

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER ON RECONSIDERATION

Adopted: August 23, 2016

Released: August 24, 2016

By the Commission:

I. INTRODUCTION

1. The Commission has before it a petition for reconsideration (PFR) jointly filed by the National Association of State Utility Consumer Advocates (NASUCA), Maryland Office of People’s Counsel, Public Knowledge, the National Consumer Law Center, 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, and Access Sonoma Broadband (collectively NASUCA et al.) requesting reconsideration1 of the Ensuring Continuity of 911 Communications Report and Order.2 NASUCA et al. request that we reconsider our conclusion that backup power should be a matter of consumer choice and instead require the mandatory provision of backup power at the expense of the providers’ customers. As discussed below, we dismiss the NASUCA PFR as repetitious. Alternatively, and as an independent ground for action, we deny the NASUCA PFR on the merits.

II. BACKGROUND

2. On August 6, 2015 the Commission adopted the Report and Order to promote continued access to 911 during commercial power outages by requiring providers of facilities-based, fixed residential voice services that are not line powered to offer subscribers the option to purchase a backup power solution capable of 8 hours of standby power, and within three years, a solution capable of 24 hours of backup power.3 The Report and Order also promotes consumer education and choice by requiring providers of covered services to disclose to subscribers, information about: (a) availability of backup power sources; (b) service limitations with and without backup power during a power outage; (c) purchase and replacement options; (d) expected backup power duration; (e) proper usage and storage

1 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, 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, and Access Sonoma Broadband, PS Docket No. 14-174 (filed Nov. 16, 2015) (NASUCA PFR).

2 Ensuring Continuity of 911 Communications, Report and Order, 30 FCC Rcd 8677 (2015) (Report and Order).

3 Id. at 8678.

conditions for the backup power source; (f) subscriber backup power self-testing and monitoring instructions; and (g) backup power warranty details, if any.⁴

3. The NASUCA PFR alleges that the *Report and Order* departs from the approach set forth in the underlying *Notice of Proposed Rulemaking* by allowing consumers to choose whether to purchase backup power.⁵ The NASUCA PFR further claims that certain conclusions in the *Report and Order* lacked adequate support. In particular, the NASUCA PFR claims that the *Report and Order* failed to address the economies of scale that would result from requiring the provision of backup power for all consumers,⁶ as well as the need for standardization of the backup power system and interface to ensure reliable VoIP service.⁷ The NASUCA PFR claims that the *Report and Order* transfers the responsibility for ensuring the reliability of 911 and other emergency voice communications from the provider to the consumer, who may choose to forego backup power due to funding constraints or simple lack of foresight,⁸ and undermines the policy goals of Section 151 of the Communications Act of 1934, as amended.⁹ NASUCA urges the Commission 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.”¹⁰

4. Five parties filed oppositions to the PFR;¹¹ one party filed supporting comments.¹² NASUCA *et al.* filed a timely consolidated reply, essentially restating its arguments in the PFR.

III. DISCUSSION

A. The NASUCA PFR is Repetitious.

5. As an initial matter, we dismiss the NASUCA PFR because it repeats issues that commenters, including NASUCA *et al.*, raised earlier in the proceeding, and that we fully considered and rejected in the *Report and Order*. It is by now well settled that the Commission will not consider a petition for reconsideration that merely repeats arguments that the Commission has previously rejected.¹³

6. In their PFR, NASUCA *et al.* reprise the position taken in their comments, that provider-supplied backup power should be mandatory for every consumer, with the cost thereof shared by *all* of

⁴ *Id.* at 8703-8707.

⁵ See NASUCA PFR at 2 (referencing *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014))(Notice)).

⁶ NASUCA PFR at 8-9.

⁷ NASUCA PFR at 9-10.

⁸ NASUCA PFR at 2, 6-8, 11.

⁹ 47 U.S.C. § 151.

¹⁰ NASUCA PFR at 12.

