

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554**

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| In the Matter of |) | |
| Ensuring Customer Premises Equipment Backup |) | PS Docket No. 14-174 |
| Power for Continuity of Communications |) | |
| |) | |
| Technology Transitions |) | GN Docket No. 13-5 |
| |) | |
| Policies and Rules Governing Retirement Of |) | RM-11358 |
| Copper Loops by Incumbent Local Exchange |) | |
| Carriers |) | |
| |) | |
| Special Access for Price Cap Local Exchange |) | WC Docket No. 05-25 |
| Carriers |) | |
| |) | |
| AT&T Corporation Petition for Rulemaking to |) | RM-10593 |
| Reform Regulation of Incumbent Local Exchange |) | |
| Carrier Rates for Interstate Special Access |) | |
| Services |) | |

**COMMENTS OF
THE MICHIGAN PUBLIC SERVICE COMMISSION**

On November 25, 2014, the Federal Communications Commission (FCC or Commission), released a Notice of Proposed Rulemaking (NPRM) and Declaratory Ruling in the above captioned proceedings seeking comment on its proposal to modernize its rules as the transitions to diverse communications networks and technologies move forward while seeking to preserve the core values of public safety, universal access, competition and consumer protection. More specifically, the NPRM requests comment on ensuring reliable back-up power for consumers of

Internet Protocol (IP) based voice and data services that provide residential service that substitutes for traditional legacy telephone service used by consumers to dial 911; providing consumer protections by ensuring customers are informed about their choices and the services provided to them when carriers retire legacy facilities and seek to discontinue legacy services; and protecting competition where it currently exists today, so that the change of a network facility or discontinuance of a legacy service does not compromise the needs of businesses, healthcare facilities and anchor institutions, including schools and libraries. In response to the NPRM and the comment cycle established in this proceeding, the Michigan Public Service Commission (MPSC) provides the following comments.

Customer Premise Equipment (CPE) Power Back-up

Even during a power outage, customers have long relied on the ability to pick-up the receiver of their phone, hear a dial-tone and place an emergency call to 911 or to a loved one who may otherwise be inaccessible as a result of the cause of the outage such as severe storm damage. The next generation networks, while providing technologies and opportunities not afforded by the legacy network, do not provide the reliability customers have come to expect and it is critical that any Commission rules and policies developed provide certainty of service for customers. Although central offices have the capability to provide dial tone for a much longer period of time, the MPSC believes that prior to allowing an incumbent local exchange carrier (ILEC) to discontinue landline voice service in an area, the FCC must ensure that voice replacement service includes stringent back-up power

requirements which apply to that area uniformly and that customers be able to make voice calls utilizing that replacement service for a minimum of eight hours.¹ Additionally, those providers choosing to discontinue service should have the burden of replacing and bearing the cost of any CPE that is not compatible with the new technology that is expected to replace the customer's landline service. The MPSC also asserts that not only is it important to rely on CPE for residential customers, it is essential that other critical users of the legacy network such as business customers and medical facilities are not forced to replace all of their CPE due to non-compatibility issues with the new technology commissioned to replace the landline technology. While the MPSC believes that power back-up is essential, it also recognizes that customers should bear some of the responsibility of ensuring their CPE is operational after the minimum back-up time. Consumer education can play a critical role in ensuring that customers are aware of the insufficiency of back-up power for their service, especially with VoIP provided through a broadband or cable provider. In replacing landline service with interconnected Voice over Internet Protocol (VoIP), many customers may not realize there is a difference and be caught off guard when attempting to make a call during a power outage only to find their phone "dead." Therefore, at the point of replacing legacy service with new technology, it is important that the carrier providing the new service be clear and concise regarding the power limitations of the new service. State Commissions could assist with the education of customers, but ultimately the providers should be responsible for providing educational materials to customers. The MPSC asserts

¹NPRM page 21.

that developing battery back-up standards across all forms of replacement technologies could help alleviate inconsistencies from carrier-to-carrier in their policies and would allow customers some measure of certainty when the power goes out.

