

**Before the
Federal Communications Commission
WASHINGTON, D.C. 20554**

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<i>In the Matter of</i>)	
)	
<i>Technology Transitions</i>)	GN Docket No. 13-5
)	
<i>Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers</i>)	RM-11358
)	
<i>Special Access for Price Cap Local Exchange Carriers</i>)	WC Docket No. 05-25
)	
<i>AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services</i>)	RM-10593
)	
<hr/>)	[FCC 14-185]

**COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these comments on the August 7, 2015 *Further Notice of Proposed Rulemaking*¹ seeking input on the “specific criteria for the Commission to use in evaluating applications to discontinue retail services pursuant to section 214 of the Act. “ *Id.* at ¶ 7.

¹ See, *In the Matter(s) of Technology Transitions*, GN Docket No. 13-5, *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (FNPRM), FCC 14-185, rel. Aug 7, 2015, available online at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-97A1.docx .

NARUC, a nonprofit organization founded in 1889, has members that include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,² energy, and water utilities.

Congress and the courts³ have consistently recognized NARUC as a proper entity to represent the collective interests of the State public utility commissions. In the Federal Telecommunications Act,⁴ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁵

NARUC has been very active on transition issues.⁶ NARUC is on record in this proceeding numerous times urging the FCC to take a technology neutral approach to transitions and, *inter alia*,

² NARUC’s member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competing local exchange carriers (LECs). These commissions are obligated to ensure that local phone service supplied by the incumbent LECs is provided universally at just and reasonable rates. They have a further interest to encourage unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. See, e.g., 47 U.S.C. § 252 (1996).

³ See, United States v. Southern Motor Carrier Rate Conference, Inc., 467 F. Supp. 471 (N.D. Ga. 1979), aff’d 672 F.2d 469 (5th Cir. 1982), aff’d en banc on reh’g, 702 F.2d 532 (5th Cir. 1983), rev’d on other grounds, 471 U.S. 48 (1985). See also Indianapolis Power and Light Co. v. ICC, 587 F.2d 1098 (7th Cir. 1982); Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1976).

⁴ Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁵ See, 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) Cf. NARUC, et al. v. ICC, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system.)

⁶ See, NARUC filings in Docket No. 13-5 et al. on July 30, 2015, Notice of Ex parte filed by NARUC General Counsel with FCC Secretary (<http://apps.fcc.gov/ecfs/comment/view?id=60001096120>); March 9, 2015, Comments of the National Association of Regulatory Utility Commissioners (<http://apps.fcc.gov/ecfs/comment/view?id=60001026129>); November 6, 2014, Notice of Ex Parte filed by NARUC General Counsel (<http://apps.fcc.gov/ecfs/comment/view?id=60000976737>); July 17, 2014, Notice of Ex Parte filed by NARUC General Counsel (<http://apps.fcc.gov/ecfs/comment/view?id=6018211438>); July 7, 2014 Reply Comments of the National Association of Regulatory Utility Commissioners on VCXC Petition for Notice of Inquiry on the Migration to HD Voice, (<http://apps.fcc.gov/ecfs/comment/view?id=6017878247>); March 10, 2014 Reply Comments of the National Association of Regulatory Utility Commissioners, (<http://apps.fcc.gov/ecfs/comment/view?id=6017611661>); January 24, 2015, Notice of Ex parte filed by NARUC General Counsel (<http://apps.fcc.gov/ecfs/comment/view?id=6017585171>); August 7, 2013, Reply Comments of the National Association of Regulatory Utility Commissioners (<http://apps.fcc.gov/ecfs/comment/view?id=6017462259>).

