient [to afford] power for . . . 911 calls and the receipt of emergency alerts and warnings.”²⁰ The Commission observed that eight hours of backup power is consistent with VoIP deployment models already in practice and that some providers have deployed backup power devices capable of providing power for up to twenty-four hours. The Commission proposed that providers be required “to assume responsibility for provisioning backup power that is capable of powering their customers’ CPE during the first eight hours of an outage.”²¹

There is much forward-looking discussion in the NPRM, all directed toward improving the reliability of the modernized network. The Commission noted recommendations from the Communications Security, Reliability and Interoperability Council (CSRIC) to advance the state of the art in CPE powering²² and to make affordable battery backup available to consumers.²³ The Commission asked about the

¹⁶ *Id.*, ¶ 43.

¹⁷ *Id.*, ¶ 2.

¹⁸ *Id.*, ¶¶ 3, 32, 35.

¹⁹ *Id.*, ¶ 3.

²⁰ *Id.*, ¶ 34.

²¹ *Id.*, ¶ 35.

²² *Id.*, ¶ 36.

²³ *Id.*, ¶ 38.

economies of scale that might be associated with requiring providers to supply customers with initial backup power capability.²⁴

The Report and Order endorses validity of the concerns expressed in the NPRM,²⁵ but then abandons the proposal in the NPRM that companies be required to assume responsibility for provisioning eight hours of backup power during an electrical outage. The Report and Order appears to signal an abandonment of the resolve to require the industry to assume responsibility for designing and engineering a reliable network.

In place of the eight-hour provisioning requirement proposed in the NPRM, the Report and Order adopts a previously unannounced rule²⁶ placing only limited obligations on companies to offer new subscribers the “option” to purchase an eight-hour backup solution (and a twenty-four hour backup solution after three years) and to make

²⁴ *Id.*, ¶ 41.

²⁵ “[I]t is essential for all consumers to be able to access 911 emergency services during commercial power outages, especially those outages caused by catastrophic storms or other unpredictable events, and to understand how to do so. Ensuring the ability to maintain such service is a vital part of our statutory mandate to preserve reliable 911 service, and more generally, our statutory goal to promote “safety of life and property through the use of wire and radio communication. We agree with the National Association of State Utility Consumer Advocates (NASUCA) that it is unlikely that our concerns would be adequately addressed without the adoption of regulatory requirements. . . . [W]e find that public safety officers, first responders and other public officials have a need to communicate with citizens through whatever means possible, and 911 service plays an important role in this regard. Indeed, consumer advocates and 911 providers emphasize the need to adopt robust backup power requirements to ensure public safety. . . . We agree with the commenters who assert that transitions to new technology should not result in 911 service being more vulnerable than when consumers used the legacy network. . . . We reiterate our observation in the Notice that adequate and reliable 911 access to 911 services and functionalities during emergency conditions is a long-standing policy objective. . . . [W]e believe that voice communications continue to play an essential and central role in the delivery of public safety services, and that this role does not diminish during events that cause power outages. Instead, it is at these times that consumers most need to know that they will be able to use their home telephone to get help through 911.” Report and Order, note 2 above, ¶¶ 13-14, 17-18 (footnotes omitted).

²⁶ 47 C.F.R. § 12.5 (“Backup Power Obligations”).

“disclosures” at the point of sale and annually until 2025. No provider is required to install backup power.²⁷ No subscriber is required to purchase it.²⁸

In changing course and adopting the rule, the Commission states: “We find merit in NASUCA’s argument that the public interest requires the industry to be responsible for ensuring that its subscribers at least have some option to purchase backup power . . . to maintain continuity of 911 communications during a loss of commercial power.”²⁹

NASUCA made no such argument. It did not and does not subscribe to the notion that mere "options" and "disclosures" will secure public safety and associated policy goals in the context of emergency voice communication during a power outage.³⁰ For the reasons stated in this petition, it urges the Commission to reconsider the Report and Order and upon such reconsideration to return to the concepts expressed in the NPRM and place greater responsibility on the industry, where it belongs.