¹¹ The five parties that filed oppositions are: (1) ITTA – The Voice of Mid-Size Communications Companies (ITTA); (2) CenturyLink; (3) NTCA–The Rural Broadband Association (NTCA); (4) American Cable Association (ACA), the National Cable & Telecommunications Association (NCTA), and the United States Telecom Association (US Telecom) jointly; and (5) Fiber To The Home Council Americas (FTTH).

¹² The International Association of Fire Chiefs (IAFC).

¹³ See, e.g., Federal-State Joint Board on Universal Service, *Order*, 19 FCC Rcd 22305 ¶ 4 (2004). Indeed, in 2011 the Commission amended its Part 1 rules, granting staff the authority to dismiss petitions for reconsideration that “fail to identify any material error, omission, or reason warranting reconsideration,” or which “rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.” *Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594 (2011); 47 CFR § 1.429(1)(3). Because we also address NASUCA’s PFR on the merits, we have no occasion to rely on that delegation of authority here.

the provider's consumers.¹⁴ Specifically, the NASUCA *et al.* argument that providers should be responsible for the provision of backup power to all consumers was raised in its comments and is repeated in its PFR.¹⁵ We did not fail to consider that argument, but rather evaluated it and found it wanting for the reasons stated in the *Report and Order*.¹⁶ Similarly, the NASUCA PFR raises an argument, first raised in its comments, that the provider should furnish backup power to every customer, with the cost thereof distributed among all of the provider's customers.¹⁷ That argument, too, was considered and rejected.¹⁸ We did not, as NASUCA *et al.* allege, ignore the economies of scale that would accrue if providers were required to pay for subscribers' backup power equipment.¹⁹ Instead, after evaluating comments received in response to the *Notice's* questions as to whether it is "reasonable for providers to continue to bear primary responsibility" in light of changing technologies and consumer preferences, and "if so, to what extent" we concluded that it would best serve the public interest to apportion responsibility for backup power between the consumer and provider, with the consumer bearing the reasonable cost of backup power equipment furnished by the provider based on required disclosures designed to ensure informed consumer choices.²⁰ In this way, we implemented the objective identified at the outset of "[e]stablishing clear expectations for both providers and customers as to their responsibilities throughout the course of an outage," which, as we explained in the *Notice*, "should minimize the potential for lapses in service to occur due to consumer confusion or undue reliance on the provider."²¹ Moreover, we agreed with some of the issues raised by NASUCA *et al.* For example we agreed with NASUCA *et al.* and several other commenting parties who argued that it is essential for all consumers to be able to access 911 in the event of a power outage.²² We also agreed with the comments of parties that recognized that the transition to new technologies requires changes to our rules.²³

¹⁴ NASUCA PFR at 9. ("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.")

¹⁵ NASUCA Comments at 8-11; NASUCA Reply Comments at 4-5, 7-14; NASUCA PFR at 9.

¹⁶ *Report and Order*, 30 FCC Rcd at 8691-8692. ("We agree with commenters, such as Verizon, that '[c]ustomers should be free to decline [a backup] battery, depending on their personal preferences.'") We also address the merits of these arguments – as well as NASUCA *et al.*'s other claims – in Section II.B, *infra*.

¹⁷ NASUCA PFR at 9.

¹⁸ In its comments, NASUCA *et al.* did not directly address who would bear cost responsibility for backup power – the consumer or the provider. NASUCA Comments at 8-11. Their PFR clarifies that NASUCA *et al.* intended that the cost of backup power be shared across all of the provider's customers. NASUCA PFR at 9. The *Report and Order* provided that consumers electing to have backup power after consideration of specific disclosures by the provider would pay for it. *Report and Order*, 30 FCC Rcd at 8684.

¹⁹ NASUCA PFR at 9. *See also* NASUCA Reply Comments at 4 (pointing to such "efficiencies of scale and scope").