- “[R]eaffirm its commitment to a collaborative, joint approach with the States to further the goals and directives contained in the NPRM regarding consumer protection and public safety;
- [A]dopt rules that respect and do not diminish, impede or otherwise infringe upon State authority in these areas;
- [E]nsure that competition, and current consumer protections, including privacy, complaint resolution, basic service, and service quality, remain in effect regardless of the technology used to provide service, and should endorse the States’ continued enforcement of these protections where they exist under State law;
- [R]equire all providers of fixed IP-based networks to notify and educate their consumers of any backup power requirements of their services, including battery life spans and procedures for ordering, installing, replacing, and disposing of batteries, as well as actions consumers may take to extend battery life during a power outage; and
- [P]artner with the States to ensure that consumers are fully informed on the backup power requirements of their IP-based services, regardless of the technology used by the consumer, and to advance the FCC’s and States’ mutual goals for consumer protection and public safety.”⁷

In support of those positions, NARUC respectfully states as follows:

DISCUSSION

At the outset, NARUC would like to commend the FCC for, in the order accompanying this rulemaking:

- Specifying that its actions “do not encroach on traditional state jurisdiction regarding ongoing maintenance obligations;” *Id.* at ¶ 96
- Explicitly reiterating that “States localities and Tribal nations play a vital role in overseeing Carriers’ service quality and network maintenance.” *Id.*
- Finding that with concerns about copper retirements, that is it is important to address “concerns about technological change, competitive access and universal service...with the principle of cooperative federalism; *Id.* at ¶ 70

⁷ See, NARUC’s February 18, 2015 *Resolution Urging the FCC to Partner with States to Protect Residential and Business Consumers During the Technology Transition*. That resolution is available online at: <http://www.naruc.org/Resolutions/Resolution%20Urging%20the%20FCC%20to%20Partner%20with%20States%20to%20Protect%20Residential%20and%20Business%20Consumers%20During%20the%20Technology%20Transition.pdf>

- Specifically “emphasiz[ing] and support[ing] the role of State commissions to support consumer education around copper retirement; Id. at ¶ 64

We hope the agencies actions going forward continue to reflect both technology neutrality⁸ and the “cooperative federalism.”⁹ Although sometimes a specific technology can engender a new problem, generally, the technology used to provide a service is not a relevant consideration. Consumers care if the service works and that they are getting what they pay for. Fortunately, the definitional scheme in the Act is technology neutral. As NARUC has consistently urged both before Congress¹⁰ and this Agency:

No regulator or legislator should be intervening in the market to put a thumb on the scale to favor one technology over another. The market should make those choices Policy makers should, as Congress required, adopt a functional approach to defined services. The 1996 Act is far from a model of perfection. But in key areas, it does properly focus on services – not the technologies used to provide those services.

However, as Congress recognized in 1996, and the FCC has confirmed in the statements listed, *supra*, a single federal agency lacks the resources to handle this job alone.

The FNPRM requests comment on proposed criteria with which the Commission can measure the adequacy of substitute or alternative services that a carrier plans to use to replace legacy services when making a technology transition. Id. at ¶ 202. Specifically, the FCC proposes that a carrier seeking to discontinue an existing retail service based on new technology must demonstrate

⁸ The precursor 2014 NPRM, at ¶ 1, online at: <http://apps.fcc.gov/ecfs/comment/view?id=60000984757>, starts with the correct statement of principles that should act as the guide for all future FCC decisions:

[T]he success of these technology transitions depends upon the technologically-neutral preservation of principles embodied in the Communications Act that 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.[] We are determined to ensure that these fundamental values are not lost merely because technology changes.

⁹ See, e.g., Weiser, Philip J., *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, New York University Law Review, Volume 76, Number 6 (December 2001.), online at: <http://www.nyulawreview.org/issues/volume-76-number-6/federal-common-law-cooperative-federalism-and-enforcement-telecom-act>

¹⁰ See, e.g., *Testimony by Commissioner John Burke, Chairman NARUC Committee on Telecommunications before the United States House of Representatives Energy and Commerce Committee Subcommittee on Communications and Technology hearing on “The Evolution of Wired Communications Network,”* (October 23, 2013), online at: <http://www.naruc.org/Testimony/13%201022%20Burke%20Testimony2.pdf>, at pages 4 - 7.

that any substitute service offered by the carrier or alternate services provided by other carriers, meet the following criteria: “(1) network capacity and reliability; (2) service quality; (3) device and service interoperability, including interoperability with vital third-party services (through existing or new devices); (4) service for individuals with disabilities, including compatibility with assistive technologies; (5) PSAP and 9-1-1 service; (6) cybersecurity; (7) service functionality; and (8) coverage.” *Id.* at ¶ 208.

