

December 4, 2019

The Honorable Michael Doyle
Chairman
Subcommittee on Communications
& Technology
United States House of Representatives
Washington, D.C. 20515

The Honorable Robert Latta
Ranking Member
Subcommittee on Communications
& Technology
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman Doyle and Ranking Member Latta:

We write as consumer advocates, civil rights advocates, Tribal advocates and advocates for economic development of local communities and rural America deeply concerned over the continually declining state of our nation's critical communications infrastructure. While Washington remains focused on "winning the race to 5G," increasing numbers of Americans lack basic, reliable voice telephone service as providers allow their legacy networks to rust and degrade. Lack of maintenance and lack of emergency preparedness have contributed to lengthy outages in periods of natural disaster, where the ability to communicate with emergency services and family is most critical. Once the envy of the world, our national telephone network increasingly fails us when we need it most.

The current FCC has aggravated this situation. As one of his first items of business, Chairman Ajit Pai repealed critical safeguards put in place after Hurricane Sandy. Chairman Pai has ignored the recommendations of the FCC's own staff reports after the botched responses by industry to natural disasters such as Hurricanes Michael, Irma and Maria. Nor has Chairman Pai responded to the repeated requests from Democratic Commissioners Jessica Rosenworcel and Geoffrey Starks to address network reliability concerns, most recently highlighted by the California wildfires.

We therefore ask that you and other members of the subcommittee require Chairman Pai to address these concerns at your upcoming oversight hearing. Below, we provide documentation of declining quality of basic telephone service for millions of Americans, and dangerous declines in network reliability throughout the United States. We stress that these are only a few examples, and that the failure of the FCC to engage in any comprehensive investigation into national network reliability or to engage in any follow up on the impact of repeal of the post-Hurricane Sandy "Technology Transition" safeguards makes it impossible to assess the full scope of the problem. What is clear is that we are experiencing broad, systemic failure of critical communications infrastructure, while the agency that Congress created to protect the American people stands idly by.

1. Evidence of Lack of Resiliency: California Wildfire

For years, the telecom industry has urged policymakers to ignore worries over critical infrastructure by promising us a shiny future of fiber and 5G. The California Wildfires should finally show these airy promises for the smoke screen they are. We cannot build a reliable and resilient digital future on a fractured and faulty foundation.

After the wildfires of 2018, all telecommunications carriers were on notice that California power companies might engage in extended “power downs” to reduce the risk of wildfires, or that power might be interrupted as a consequence of wildfires and firefighting activities. In April of 2019, the California Public Utility Commission (CPUC) published “Safety Principles for Communications Providers,” a report outlining lessons learned from California’s 2018 wildfires and steps necessary to ensure reliable and resilient communications for the 2019 wildfire season.¹ The Report also noted the legal barriers to the CPUC directly requiring carriers to take these steps as a consequence of both state and federal deregulatory action.

Despite this advance warning, California suffered massive failure of its communications networks when most critically needed. Nearly 875 cell sites failed, including over half the cell sites in Marin County.² Over 700 of these failures were due to power failure from a lack of sufficient back up power. More troubling, it appears that PG&E executives, and millions of California residents, are unaware that landline voice-over-IP services do not work in a blackout. As reported by the Associated Press:³

Mark Quinlan, PG&E Senior Director for emergency preparedness and response, appeared stumped Tuesday night when asked how people should

¹ California Public Utility Commission, *Safety Principles for Communications Providers*, 2019, available at: [https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/Principles%20for%20Comm%20Providers%20Final%203-29-19%20\(003\).pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/Principles%20for%20Comm%20Providers%20Final%203-29-19%20(003).pdf).

² Karl Bode, *Wildfire Victims Don't Have Cell Service Thanks to Greedy Telecoms*, VICE (Oct. 29, 2019), available at: https://www.vice.com/en_us/article/ywa4p5/wildfire-victims-dont-have-cell-service-thanks-to-greedy-telecoms.

³ Jonathan J. Cooper and Juliet Williams, *Anger grows as utility struggles to get its blackouts right*, AP (Oct. 31, 2019), available at: <https://apnews.com/64fdb75d7e434722bd0229e1b458eebc>.

get information when the power is already out and many cell phones have stopped working.

“People could get the information from a website through family,” he suggested. “Or just get it the old-fashioned way, through calling on a landline.”