²⁰ *Notice*, 29 FCC Rcd at 14988 n.109. ("In the event that we were to adopt a requirement that providers must provision CPE backup power, we expect that providers would be entitled to commercially reasonable compensation in exchange for providing this service.")

²¹ *Notice*, 29 FCC Rcd at 14987 ¶ 32, 14988 ¶ 35.

²² NASUCA Comments at 9. *See, e.g.*, Comments of Neustar, Inc. at 3 ("The FCC's oversight of the IP transition must ensure that public safety entities retain seamless and robust access to the full suite of critical telephony services; that consumers can rely on the continued uninterrupted high-level performance of the telephone network, including emergency access"); Comments of Century Link, Inc., at 45 (There is a clear public benefit in promoting consumers' awareness that their CPE might not work if they have not taken affirmative action to acquire and maintain backup power, and electric power sources fail.).

²³ NASUCA Comments at 8; Comments of the Association of Public Safety Communications Officials – International (APCO) at 2; Comments of the National Association of State 911 Administrators (NASNA) at 1-2; Comments of the Communications Workers of America (CWA) at 1.

7. NASUCA *et al.* have not pointed to errors of fact or law in the *Report and Order* and, instead, have merely cataloged the recommendations made in their comments and registered their disagreement concerning those recommendations that we did not adopt. We gave those recommendations full and careful consideration and explained in the *Report and Order* why we chose a course different than that urged by NASUCA *et al.* Accordingly, we are dismissing the NASUCA *et al.* petition.

B. Consideration on the Merits

8. Notwithstanding our conclusion above, we address the merits of the NASUCA, *et al.* arguments in the PFR, to dispel any implication that we have been less than complete in addressing the NASUCA *et al.* PFR, and as a separate and independent ground for denial of the PFR.

9. We affirm our decision to require providers to furnish backup power upon consumer request. We take the point made by NASUCA *et al.* that backup power has life-saving potential only if the option to acquire a backup power source is exercised.²⁴ However, we disagree that, as a consequence, we must override the decisions that already have been made by many consumers and require providers to furnish backup power to every customer. Instead, we agree with ACA *et al.* that, while it is important to ensure that all (including low-income) consumers have the ability to communicate during a power outage, requiring backup power for all customers (including those who do not want or need it) is an expensive and inefficient way to achieve our objective.²⁵ Because of the many backup power and related options that already exist – and we expect to continue to grow – consumers will be able to find a solution for maintaining communication capabilities that is right for them.²⁶ And our disclosure requirements are designed to ensure that providers give consumers the information necessary to make an informed choice.

10. We disagree with NASUCA *et al.* that standardization and uniformity are necessary to provide adequate backup power solutions.²⁷ As we observed in the *Report and Order*, the record reflects that providers currently furnish a variety of backup power technologies and that a range of backup power and alternative communications options are also available direct-to-consumers from third party sources.²⁸ Further, we seek to promote providers' flexibility to deploy innovative solutions as technology evolves. We find that forcing consumers to pay for a service they do not – after full disclosure – need or want is too high a price to pay for standardization and uniformity. By requiring providers to make available 8 hour and, ultimately, 24 hour backup power solutions, and by adopting consumer education and disclosure requirements, we establish a baseline that accomplishes our public safety objectives in a cost-effective and pro-consumer manner.

11. We considered the NASUCA *et al.* contention that requiring providers to furnish backup power to all consumers would result in economies of scale, a contention that is difficult to evaluate since

²⁴ NASUCA PFR at 9. (“Everyone wants and needs the ability to complete an emergency call when an emergency arises.”)

²⁵ American Cable Association, *et al.* Opposition at 7.

