April 20, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC  20554


Dear Ms. Dortch:

On April 16, 2015, AJ Burton of Frontier Communications, Jeff Lanning of CenturyLink (by phone), and the undersigned of ITTA met with Matt DelNero, Daniel Kahn, Michele Levy Berlove, Jean Ann Collins, and Heather Hendrickson (by phone) of the Wireline Competition Bureau to discuss the Commission’s Notice of Proposed Rulemaking (“NPRM”) seeking comment on copper retirement, backup power for customer premises equipment (“CPE”), and related issues in connection with the ongoing TDM-to-IP transition.¹

We expressed concern that several of the proposals in the NPRM single out incumbent local exchange carriers (“ILECs”) for disparate regulatory treatment and would continue to place ILECs at a competitive disadvantage in comparison to their cable and wireless competitors. These requirements are unwarranted and unnecessary in light of the current state of the communications marketplace in which ILECs are no longer dominant in the provision of residential or business voice services. We urged the Commission to refrain from adopting needless and intrusive regulations that will stifle innovation and investment and undermine its goals of facilitating the IP transition and advancing broadband deployment to consumers throughout the United States. Rather, the Commission’s IP transition policies should be focused on ensuring regulatory parity and technological neutrality so as to stimulate competition, reflect marketplace realities, and promote the Commission’s technology transition and broadband deployment objectives.

Wholesale Access

We observed that the Commission’s proposals relating to wholesale access and additional notice to competitive local exchange carriers (“CLECs”) are premature and inconsistent with Section 214 of the Communications Act. The Commission’s comprehensive review of the special access marketplace is well underway and the Commission has indicated that it intends to complete its evaluation by the end of this year. The Commission should continue to move forward with this process. We are confident the Commission’s analysis will show sufficient competition in the market for special access services, such that adopting the proposals in the NPRM would be premature and wholly unnecessary. Indeed, the FCC’s examination could very well lead the Commission to identify areas where regulation should be removed to encourage innovation.

We also pointed out that Section 214 is not an appropriate vehicle for the Commission to adopt its proposals relating to wholesale access. It is well established that the Section 214 discontinuance process cannot be used to challenge changes in rates, terms, and conditions of service. Thus, a discontinuance process that includes an evaluation of the prices, terms, and conditions of service (e.g., by precluding ILECs from adjusting their rates for various components of the IP replacement product, requiring ILECs to offer a minimum number of bandwidth options, and limiting changes ILECs may wish to make with respect to service delivery options and other terms and conditions that take into account the nature of the IP replacement product) cannot be squared with the statute.

Retail Notice and Related Disclosures

The extensive retail customer notice requirements proposed in the NPRM are unnecessary. In many cases, copper retirements have little or no practical impact on retail customers and providing them notice would be unnecessary or confusing. In situations where notice to retail customers could be beneficial, such as when copper retirement requires the provider to replace or install CPE on a customer’s premises or eliminate line power, there is every incentive for carriers to provide consumers with the necessary information to understand how such changes may affect them.

To the extent the Commission adopts retail notice requirements, it should ensure providers have adequate flexibility to exercise their reasonable discretion. It should not specify the form, content, and timing of notices, adopt onerous document retention requirements, or require notice to additional entities.

The Commission also should refrain from placing burdensome restrictions on ILECs regarding how they interact with customers about the services available for purchase as a result of the transition to upgraded facilities. The presence of significant competition from other voice providers provides sufficient marketplace constraints to address any concerns relating to “upselling.” Placing additional restrictions specifically on ILECs would diminish competition by inhibiting their ability to compete, particularly given that 60%-70% of households do not purchase ILEC voice services today. Such requirements also could be detrimental to consumers by limiting transparency and increasing their costs. For example, to the extent ILECs cannot
inform customers about new products and services when they are retiring copper, customers would likely encounter separate install charges should they decide to upgrade to those services at some point in the future.

**CPE Backup Power**

The CPE backup power mandates proposed in the NPRM are particularly overreaching. Most consumers already rely on alternative (i.e., non-landline) sources for voice calls, such as wireless service, to communicate during power outages. To the extent consumers need backup power for CPE, numerous options are available, and consumers, not carriers, are in the best position to understand their specific needs and take any desired precautions.

The successful migration of more than 31 millions of consumers to VoIP service over networks that do not provision line power to the customer premises indicates that the Commission’s proposals are not justified. Indeed, the industry, including one of the largest providers of IP-based voice service in the country, has responded to this marketplace demand by voluntarily deploying devices capable of maintaining backup power for an extended period of time. In most cases, however, customers choose to pay less and forego backup power. Mandating CPE backup power requirements on affected wireline providers would create unnecessary burdens and result in increased costs for consumers.

In sum, the Commission should refrain from adopting regulations that would harm consumers by singling out ILECs and hampering their ability to compete against larger cable and wireless rivals. Continuing to saddle legacy providers with onerous regulatory obligations that reflect a bygone era in which they were monopoly providers ignores the realities of today’s communications marketplace. The Commission’s primary objective must be to ensure regulatory parity for all providers and to identify ways to reduce or eliminate regulation and uncertainty that would impede investment in IP-based infrastructure and services. By exercising a light regulatory touch that emphasizes competitive neutrality, the Commission can minimize marketplace distortions, create incentives for broader investment in next-generation networks and services, promote efficient allocation of valuable investment dollars, and promote the transition to all-IP networks.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

Micah M. Caldwell
Vice President, Regulatory Affairs

cc: Michele Levy Berlove
    Heather Hendrickson
    Jean Ann Collins
    Daniel Kahn
    Matt DelNero