As explained by several consumer protection organizations in a letter to the CPUC, communications between public safety and residents were further hampered by the refusal of the FCC to disclose granular data on outages.⁴ Public Knowledge and Consumers union have repeatedly urged the FCC to make this data available to the public, but the FCC has consistently refused to do so. Additionally, Public Knowledge and other consumer organizations have urged the Commission to require that facilities-based VOIP providers offer customers 24-hour back up power at no charge. This request remains pending at the FCC.⁵

2. Evidence of Lack of Resiliency: Hurricanes and Other Natural Disasters

The events in California have prompted speculation that communications failures would be even worse in the event of a major earthquake.⁶ Recent response to Hurricanes – a far more frequent occurrence – certainly suggest that telecommunications providers have not hardened their networks to maintain reliable and resilient communications in times of national emergency. Yet the Trump FCC has not merely stood idly by, it has actively removed safeguards put in place following Hurricane Sandy.

⁴ Letter of Regina Costa, Telecommunications Policy Director, The Utility Reform Network; Melissa W. Kasnitz, Legal Director, Center for Accessible Technology, and Olivia Wein, Staff Attorney, National Consumer Law Center, to President Marybel Batjer, Commissioner Martha Guzman Aceves, Commissioner Liane M Randolph, Commissioner Clifford Rechtschaffen, Commissioner Genevieve Shiroma, Re: R.18-03-011, Order Instituting Rulemaking Regarding Emergency Disaster Relief Program and R.18-12-005, Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions (October 30, 2019).

⁵ Petition for Reconsideration of the National Association of State Utility Consumer Advocates et al., *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14- 174 (Oct. 11, 2016), available at: https://ecfsapi.fcc.gov/file/101139461574/NASUCA%20et%20al%20Pet%20for%20Recon%2010_11_2016.pdf.

⁶ Leila Miller and Rong-Gong Lin II, *California suffered widespread cellphone outages during fires. A big earthquake would be much worse*, LA Times (Nov. 5, 2019), available at: <https://www.latimes.com/california/story/2019-11-05/mass-cellphone-outages-during-blackouts-and-fires-are-a-grim-preview-of-life-after-a-major-earthquake>.

In 2017, Hurricanes Irma and Maria laid waste to the Island of Puerto Rico and the U.S. Virgin Islands. As documented in a report by Free Press in May 2019,⁷ the communications outages on Puerto Rico were devastating. Full recovery did not occur until after 182-days, the longest communications outage since Hurricane Katrina and among the longest in U.S. history. The failure of communications infrastructure complicated disaster relief efforts, and contributed to the suffering and death toll. But other than re-designating \$954 in Universal Service Fund money for recovery efforts, the FCC's response was surprisingly anemic – particularly when compared to its reaction to previous storms of similar magnitude and impact. The FCC's final staff report on the 2017 Hurricane Season recommended little change in the existing voluntary wireless disaster recovery framework.⁸

In 2018, in response to an extended outage of over 10 days by some carriers in the wake of Hurricane Michael, the FCC conducted a second inquiry into the Wireless Disaster Recovery Framework. This Report was far more critical of carrier conduct, and of the continued reliance of the FCC on an unenforceable voluntary framework.⁹ Nevertheless, the Report declined to recommend any follow up regulatory steps that might provide a more robust response.

Indeed, rather than increase oversight or accountability of telecommunications providers, the Commission took the opposite tack. In November of 2017, mere months after Hurricanes Irma and Maria, the Commission relaxed numerous notification safeguards and quality standards relating to network maintenance and replacement adopted following Superstorm Sandy. [CITE] The Commission relaxed these safeguards even further in 2018. [CITE] This loss of copper lines particularly hurts rural America. Not only is rural America disproportionately dependent on traditional copper telephone lines for traditional telephone service, but rural America is disproportionately dependent on DSL for broadband.¹⁰

⁷ *Connecting the Dots: The Telecommunications Crisis in Puerto Rico*, Free Press (May 2019), available at: https://www.freepress.net/sites/default/files/2019-05/connecting_the_dots_the_telecom_crisis_in_puerto_rico_free_press.pdf.

⁸ *Report on the 2017 Atlantic Hurricane Season's Impact on Communications*, Public Safety and Homeland Security, FCC (rel. Aug. 24, 2018), available at: <https://www.fcc.gov/document/2017-atlantic-hurricane-season-report-impact-communications>.

⁹ *FCC's Hurricane Michael Investigation Finds Backhaul, Roaming, And Coordination Problems Hindered Recovery Of Wireless Services*, Public Safety and Homeland Security, FCC (rel. May 9, 2019), available at: <https://www.fcc.gov/document/fcc-releases-report-communication-impacts-hurricane-michael-0>.