²⁶ As we note *infra*, consumers may provide for backup by purchasing wireless service or alternative solutions. With respect to those who wish to purchase backup power for their fixed, residential voice services, we note that Verizon sells backup batteries for \$39.99 (*see* Fios Voice Backup Battery, <https://www.verizon.com/home/accessories/fios-voice-backup-battery/> (last visited Mar. 24, 2016)), Comcast sells them for \$35 (Purchase a Battery for Your Xfinity Voice Phone Modem, <http://customer.xfinity.com/help-and-support/phone/getting-a-new-battery/> (last visited Mar. 24, 2016), Cablevision prices its backup battery at \$34.95 ([http://optimum.custhelp.com/app/answers/detail/a_id/1404/kw/backup%20power/related/1ARRIS Telephony Modem Backup Batteries \(identifying backup power solutions\)](http://optimum.custhelp.com/app/answers/detail/a_id/1404/kw/backup%20power/related/1ARRIS%20Telephony%20Modem%20Backup%20Batteries)), <http://shop.surfboard.com/arris-telephony-modem-back-up-batteries/> (pricing for backup power) (last visited Mar. 30, 2016), and Bright House sells its for \$35 (*Report and Order*, 30 FCC Rcd at 8691 n.98; Bright House Networks Reply Comments at 2).

²⁷ NASUCA PFR at 10-11. (Urging a “one size fits all” solution.)

²⁸ *Report and Order*, 30 FCC Rcd at 8692.

NASUCA *et al.* did not quantify the alleged savings over the current costs to consumers.²⁹ We concluded, however, that the record demonstrated that “batteries or other potential substitutes for line powering carry a not insignificant additional cost over an entire network, and that it is not unreasonable to permit providers to recoup those additional costs from those subscribers who have need for the additional coverage.”³⁰ Although the per-unit cost of backup power could be less – due to economies of scale – if providers were required to furnish units to all users, the overall cost to providers of furnishing units to all users, including those who neither want nor need them, would be greater, thus undercutting the NASUCA *et al.* argument that its recommended course would benefit from economies of scale. We therefore continue to believe that the inefficiencies attendant on providing backup power to consumers who do not need it or elect not to have it, far outweigh the asserted, but unquantified, benefits of economies of scale that would be achieved by forcing backup power on all consumers.³¹ As noted above, NASUCA also provides no information on the extent of any such economies of scale, and the record evidence suggests that the per-unit price of backup power supplies is on the order of only \$35.³²

12. We find that the *Report and Order* appropriately balanced competing interests in ensuring that consumers had the ability to purchase backup power. We concluded that the public interest would best be served by ensuring that an option existed for backup power for continuity of 911 communications during a loss of commercial power. Our conclusion regarding the need for consumer choice is well supported by the record. During the proceeding we received comments asserting that, when it is offered, consumers often choose not to avail themselves of options to purchase backup power.³³ Commenters note, for example, that many subscribers of fixed, residential VoIP service also purchase mobile voice service that provides an alternate means of reaching 911 in an emergency, and that others have chosen to rely, as a personal preference, exclusively on cordless phones that require backup power beyond that supplied by service provider networks.³⁴ As FTTH in its opposition notes,³⁵ and other commenters previously confirmed,³⁶ we properly considered that there is extensive consumer use of non-line powered voice services, and reliance on non-line powered transmission media to access 911 and other emergency services.³⁷ Accordingly, the *Report and Order* recognizes that many users of interconnected VoIP voice service may be unconcerned about backup power, choosing instead to rely on their mobile phones or alternative backup power sources. As a result the *Report and Order* emphasizes that nothing in our rules forces consumers to purchase backup power that they do not want.³⁸ We continue to believe that it is appropriate to require providers to give consumers the benefit of information with which to make an informed decision, to offer consumers who want service that will operate during power outages the opportunity to obtain it, and not to impose those costs on consumers who have made an informed decision

²⁹ NASUCA PFR at 9-10 (claiming that economies of scale “logically flow” from its proposal).

³⁰ *Report and Order*, 30 FCC Rcd at 8696 ¶ 44.

³¹ See NCTA-the Rural Broadband Association, Opposition to Petition for Reconsideration at 11 (economies of scale “irrelevant” given the Commission’s policy to defer to consumer preferences).

³² See *supra* n.26.