Copper Retirement

Copper retirement rules go hand in hand with the discontinuance of legacy telephone services for incumbent local exchange carriers. Copper still plays a crucial role in providing wholesale and last mile services to other providers and the MPSC supports including the definition of copper retirement in the FCC's rules.² The MPSC also supports robust notification requirements and public disclosure of effects and changes to customers and interconnected providers of any discontinuance or impairment of services as a result of copper retirement and the ability of those affected to be able to file comments or complaints with the FCC. The public needs to be aware of the practical consequences of copper retirement and how it affects them. Additionally, if a customer is presently receiving non-legacy service from a competitor and wishes to switch back to an ILEC, consumers should be informed in advance that they will not be able to receive the landline service that they have always been able to obtain and have come to expect from the ILEC in their exchange. The FCC has proposed a 30-day comment period for subscribers to be able to comment on a copper retirement. The MPSC believes that a longer window may be more appropriate. Reaching customers can sometimes be more

² NPRM and Declaratory Ruling, pg. 26.

difficult than reaching interconnected providers. Interconnected providers are more likely to be prepared and anticipating copper retirements, unlike subscribers that may be inexperienced in dealing with regulatory matters and totally caught off guard and unable to digest the information as easily as interconnected providers. The MPSC also supports requiring that ILECs provide notice of any copper retirements to the public utility commissions and governors of the states in which they intend the changes, similar to the requirements in CFR 63.71.

The MPSC believes that education during the copper transition is critical to alleviate misunderstandings and confusion for consumers and supports requiring initiatives similar to the digital television (DTV) transition to allow the copper transition to move along more smoothly. Education initiatives for the telephone transition are more critical than the DTV transition because telephone communication, including 911 services, plays such an essential role in our daily lives. It is also prudent that the FCC proceed with greater caution with the technology transition and learn from the delays in implementing the DTV transition to allow for more time, and be willing to postpone any retirements on a more long term basis if it is shown that the retirements will be a great detriment to customers and interconnected providers alike.

The MPSC also supports—with proper oversight—permitting the sale of ILEC's copper facilities as a vehicle for competition.³ While allowing the parties to work out some aspects of a sale for themselves, it is important that the party purchasing any facilities remains committed to utilizing those facilities to provide

³ NPRM and Declaratory Ruling, pg. 21.

voice service to all customers in an area and can remain financially viable in the long term. It is also important that those pieces of the network that are sold remain open to competition and that any carriers with current interconnection agreements with the ILECs, or that obtain wholesale services that utilize those pieces of the network, be allowed to continue to have access under the same rates, terms and conditions.

Section 214 Discontinuance

Many concerns have been raised—both nationally and in Michigan—about the implications of an ILEC pulling out of a service area and discontinuing landline service. The FCC has already seen concerns raised in Verizon’s attempt to discontinue its landline service in the Hurricane Sandy ravaged areas of Fire Island, New York and parts of New Jersey, which attest to the fact that customers take their landline service seriously. While an ILEC may request to discontinue providing a particular type of service, or a competitive local exchange carrier (CLEC) may file to discontinue service from exchanges in the state of Michigan, there has always been the carrier of last resort to fall back on. The MPSC has not yet experienced a situation where a carrier of last resort has requested to completely abandon all of its landline services, but the MPSC acknowledges this day may be coming. In the wake of legislation passed last year in Michigan to amend the discontinuance of service requirements outlined in the Michigan Telecommunications Act (MTA), numerous customers, businesses and municipalities reached out to the MPSC after taking into consideration what a

discontinuance of landline service would mean to them or to their area⁴. Among the changes made in Section 313 of the MTA, the Michigan legislature incorporated the terms of the “FCC trials order”:

(c) “Reliable access to 9-1-1” means the rules, regulations, and guidelines set forth in the **FCC trials order**, including all appendices, that provide comparable and reliable consumer access to emergency services.

(d) “Willing provider” means a provider that voluntarily participates in the request for service process.

(7) Beginning January 1, 2017, a telecommunication provider that discontinues service under this section shall adhere to all rules, regulations, and guidelines set forth in the **FCC trials order**, including all appendices, for each of that telecommunication provider's exchanges in this state, whether or not the discontinuance is undertaken pursuant to an official trial under the **FCC trials order**, except that all notices or reports to be filed with the federal communications commission shall be submitted to the Michigan public service commission for its information. This subsection is effective until the federal communications commission determines the legal and policy framework and establishes the requirements for the IP-transition including emergency connectivity requirements that provide comparable and reliable consumer access to emergency services.

(8) As used in this section, “**FCC trials order**” means the order of the federal communications commission, GN docket nos. 13-5 and 12-353, adopted January 30, 2014, and any subsequent order of the federal communications commission modifying or revising that order that includes emergency connectivity requirements that provide comparable and reliable consumer access to emergency services.