III. Argument

Core conclusions reached in the Report and Order lack adequate consideration and support. The Commission states: “[T]he rules we adopt today will preserve safety of

²⁷ Joint Consumer Advocates are concerned that requiring low income customers to pay for battery back-up places households who cannot afford to purchase back-up power at risk.

²⁸ Report and Order, note 1 above, ¶ 9

²⁹ *Id.*, ¶ 20, citing NASUCA Reply at 4.

³⁰ The argument advanced by NASUCA was and is that “[a]dvances in network technology need not and must not diminish service reliability,” that “the public interest does not permit network owners to allow customers to be without adequate power backup,” and that “there are efficiencies of scale and scope to be gained in requiring the industry to be responsible.” NASUCA Reply at 4. More specifically, NASUCA argued that, “the Commission **establish an initial requirement** that for all new installations carrier provided backup batteries should have the ability to provide 8 hours of talk time and 24 hours of standby time and be provided with the 25 amp lithium ion battery identified in [the] testimony of the [Office of the People’s Counsel for the District of Columbia].” NASUCA Reply at 13 (emphasis added). See Report and Order, ¶ 13 (citing NASUCA Reply at 8).

life by enabling the use of VoIP and other non-line powered services to contact 911 in a commercial power outage.”³¹ And: “[P]roviding the option for at least 8 hours of backup power would ensure the ability to make many life-saving 911 calls during commercial power outages.”³² The difficulty is that a backup “option” has life-saving potential *only* if it is exercised. The evidence cited by the Commission indicates that most of the time the option will *not* be exercised.³³

The Commission cites an observation from CSRIC that “[i]ncreasingly, battery backup is being offered as an optional accessory to the consumer.”³⁴ There is no indication, however, that CSRIC views this transfer of responsibility from the provider to the consumer as a preferred policy position. No matter the extent of disclosures, providers will always have far greater knowledge of the capabilities and interoperabilities of their systems than the vast majority of consumers. CSRIC’s observation is simply one of fact: The industry, free from regulatory accountability, has been designing and engineering a network that does not deliver the critical functionality of access to 911 during a power outage. The Commission should correct, not abet, this serious degradation of service.

Making back-up power optional would be like making the installation of seatbelts optional. Individual customers should not be making the decision about whether 911

³¹ Report and Order, ¶ 21.

³² *Id.*

³³ *Id.*, n. 98, citing Bright House Networks Reply at 2 (Bright House made batteries optional for new installations at approximately \$35 plus shipping; only a “negligible” number of customers decided to purchase the battery). See also *id.*, ¶ 46 (“Similarly, NCTA stated that in their experience only a small number of customers have purchased backup power”).

³⁴ *Id.*, ¶¶ 42, 44.

calling is available. Notice of the option to the customer - and the willingness to put the customer at risk - should not be up to the individual customer. Instead, it should be the responsibility of the carrier, with the costs - alleviated by the economies of scale the Commission asks about - distributed among all the carrier's customers.

The Commission observes that some consumers purchase wireless service as an alternate means of making 911 and other emergency calls, and some have opted for cordless phones that require commercial power to operate.³⁵ Other consumers, however, have chosen to keep their traditional landline phones precisely because they do not see mobile service as sufficiently reliable to count on in cases of emergency.³⁶ These concerns are valid: The Commission acknowledges that wireless services may become overloaded in times of extreme use and thus be unavailable for use to reach 911.³⁷ And consumers with cordless phones commonly retain a traditional line-powered phone for use when the power goes out.³⁸

Everyone wants and needs the ability to complete an emergency call when an emergency arises. Savings to the carriers from the Report and Order's optional program will come at the expense of consumers who want and need the ability to complete an emergency call but who cannot afford it, and to customers who are simply shortsighted.