³³ *Id.* at 9-10 citing Comments of the National Cable and Telecommunications Association at 6-7. See also *e.g.*, Verizon Comments at 17-18.

³⁴ *Report and Order*, 30 FCC Rcd at 8691-8692; See also, *e.g.*, Fiber to the Home Council of America Reply Comments at 6.

³⁵ FTTH Opposition to Petition for Reconsideration at 5.

³⁶ See, *e.g.*, Comments of AT&T at 12 n.25; Comments of CenturyLink at 3 n.6; Comments of USTelecom at 4.

³⁷ *Report and Order*, 30 FCC Rcd at 8683-8684.

³⁸ *Id.* at 8684.

to rely on alternative solutions or to forego the benefits of backup power altogether (e.g., by using cordless phones).³⁹

13. Some comments urged us not to regulate in this area;⁴⁰ others urged us to act more aggressively than we did in the *Report and Order*.⁴¹ We affirm that the balanced approach we adopted not only promotes the greater availability of 911 service during commercial power outages, but also promotes “the safety of life and property through the use of wire and radio communications,” consistent with our statutory goal.⁴² Moreover, we were not convinced that we should forego regulation because of claims that consumer expectations of continuity of telephone operations – which had stood unchallenged for decades – have already been upended, such that consumers no longer expect their home phone to work during power outages.⁴³ Instead, in the *Report and Order* we found that “[c]onsumers who have yet to abandon (or who have only recently abandoned) line-powered service may not have had their expectations reset.”⁴⁴ The *Report and Order* found that, at this time of transition, it is these consumers who are likely to believe that they can still access emergency services during a power outage, even when they no longer have line power.⁴⁵ Accordingly, our approach was to ensure that consumers understand the choices that remain, and that they can thus make an informed choice. We believe that it would have been counterproductive had we taken more extensive measures, unduly burdening both industry and consumers, or declined to take action, leaving a gap when consumers may need help.

14. With respect to the NASUCA *et al.* argument that backup power should be mandatory because consumers lack the foresight to purchase it on their own,⁴⁶ we have addressed that concern in a more empowering, targeted, and cost-effective manner than requiring consumers to purchase a capability they may not want or need. To promote clear expectations and consumer choice, the *Report and Order* adopted a combination of performance and disclosure requirements that we affirm here.⁴⁷ In the *Report and Order* we sought to ensure consumers are educated about backup power options available to maintain continuity of 911 service and understand how to obtain backup power equipment if they wish to do so.⁴⁸ We adopted the disclosure requirement to ensure that both current and future subscribers understand their backup power options and the limitations of a service that is no longer line-powered.⁴⁹ The *Report and Order* made clear that we want consumers to be aware of the consequences of their decision on whether or not to purchase backup power.⁵⁰ Finally, in the *Report and Order*, we encouraged providers of covered

³⁹ *Id.*

⁴⁰ *Report and Order*, 30 FCC Rcd at 8684; *see, e.g.*, Corning, Inc. Comments at 2-6 (arguing that requiring backup power for IP-based voice services would be unnecessary and costly, and instead of adopting the proposed rule, the Commission should promote the development and implementation of backup power solutions in cooperation with industry); AT&T Comments at 12 (asserting that “the Commission should recognize that consumers are already aware of the need for backup power for new IP-based services and are fully capable of making informed decisions on the type and amount of backup power they believe is appropriate for their circumstances”).

⁴¹ *See generally*, NASUCA Comments.

⁴² 47 U.S.C. § 151.

⁴³ *Report and Order*, 30 FCC Rcd at 8684.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ NASUCA PFR at 9. (Reciting that consumers who are “simply shortsighted” should be provided with mandatory backup power.)

⁴⁷ *Report and Order*, 30 FCC Rcd at 8680.

⁴⁸ *Id.* at 8687.