In including this language, which takes effect on January 1, 2017, the law relies heavily on what the FCC determines in GN docket nos. 13-5 and 12-353, so it is crucial to the MPSC that any decisions that the FCC makes in these proceedings provide for the protection and welfare of the citizens of the state of Michigan.

⁴ See Michigan Telecommunications Act, MCL 484.2313, amended through Act 52, eff. March 25, 2014
http://www.michigan.gov/documents/mpsc/pa179_453242_7.pdf?20150129154153.

In the instant notice requesting comment, the FCC indicated its intent to focus on three key issues in the context of discontinuances of service: (1) ensuring that consumers receive adequate substitutes for the services to be discontinued; (2) further defining the scope of section 214(a) authority; and (3) ensuring competitive availability of wholesale inputs available from ILECs that CLECS currently rely on. In considering changes to its discontinuance of service rules, the FCC must look to the statutory values of telecommunications policy that it has previously outlined: public safety, universal service, competition, and consumer protection.⁵ The MPSC contends that an ILEC should not be allowed to discontinue landline service unless it can be demonstrated that a functionally equivalent voice service with reliable access to 911 is available to all customers in an exchange under the same (or very similar) rates, terms and conditions as the service to be discontinued.

The FCC must also take into consideration the geography and demographics and communities of each individual exchange in its determinations of whether to allow an ILEC to discontinue providing landline service in an area, including what percentage of residents in a given exchange or area still subscribe to landline service and the reasons for the continued subscription. While alternative services and facilities based-competitors, such as cable providers, may be available in urban areas as well as in and around the immediate vicinity of suburbs and small towns, in rural areas a landline is often the only viable and dependable option.

⁵ *FCC Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, GN 13-5, 12-353, et al. rel. January 31, 2014, p 9.

Additionally, if the FCC considers allowing wireless service as a substitute for landline service, which the MPSC believes should not occur, it should develop discontinuance of service requirements for those providers along the lines of those crafted for domestic carriers and interconnected VoIP providers. It is also important in adhering to its core values, that the FCC consider interconnection of other carriers and the repercussions and domino effect that allowing an ILEC to discontinue service will have on competition and the wholesale market as well as the impact on their end user customers. As demonstrated in some carrier-to-carrier disputes, a disconnection of parts of the wholesale services provided by an ILEC to an interconnected CLEC can affect the CLECs' retail customers. The FCC must always presume that a discontinuance of service by an ILEC will affect interconnecting carriers and must take all necessary steps to prevent this from occurring and allow a full vetting process of the discontinuance by all affected parties. The MPSC also supports the FCC's position that the technology transition must not undermine competition. The ILECs that seek section 214 authority to discontinue, reduce, or impair a legacy service used by a CLEC must commit to providing those carriers equivalent wholesale access on equivalent rates, terms, and conditions.

Declaratory Ruling

In this section, the FCC also adopted a Declaratory Ruling clarifying that the circumstances in which a carrier must seek approval to discontinue a service depend upon the practical impact of its actions and not the fine print of an aging

tariff filing. In response, United States Telecom Association (USTA) filed a request for reconsideration of the Declaratory Ruling on December 23, 2014, with oppositions and replies due on January 23, 2015 and January 30, 2015 respectively⁶. While the MPSC did not respond directly to the USTA petition, the MPSC supports the FCC's clarification and review of discontinuance of service applications to look beyond the terms of a carrier's tariff and instead apply a functional test that takes into account the circumstances and perspective of the communities in which a discontinuance of service, reduction or impairment will take place. Not only do some carriers not update their tariffs regularly, many states no longer require that tariffs be filed for many basic services or features that an ILEC offers. The use of third party services and functions in an exchange which primarily are available only through the legacy network (i.e. fax machines, credit card machine services, medical alert devices, alarm systems and other monitoring devices) must be considered when determining whether to allow a carrier to discontinue service to protect the communities impacted.

Conclusion

The MPSC appreciates the opportunity to comment on such important and critical matters and commends the FCC for its initiative. While new technologies bring a multitude of benefits and advantages to customers, it is important that the services and reliability that consumers have come to expect and depend on for their safety, well-being, and livelihood are taken into consideration and included in

⁶ See FCC Order https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1903A1.pdf, released December 30, 2014 PS Docket No. 14-174, GN Docket No. 13-5 *et al.*

building and developing policies designed to deploy next generation networks. It is essential that as the transition from the legacy phone network to diverse technologies takes place, which no one who depends on that legacy service gets left behind.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION**

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