The Report and Order does not address the economies of scale that would logically flow from an obligation that companies generally provision backup power for their customers, as proposed in the NPRM. Nor does the Report and Order otherwise

³⁵ *Id.*, ¶ 37.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*, ¶ 14.

seek to mitigate the cost to consumers of maintaining backup power in a market in which no effort is made to realize such economies of scale.³⁹ The Report and Order similarly does not address CSRIC's observation that, due to the wide variety of backup power options and interfaces offered by individual service providers and CPE vendors, some level of standardization is "needed" of both power systems and interface, if VoIP services are to meet the reliability that consumers expect.⁴⁰ These are serious omissions that deserve the Commission's attention.

Citing the argument of a single commenter, the Commission concludes that a "'one-size-fits-all' solution is inappropriate and would dissuade consumer interests."⁴¹ The NPRM did not propose a simplistic one-size-fits-all solution. The NPRM proposed to place meaningful obligations on providers to assume responsibility for the provision of essential backup power, thus taking a meaningful step toward preserving the enduring values of the past⁴² for the future.

The task the Commission must demand of the industry is the engineering of a network that delivers reliable service regardless of the technology employed. Only such a "one-size-fits-all" solution offers the American public the secure knowledge that they will be able to make 911 and other emergency calls. There are also considerable economies of scale associated with the adoption of uniform requirements, including

³⁹ The Report and Order states, ¶ 45: "A service provider can receive compensation for all aspects of implementing the rules we adopt today, including the backup power installation, and costs of equipment and labor, from the customer that elects to have backup power installed."

⁴⁰ NPRM, ¶ 46.

⁴¹ *Id.*, ¶ 31, citing Hawaiian Telecom Reply at 4.

⁴² Report and Order, ¶ 13.

uniform requirements for backup power in the case of traditional landline service or transitioned services designed to substitute for traditional landline service.

There are, moreover, substantial undesirable costs and risks associated with the development and marketing of multiple options for backup power and the development and communication of disclosures that 911 and other emergency calls may fail. With the approach taken in the Report and Order, lack of customer funds to pay for the back-up, or simple lack of foresight, will make essential reliability for 911 and other emergency calls unavailable for many. That includes the customer's family and visitors, who will also be unable to make 911 calls.

The approach taken in the Order will not ensure the continuity of 911 communications, as the title of the docket implies. It will instead ensure the **discontinuity** of 911 communications. The approach taken in the Order will not preserve the fundamental values to which the Commission aspires. It will severely compromise reliable universal service and with it the public safety.⁴³ The Commission states, "We agree with the commenters who assert that transitions to new technology should not result in 911 service being more vulnerable than when consumers used the legacy network."⁴⁴ But that is just what the Report and Order does.

For these reasons, the Report and Order should be reconsidered. The notice-and-option rule adopted by the Commission disserves the public interest. The reliability for 911 and other emergency calls during a power outage will be lost because, as providers seek to make profit centers out of backup power, customers will elect not to purchase

⁴³ See 47 U.S.C. sec. 151.

⁴⁴ Report and Order, ¶ 17.

unaffordable but essential optional backup power. The legal authority the Commission cites for its inadequate resolution⁴⁵ is quite sufficient for ordering service providers to provide back-up power.

Accordingly, in the interest of promoting safety of life and property through the use of wire and radio communications, and in the interest of making available, so far as possible, to all the people of the United States, a rapid, efficient, nationwide and worldwide wire and radio communication service with adequate facilities at reasonable charges,⁴⁶ NASUCA asks the Commission to reconsider the Report and Order in this docket and upon such reconsideration to replace the rules adopted in the Report and Order with rules that follow the superior and more far-sighted approach suggested in the NPRM.

Respectfully submitted,

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⁴⁵ Id., ¶¶ 83-88.

⁴⁶ See 47 U.S.C. § 151.

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