⁴⁹ *Id.*

⁵⁰ *Id.*

services to engage in targeted outreach to the communities they serve, to ensure that local emergency managers are aware of the limitations inherent in various fixed, residential voice services technologies commonly used in their areas.⁵¹

15. In reaching the conclusions set out in the *Report and Order*, we fully considered options ranging from declining to regulate in this area, such as proposed by Corning, Inc.⁵² to making backup power mandatory at the cost of all customers, as advocated by NASUCA *et al.*⁵³ We also looked at battery backup duration options,⁵⁴ ranging from the 8 hours discussed in the *Notice*⁵⁵ to the 24 hours proposed by the Ad Hoc Telecommunications Users Committee,⁵⁶ the seven day backup duration advocated by Public Knowledge⁵⁷ and the 10 days suggested by the Environmental and Energy Study Institute.⁵⁸ Based on the record and the state of the art in battery technology, we required providers to offer 8 hours of backup power capacity initially, and, within 3 years, 24 hours of capacity.⁵⁹ The *Report and Order* also set the relative responsibilities of providers and consumers based on a record in which some commenting parties favored total provider responsibility (NASUCA *et al.*)⁶⁰ and others advocated that neither providers nor consumers should be responsible for backup power because backup power was unneeded.⁶¹ After careful review of the record, we placed responsibility on providers to offer backup power equipment and furnish related information and disclosures, and placed responsibility on consumers to decide whether to purchase backup power.

16. A core argument in the NASUCA PFR is that the rules adopted in the *Report and Order* transferred the responsibility for ensuring the reliability of 911 and other emergency voice communications from the provider to the consumer.⁶² We have shown, above, however, that the *Report and Order* assigned providers the responsibility for offering backup power and providing consumer education and disclosure, and assigned consumers the responsibility of paying the reasonable cost of backup power if they determined to make an informed choice to purchase it. We find that the *Report and Order* adopts a balanced approach that, on full consideration of the record and the different alternatives offered by the parties, serves the public interest in promoting public safety through continuity of 911 communications in an era of technological change in a way that is most cost effective.

⁵¹ *Id.*

⁵² Corning, Inc. Comments at 2.

⁵³ NASUCA Comments at 13-14.

⁵⁴ The *Notice* proposed that providers furnish equipment “capable of powering their customers’ CPE during the first 8 hours of an outage,” *Notice* 29 FCC Rcd at 14988, but noted that “some providers have deployed backup power devices that are capable of providing power for up to 24 hours. *Id. citing* Verizon – Order, Replace, Install and Dispose of ONT Batteries, <http://www.verizon.com/battery> (last visited Nov. 24, 2014). In response, the Ad Hoc Telecommunications Users Committee argued for 24 hour backup capability. Ad Hoc Telecommunications Users Committee Comments at 6. *See also, e.g.,* Public Knowledge Comments at 9. (Advocating 7 days of backup power.)

⁵⁵ *Notice*, 29 FCC Rcd at 14989-14990.

⁵⁶ Ad Hoc Telecommunications Users Committee Comments at 6.

⁵⁷ Public Knowledge Comments at 25-26.

⁵⁸ Environmental and Energy Study Institute Comments at 3.

⁵⁹ *Report and Order*, 30 FCC Rcd at 8678.

⁶⁰ NASUCA PFR at 2. (Reciting that, in the *Report and Order*, we transferred the responsibility for furnishing backup power from providers to consumers.)

⁶¹ *See, e.g.,* Corning, Inc. Comments at 4. (“Consumers today do not need backup power for the landline telephones in their homes.”)

⁶² NASUCA PFR at 2.

IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.429 of the Commission's Rules, 47 CFR § 1.429, that the petition for reconsideration filed by the National Association of State Utility Consumer Advocates, Maryland Office of People's Counsel, Public Knowledge, the National Consumer Law Center, 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, and Access Sonoma Broadband IS DISMISSED and alternatively and independently DENIED for the reasons stated herein.

18. IT IS FURTHER ORDERED that this *Order on Reconsideration* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch, Secretary