

customers the option to purchase back-up power – at the customer’s expense⁶ – is sufficient for public safety.⁷

In Opponents’ view, reliable access to 911 should be optional – and the customer must decide to pay for that reliability. This is claimed to “meet consumer expectations regarding access to emergency communications.”⁸ But access to 911 is mandated by regulation, and the costs of that access were spread throughout the industry and consumers⁹... just as the cost of back-up power would be. The decision was made years ago that the public safety embodied in 911 should not be optional.¹⁰ Likewise, seatbelts are not optional, even though few customers opted to pay for them as options when a car could be bought without seatbelts.¹¹ Thus in the Order, the Commission erred in “preserving the status quo”¹² in a manner that puts customers at risk.

The Opponents stress the observation that many consumers rely exclusively on wireless voice services, including for their emergency communications.¹³ As discussed in the Petition, the Commission erred in basing its Order on that observation, and concluding that backup power for other, IP-based (including VoIP), services should be optional. The American public needs and deserves a closer and more reasoned analysis than that provided by the industry on which the Order was based.

⁶ ACA, et al. acknowledge that some customers will not be able to afford to purchase battery back-up, but assert that requiring back-up power for all consumers is not the solution. ACA, et al. Opposition at 7.

⁷ E.g., ACA, et al. Opposition at 4-5; CenturyLink Opposition at 2; FTTHC Opposition at 6; ITTA Opposition at 4; NTCA Opposition at 11.

⁸ ACA, et al. Opposition at 1.

⁹ See <https://en.wikipedia.org/wiki/9-1-1>.

¹⁰ §& U.S.C. § 615a.

¹¹ See https://en.wikipedia.org/wiki/Seat_belt.

¹² ACA, et al. Opposition at 5.

¹³See FTTHC Opposition at 6; ACA, et al. Opposition at 2; NTCA Opposition at 9; ITTA Opposition at 2.

As the Commission recently observed in a related docket, 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services, while 44 percent of households were “wireless-only” during January-June 2014.¹⁴ The movement of consumers is thus not just to wireless services but also to IP-based services – such as those provided by the cable, fiber and other providers who oppose reconsideration. By all accounts, the movement to IP-based services poses challenges of great magnitude – financial, technological and geographic. The public safety is very much at stake. Back-up power requirements are necessary.

Many consumers are thus forced to turn to the IP-based services for replacing legacy services.¹⁵ The question is whether these IP-based services, like the legacy services they replace, should be designed and engineered to work in times of emergency. If the enduring values¹⁶ are to be preserved, the answer must be affirmative. The argument that many consumers have “cut the cord” is not responsive to the needs of consumers who continue to rely on an IP-based network. Nor would it be accurate to say that every consumer has a viable wireless option. Wireless service is not available or not reliable in all locations. It is particularly unreliable – or non-existent – in rural areas. And even where wireless is available, it can become overloaded in emergency situations.¹⁷

¹⁴*In the Matter of Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, et al., FCC 15-97, 30 FCC Rcd 9372 (Aug. 7, 2015), ¶ 9.

¹⁵ It is clear that some of the transitions to non-line-powered are not voluntary or a matter of customer choice. See Rate Counsel’s Emergency Request for Relief to Temporarily Suspend Verizon New Jersey Inc.’s Copper-to-Fiber Transition in New Jersey and for an Investigation into Verizon New Jersey Inc.’s Continued Use of its Copper Infrastructure to Provide Telecommunications Services in New Jersey and Verizon New Jersey Inc.’s Transition Plan to Migrate Customers to its Fiber Infrastructure Throughout New Jersey. BPU Docket No.: TO15060749, Petition (filed July 29, 2015).

¹⁶ Order, ¶ 13.

¹⁷ See Order, ¶ 37.

The substantial use of wireless service for 911¹⁸ speaks to the fact that emergencies occur in public places where wireline phones are not available. Further, emergency needs during an electrical outage, where the need for back-up power is crucial, are different – and likely much more severe, in total – than the normal course of emergency calls that are increasingly made from mobile devices. The impact of an electrical outage at home causes all sorts of specific emergencies, from loss of heating in freezing temperatures, to an absence of security (no lights, no medical alarm systems, loss of powered medical life support devices, etc.). The citations to emergency calls from mobile phones miss the point of the enhanced need for emergency service access during home-based power outages. This is when VoIP backup power is needed to kick in, and when mobile 911 service is likely to be overwhelmed by large numbers of mobile customers trying to report an emergency triggered by an electrical failure.

There is no evidence that, under the rule as adopted, with companies making backup power available at the option and expense of the consumer, “market forces [will] ensure that backup power is offered at competitive prices.”¹⁹ The batteries may in some instances be proprietary, and some equipment may be designed to work only with certain batteries. Factors such as these may influence pricing. What the evidence does show is that, with current market forces and current pricing practices, only a negligible or small number of customers have elected to buy what the companies have been offering for sale.²⁰ Absent reconsideration, based on the

¹⁸ See, e.g., ACA et al. Opposition at 6, asserting that over 70 percent of 911 calls originate on mobile phones.

¹⁹ NTCA Opposition at 11-12. ITTA's claim about costs (ITAA Opposition at 5) also takes no account of economies of scale (and scope).

²⁰ Report and Order, 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”).

evidence that is in the record, the end result of the Commission’s order will almost inevitably be the absence of backup power and the consequent loss of reliability in times of emergency.

The Joint Petitioners observed that requiring carriers to assume responsibility for provisioning backup power will produce economies of scale. Yet only one Opponent offers support but still no evidence for the Commission’s questionable expectation that “market forces [will] ensure that backup power is offered at competitive prices.” History, economics and common sense compel the conclusion that prices for a seldom-purchased and completely non-standardized accessory product – rather than one that is broadly mandated – will be anything but reasonable. Absent reconsideration, the all-but-inevitable result will be a loss of reliability in times of emergency.

The outcome sought by Joint Petitioners is no more “paternalistic”²¹ and no more at odds with “consumer choice”²² than the requirement that automobile manufacturers – all of them – install seat belts. None of the arguments advanced by any of the opponents puts a dent in the argument that public safety requires the industry to design and engineer a network on which emergency calls will complete in times of emergency – or the argument that backup power in an IP-based network is essential to achieving the public safety goal.

One Opponent argues that the Petition failed to point to any prior interpretation by the Commission, Congress or the courts that would require adoption of back-up power requirements like those identified in the Petition.²³ But up until this investigation, consumers relied on line-powered wireline service... where no back-up power is needed for access to 911. The increase

²¹ ACA, et. al. Opposition at 5. NCTA’s statement that “consumers ... are entirely comfortable with dialing 99 from their mobile device in an emergency...” (NTCA Opposition at 10) is itself dangerously paternalistic.

²² NTCA Opposition at 9.

²³ NTCA Opposition at 8.

in VoIP use –where back-up power is necessary – is part of the new IP transition, and the safety considerations that arise from the transition should be appropriately addressed in this proceeding.

For these reasons, and those previously stated, the petition for reconsideration should be granted.

Respectfully submitted,

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