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The FCC Should Promote Timely Transitions to Next-Gen Broadband

by

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To fully and rapidly reap the benefits of fiber and 5G broadband services, old networks need to be retired and make way for new ones. Transition periods are often needed to move consumers to advanced services. Yet the U.S. communications services market is reaching a point when the older outdated copper-wire facilities and older 3G wireless networks finally will have to be shuttered so that broadband provider resources can be fully dedicated to next-generation high-bandwidth infrastructure.

The FCC must keep to its forward-looking policy of promoting high-speed broadband deployment. Most copper-based digital subscriber line (DSL) facilities aren't even capable of meeting the Commission's broadband benchmark speeds of 25 Mbps/3 Mbps. So eventual retirement of those slow services won't deprive anyone of broadband. Accordingly, the Commission should reject any new regulations that would prolong the life of costly slow DSL services. Mandated continuation of non-broadband services risks delaying deployment of next-generation broadband services. Most consumers today have choices among fiber, 4G and 5G wireless, as well as satellite broadband services, so targeted universal service subsidies, distributed through reverse auctions, offer the better approach to reaching those Americans who lack broadband access.

For mass communications services, transitions from older network technologies to new ones are a necessary and recurring phenomenon, as several major tech transitions have taken place in recent years and decades. Examples include upgrades from analog technologies to digital technologies in wireless voice, wireline voice, and cable video services. Broadcast TV and cable TV video services have switched from standard definition to high-definition (HD), and ultra-HD is now emerging across competing video platforms. Wireless service providers carriers are completing 4G upgrades and nationwide 5G network expansions, with 3G networks being phased out in 2021 or 2022. Cable broadband networks are preparing to replace their DOCSIS 3.1 platform with DOCSIS 4.0. And for wireline Internet access services, providers for several years have been transitioning from copper-based digital subscriber lines (DSL) to high-speed fiber broadband networks.

The FCC has recognized the critical importance of facilitating technology transitions. For instance, the Commission stated in its January 2014 *Tech Transitions Notice*:

We must act with dispatch. Technology transitions are already underway. These ongoing transitions have brought new and improved communications services to the marketplace. Network providers have invested billions of dollars to transition legacy networks and services to next generation technologies, and over the next several years will invest many billions more. Modernizing communications networks can dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices. It also catalyzes further investments in innovation that both enhance existing products and unleash new services, applications and devices, thus powering economic growth. The lives of millions of Americans could be improved by the direct and spillover effects of the technology transitions, including innovations that cannot even be imagined today.

Timely retirement of legacy facilities is also imperative because the business case for maintaining outdated services becomes weaker and weaker while newly-deployed services gain traction in the market. As the subscriber base for legacy services dwindles, procuring replacement parts and maintaining older networks often grows more expensive. To the extent government regulation requires service providers to maintain networks that are no longer viable, the consequences are expensive duplication of services – albeit inferior services – and potential stalling of consumer access to next-generation networks.

On October 1, 2020, AT&T announced it was no longer taking new orders for certain DSL lines used for wireline Internet access services. AT&T is not eliminating DSL service to its existing subscribers, but is grandfathering services offering speeds in the 768-kbps-to-6-Mbps range as part of a gradual transition toward higher-speed network technologies. This announcement should come as no surprise to anyone who has been paying attention to market developments for the last several years. Yet a handful of critical stories on AT&T's announcement imagined scenarios of customers facing service cut-offs and being left stranded in the dark.

For example, Public Knowledge's attack on AT&T's grandfathering of DSL service doubles as an attack on the FCC's 2017 *Restoring Internet Freedom Order (RIF Order)* as well as its

October 2020 *RIF Remand Order*. According to an October 2020 Public Knowledge *ex parte* filing, the Commission's classification of broadband Internet access services as Title I information services under the Communications Act removed the agency's authority to protect broadband consumers harmed by DSL retirement. Supposedly, the *RIF Order* and the *RIF Remand Order* will leave consumers without access to Lifeline-supported broadband in areas where DSL networks are set to be retired, and cause untold numbers of consumers to be disconnected from broadband or stuck with potentially inferior services. But these attacks on slow-speed DSL retirement and the Commission's *Restoring Internet Freedom* policy don't hold water.

The *RIF Order* never removed any specific FCC authority over broadband service providers' withdrawal of older Internet access services. Indeed, the repealed 2015 *Title II Order* never recognized any Commission authority over discontinuance of Internet access services. Pursuant to Section 214(a), carriers seeking to discontinue telecommunications services must receive the Commission's approval, and the Commission must consider any objections to such discontinuance raised by interested parties. However, in the *Title II Order*, the Commission found "section 10(a) met for purposes of forbearing from applying section 214 discontinuance approval requirements." Moreover, in the *Title II Order*, the Commission determined that "universal service rules are designed to advance the deployment of broadband networks, including in rural and high-cost areas," and that public interest obligations tied to high-cost universal support "provide important protections, especially in rural areas or areas that might only have one provider."