¹⁰ Roberto Gallardo and Brian Whitacre, *DSL, the Slowest Technology, Remains the One Most Available in Rural*, The Daily Yonder (Sept. 18, 2019), available at:

The Commission claimed these deregulatory steps would encourage carriers to upgrade their networks. Instead, as discussed below, deregulation has created the opposite effect. Increasing, networks throughout the United States have degraded to the point where they can hardly be considered operational. Even where networks are functional, multi-state outages for no apparently reason are now occurring, with no accountability or plans to prevent them in the future.

3. Evidence of Widespread Degradation

On December 27, 2018 CenturyLink experienced a network shutdown for over 24 hours, impacting 22 million customers in 39 states.¹¹ This outage impacted not merely CenturyLink service territory, but numerous 911 routing services that rely on CenturyLink’s network. The outage also impacted performance on Verizon Wireless and Comcast, which use CenturyLink to carry portions of their network traffic.¹² The FCC Report traced the outage back to a single malfunctioning network card generating “malformed packets,” combined with an insufficiently robust network architecture. This followed a “sunny day” 911 outage on CenturyLink’s network 6 months earlier due to a technician’s “misconfiguration” of 911 routing.¹³

The rise of such “technical glitches” and lack of accountability in our increasingly complicated and interconnected communications infrastructure would on its own be cause for alarm and a reason for the FCC to exercise greater oversight. But more than a decade of pervasive deregulation, combined with aggressive use by the FCC of preemption and forbearance authority, has created a growing crisis of rotting copper and poor cell phone service in an ever-larger swath of rural America. An investigation by the Minnesota Attorney General found evidence of broad, comprehensive problems in Frontier’s provision of phone service,

<https://www.dailyyonder.com/dsl-the-slowest-technology-remains-the-one-most-available-in-rural/2019/09/18/>.

¹¹ Matt Kapko, *FCC Issues Scathing Report on 37-Hour CenturyLink Outage*, SDxCentral (Aug. 20, 2019), available at: <https://www.sdxcentral.com/articles/news/fcc-issues-scathing-report-on-37-hour-centurylink-outage/2019/08/>.

¹² *December 27, 2018 CenturyLink Network Outage Report*, Public Safety and Homeland Security Bureau, FCC (Aug. 19, 2019), available at: <https://docs.fcc.gov/public/attachments/DOC-359134A1.pdf>.

¹³ *FCC Announces Settlements With CenturyLink & West Safety Communications Regarding 911 Outage In August 2018*, FCC News (Nov. 4, 2019), available at: <https://docs.fcc.gov/public/attachments/DOC-360612A1.pdf>.

evidence of outages lasting months, and a lack of available voice service in some areas placing lives at risk.¹⁴

A recent California study reached similar conclusions with regard to AT&T and Frontier.¹⁵ That study found that AT&T and Frontier had followed a strategy of underinvestment in rural areas where competition did not exist, and had focused investment on wealthier communities with higher potential rates of return. As a result, traditional telephone service had degraded, often failing to meet state quality standards and an increasing number of outages.

FCC preemption and deregulation have made it difficult for states to address these growing problems on their own. For example, in *Charter v. Lange*, 903 F.3d 715 (8th Cir. 2018), the 8th Circuit found that the FCC’s decision to classify VOIP as an “information service” preempted all state authority to regulate VOIP offerings. California officials have also noted how deregulation and preemption have hampered the efforts to require carriers to maintain minimum standards conducive to safe operation.

Conclusion

We cannot “win the race to 5G” or “compete globally in the broadband world” with a crumbling foundation of neglected infrastructure. *All* American should expect their phone system to work regularly and reliably – especially in times of crisis and natural disaster. Congress created the FCC for this very purpose.¹⁶ But the FCC has increasingly neglected this critical responsibility.

¹⁴ Letter of Linda Jensen, Assistant Attorney General for Minnesota Department of Commerce to Daniel Wolf, Executive Secretary of Minnesota Public Utilities Commission, at 2-3 (Jan. 4, 2019), available at: <http://mn.gov/commerce-stat/pdfs/frontier-service-quality-report-final.pdf>.

¹⁵ *Examination of the Local Telecommunications Networks and Related Policies and Practices of AT&T California and Frontier California*, Economics and Technology, Inc., at 1-3 (Apr. 2019), available at: https://www.tellusventure.com/downloads/cpuc/quality/cpuc_network_examination_2010_2017_executive_summary_redacted_22jul2019.pdf.

¹⁶ See 47 U.S.C. §151.

We strongly urge the Committee to hold the Commission accountable for these lapses and demand that they take necessary action to provide Americans with the reliable and resilient infrastructure we both need and deserve.

Respectfully Submitted,

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cc:

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