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FCC Should Go Full Speed Ahead in Removing Unbundling Regulations

by

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The FCC is taking public comments on its proposal to eliminate several of its "unbundling" rules. The sooner the Commission implements its proposal the better. Market competition should be the rule, not regulation. Over 57% of households are wireless-only for voice services, and interconnected VoIP subscribers outnumber legacy voice subscribers. The longer those old rules stay in place, the greater the harm to investment by incumbents and competitors in next-generation networks.

Unbundling regulation is a relic of the Telecommunications Act of 1996. Under Sections 251 and 252 of the '96 Act, incumbent local exchange carriers (ILECs) must make certain "unbundled network elements" or UNEs available to their competitors, subject to rates set by the FCC. When the 1996 Act was adopted in 1996, Time Division Multiplexing (TDM) using copper wires was the dominant technology for providing voice services, and ILECs were the dominant providers of local voice services. The idea behind unbundling and resale regulation was to prevent incumbents from blocking market entry by new voice providers and thereby stimulate facilities-based competition.

It's no secret that wireless and interconnected VoIP services offered by cable operators and other providers have long since overtaken legacy telephone services and eaten up incumbents' market share. According to the FCC's *Voice Telephone Services Report*, at the end of 2017, there were 49.7 million switched access lines (about 20% of which were non-ILEC), and 20.4 million of them were residential lines. As of that same date there were 66.6 million interconnected VoIP subscriptions, and 40 million of them were residential subscriptions. And USTelecom projected that ILECs will only have 27 million legacy switched access lines by mid-2020. To put incumbent switched access line numbers in further perspective, the report found there were 340 million mobile voice subscriptions at the end of 2017. And CTIA's 2019 Annual Survey indicates that American consumers had a total of 412.7 million mobile devices connected in 2018. Also, the National Center for Health Statistics' survey found that 57.1% of U.S. households were wireless-only as of the second half of 2018.

Voice services competition is an obvious reality in 2020, and the supposed basis for unbundling regulation has gone up in smoke. In view of vigorous competition in the voice services market from wireless and VoIP, singling out incumbents for extra regulatory burdens is unjustifiable. Not only that; unbundling regulation poses harm to investment in next-generation IP-based network technologies.

As Justice Stephen Breyer observed in *AT&T Corp. v. Iowa Utilities Board* (1999), "mandatory unbundling comes at a cost, including disincentives to research and development by both incumbent LECs, competitive LECs and the tangled management inherent in shared use of a common resource." Unbundling regulatory compliance costs divert incumbents' resources from investing in fiber and other IP-based infrastructure. Competitors may prefer relying on incumbent networks to deliver services rather than investing in new facilities of their own.

The Commission's proposal would eliminate unbundling regulation nationwide for narrowband voice-grade loops that have no broadband service capability. It also would eliminate such regulation for a few other categories of legacy network elements, subject to certain limits. For instance, relief from regulation of DSO Loops is proposed only for urban areas and not rural areas. Relief from DS1 and DS3 Loops used mostly by businesses is proposed only for areas deemed competitive in other agency proceedings. Additionally, the Commission's proposal contains a three-year implementation timetable to benefit transitioning competitors.

As far as it goes, the Commission's proposal to remove old unbundling requirements is commendable and worthy of adoption. But the Commission ought to consider faster implementation. Given dwindling numbers of legacy subscribers, regulatory compliance may become even more expensive. Repairs and replacement of outdated unique network components will likely grow costlier over the next three years. The Commission should therefore consider making its proposed relief in 18 months or less. This would help avoid wasteful and inefficient expenditures and encourage incumbents' and competitors' investment in next-generation networks.

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