Additionally, under the *RIF Order*, broadband ISPs are subject to the authority of the Federal Trade Commission (FTC) to address unfair or deceptive trade practices. In the event any ISPs' future withdrawal of legacy services is determined to be unfair or deceptive, the FTC is empowered to take enforcement actions.

Importantly, Lifeline-supported broadband Internet services are unaffected by grandfathering and future discontinuances of slow DSL internet access services. DSL Internet service offerings that fail to meet the Commission's speed threshold for defining fixed broadband services have never been eligible for Lifeline support. The Commission's 2016 *Lifeline Reform Order's* initial minimum download speed for fixed broadband-capable services was 10 Mbps. That minimum standard has been increased to 25 Mbps/3 Mbps.

In fact, a significant majority of DSL services are non-broadband Internet access services. That is, most DSL services don't meet the minimum criteria for broadband services as defined by the FCC. The Commission's 2020 *Broadband Deployment Report* reaffirmed the agency's benchmark of 25 Mbps/3 Mbps. But according to the Commission's September 2020 *Internet Access Services Report*, as of December 2018, only about 4.5 million out of nearly 19.7 DSL lines then used for Internet access services were capable of delivering speeds at 25 Mbps/3 Mbps or better. AT&T's October 2020 announcement that it would stop taking new DSL orders involved services with speeds ranging from just 768 kbps to 6 Mbps. And at this point, AT&T is not even retiring its non-broadband DSL services but merely *grandfathering* them.

Furthermore, the *RIF Remand Order* reaffirmed that Section 254(e) authorizes the Commission to direct Lifeline support to the broadband facilities of eligible telecommunications carriers (ETCs) that offer voice services on a common carrier basis or

that do so through an affiliate. As the *RIF Remand Order* explained, Lifeline eligibility is status-based, and Lifeline support "flows regardless of the type of service provided, as long as it goes to support the facilities of a designated ETC." The Commission's conclusion regarding Lifeline eligibility built on similar reasoning regarding high-cost program eligibility that was recognized in the 2011 *USF/ICC Transformation Order*.

By now the scare stories about gradual transitions away from *non*-broadband DSL services somehow depriving consumers of broadband access ought to be seen as pretty ridiculous. Yet at some point non-broadband DSL services – like 3G wireless networks – will need to be finally retired, and this is a reasonable and obvious part of any forward-looking communications policy that focuses on promoting deployment of next-generation broadband networks. The last thing the FCC should do is hinder new advanced deployments by mandating ISPs pour untold millions into low-speed, low-demand antiquated services.

As DSL services and other outdated networks are retired, consumers have meaningful choices for Internet access services using broadband-capable facilities. Aside from high-speed fixed broadband offerings by cable operators and fiber wireline ISPs, consumers increasingly have access to 4G and 5G fixed and mobile broadband connections, along with satellite broadband services. For instance, on November 12, the Commission announced "at the end of 2019, the number of Americans living in areas without access to terrestrial fixed broadband with speeds of at least 25/3 Mbps—the Commission's benchmark for high-speed broadband—fell to 14.5 million, a 46% decrease from the end of 2016." Meanwhile, T-Mobile, AT&T, and Verizon offer 5G mobile wireless broadband services nationwide, and wireless carriers are also launching fixed home 4G and 5G wireless broadband services. And according to the *2020 Broadband Deployment Report*, "Form 477 deployment data for satellite broadband indicate that satellite service offering 25/3 Mbps speeds is available to nearly all of the population."

To the extent that consumers in remote rural areas and other hard-to-reach locations lack access to broadband, targeted Universal Service Fund (USF) subsidies for services using broadband-capable facilities offer a better policy approach to closing digital divides than regulation requiring legacy services to remain in place. FCC Chairman Ajit Pai stated he expects the first phase of the Rural Digital Opportunity Fund's (RDOF) competitive bidding auction could "bring broadband to as many as 10.25 million unserved Americans across rural America."

Both the Obama and Trump FCC administrations have recognized the wisdom of refraining from imposing new directives that needlessly prolong slow legacy Internet access services. Whatever its composition in 2021, the Commission should adhere to that same pro-consumer, pro-investment approach and keep its policy focus on promoting deployment of new network facilities like fiber broadband and 5G networks.

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Further Reading

Seth L. Cooper, "[Net Neutrality is Dead and the Internet is Much Better Off for It](#),"

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Seth L. Cooper, "[The FCC Should Reaffirm Its Successful Internet Freedom Policy: Broadband Consumers Are Better Off Now Than Three Years Ago](#)," *Perspectives from FSF Scholars*, Vol. 15, Vol. 55 (October 21, 2020).

Randolph J. May, "[Don't Regulate the Internet as a Public Utility – Part II](#)," *Perspectives from FSF Scholars*, Vol. 15, Vol. 31 (June 11, 2020).

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[Comments of the Free State Foundation](#), Restoring Internet Freedom, WC Docket No. 17-108 *et al.* (April 17, 2020).

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Theodore R. Bolema, "[There's Nothing 'Anemic' About the FTC's Consumer Protection Capabilities](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 2 (January 7, 2020).

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[Comments of the Free State Foundation](#), Restoring Internet Freedom, WC Docket No. 17-108 (July 17, 2017).

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