Because the FNPRM was released after NARUC’s summer meetings, the association has not had an opportunity to address the proposals specifically via resolution.

NARUC’s March 9, 2015 comments, and the quoted statements from the Order, *supra*, demonstrate the legal and practical underpinnings of the need for a cooperative approach to oversight of these services.¹¹

Consistent with NARUC’s focus on a technology neutral approach to transition issues, it is clear that any criteria imposed must ensure that the fundamental features of legacy services such as connection quality and persistence, 9-1-1 service, and services for those with disabilities, remain intact at current levels. Moreover, as we have noted before in comments, the FCC should ensure that competition, and current consumer protections, including privacy, complaint resolution, basic service, and service quality, remain in effect regardless of the technology used to provide service, and should endorse the States’ continued enforcement of these protections where they exist under State law.

In the context of the FNPRM, NARUC therefore

[1] specifically supports the FCC’s tentative conclusion in ¶ 218 that “one criterion in any adequate substitute test...should be that the carrier demonstrates in its section 214 application that any replacement or alternative service meets the minimum service quality standard set by the

¹¹ See, March 9, 2015, *Comments of the National Association of Regulatory Utility Commissioners, in Docket No. 13-5, at 5 - 8*, available online at <http://apps.fcc.gov/ecfs/comment/view?id=60001026129>;

State commission responsible for the relevant service area” – as it assures the continued enforcement/relevance of State protections “where they exist under State law.”

[2] contends the principle of treating transition issues in a technology neutral way requires that:

- A. *Any criteria should include capacity and reliability requirements that meet or exceed legacy capabilities (§ 216) – including specific requirements targeting the availability, reliability and functionality of 911 service (§ 225).*

As the early roll-outs of so-called nomadic VoIP services with defective E911 service demonstrated,¹² customers have understandable expectations about the reliability of communications services for business, communications about work and emergencies. In times of crises, the communications system must have the capacity to handle the increase in calls that may occur. The current reliability of legacy systems to complete those calls must remain unaffected by changes in technology.¹³

- B. *Any criteria should ensure that service functionality on any updated system remains intact (§ 219).*

Customers expect features such as call-waiting, caller ID, and collect and calling card capabilities as well as third-party non-call functionality. Comparable features should be available from a substitute service seeking to replace legacy services. Customers

¹² See, e.g., NARUC’s August 8, 2014 *Comments to the House Energy & Commerce Committee White Paper #4 - “Network Interconnection”*, at 13-14, online at: <http://www.naruc.org/Testimony/14-0808-NARUC-response-House-wp-4-Interconnection-FINAL.pdf>, noting:

Again a functional approach to services best serves your constituents. In 2007, the Minnesota Public Utilities Commission (MPUC), in a nod to consumer expectations and safety, ruled that over the top, nomadic VoIP provider Vonage was offering a telephone service and required the company to comply with State laws – binding on its competitors - to provide a functioning 911 emergency calling service. Vonage – a nomadic non-facilities based VoIP provider - appealed to federal district court. Ultimately, the issue of whether a technology neutral application of the State’s emergency calling regime was appropriate went to the FCC, who chose *at that time* to preempt the State law based on a stipulation before the MPUC that Vonage could not differentiate between interstate and intrastate traffic. The FCC weighed right into the market to favor Vonage. It did not have to provide services its competitors were required to provide – including a reliably functioning 911/E911 service. The result was predictable. People died. {footnotes omitted}

¹³ See, e.g., NARUC’s *Resolution Calling for the Development of national and State Policies to Ensure Reliable Wireline and Wireless Communications during Power Outages*, available online at: <http://www.naruc.org/Resolutions/Resolution%20Calling%20for%20National%20and%20State%20Collaboration%20to%20Ensure%20Reliable%20Wireline%20and%20Wireless%20Communications%20during%20Power%20Outages.pdf>

should not lose the benefit of their devices because of a technology transition decision made by the carrier.

CONCLUSION

NARUC respectfully requests the agency incorporate the positions listed, *supra*, in its final rules in this proceeding.

Respectfully Submitted,

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Appendix A

Resolution Urging the FCC to Partner with States to Protect Residential and Business Consumers During the Technology Transition

WHEREAS, On November 25, 2014, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking and Declaratory Ruling (NPRM) (In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, PS Docket No. 14-174, FCC 14-185, ¶ 2 at 2), in which the FCC sought comment on ways to ensure reliable backup power for consumers to dial 911 and protect consumers through better information about retiring legacy facilities and discontinuing services; and

WHEREAS, In the NPRM (¶¶ 3-6), the FCC proposed rules establishing battery replacement and backup power expectations for end-user consumers of Internet protocol (IP)-based services, requiring consumers be given adequate notice of copper retirement network and service changes; and

WHEREAS, In the NPRM, the FCC proposed rules to maintain wholesale access in order to preserve competition; and

WHEREAS, State public service commissions and other state agencies (States) share responsibility, statutory authority and oversight with the FCC regarding consumer protection, competition and access to 911/E911 public safety services, using different regimes and approaches to network reliability and public safety; *and*

WHEREAS, Several States are examining the intrastate impacts of battery backup and copper retirement or transition, within the States' regulatory and legal parameters including any State basic services, or other, rules and laws; *and*

WHEREAS, States have a long history of partnering with the FCC to the benefit of consumers on numbering administration and number routing issues, such as area code relief, number conservation and number portability and these issues will continue to have importance to States as the transition to IP technology moves forward; *and*

WHEREAS, The FCC has partnered with States to conduct consumer education and provide consumer notices regarding VoIP's 911/E911 limitations, Lifeline Awareness Week, and the Digital Television (DTV) transition; *and*

WHEREAS, NARUC adopted resolutions at its 2013 Summer Meeting encouraging the States and the FCC to optimize consumer protection and the public interest by working together in a collaborative process on several issues, including network power outages, next generation telecommunications network technologies, the federal Lifeline service program, and billing complaint trends; *and*

WHEREAS, The FCC recognized the important role that States play concerning 911 service and power outages in its November 25, 2014 Policy Statement and Notice of Proposed Rulemaking (In the Matter of 911 Governance and Accountability, PS Docket Nos. 14-193, 13-75, FCC 14-186, ¶ 2 at 2), by stating that: "State regulators and local emergency response agencies play critical roles in

ensuring that 911 is available when needed and that every 911 call will be answered, and it is undoubtedly in the public interest that the Commission should work in close partnership with these stakeholders to carry out its responsibility”; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2015 Winter Committee Meetings in Washington, D.C., urges the FCC to reaffirm its commitment to a collaborative, joint approach with the States to further the goals and directives contained in the NPRM regarding consumer protection and public safety; *and be it further*

RESOLVED, That the FCC should, in any order issued pursuant to the NPRM, adopt rules that respect and do not diminish, impede or otherwise infringe upon state authority in these areas; and be it further

RESOLVED, That the FCC should ensure that competition, and current consumer protections, including privacy, complaint resolution, basic service, and service quality, remain in effect regardless of the technology used to provide service, and should endorse the States’ continued enforcement of these protections where they exist under State law; and be it further

RESOLVED, That the FCC should require all providers of fixed IP-based networks to notify and educate their consumers of any backup power requirements of their services, including battery life spans and procedures for ordering, installing, replacing, and disposing of batteries, as well as actions consumers may take to extend battery life during a power outage; and be it further

RESOLVED, That the FCC should partner with the States to ensure that consumers are fully informed on the backup power requirements of their IP-based services, regardless of the technology used by the consumer, and to advance the FCC’s and States’ mutual goals for consumer protection and public safety.

*Sponsored by the Committee on Telecommunications and the Committee on Critical Infrastructure
Adopted by the NARUC Board of Directors February 18, 2015*