

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Modernizing Unbundling and Resale
Requirements in an Era of Next-Generation
Networks and Services

WC Docket No. 19-308

**COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

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I. INTRODUCTION

The California Public Utilities Commission (CPUC) submits these comments in response to the above-captioned *Notice of Proposed Rulemaking (NPRM)*.¹ In the *NPRM*, the Federal Communications Commission (FCC or Commission) seeks comments on eliminating certain unbundling and resale obligations for incumbent local exchange carriers (ILECs). The proposed eliminations apply to unbundling obligations for certain types of loops, subloops, dark fiber transport, network interface devices, and operations support systems. The *NPRM* also proposes to eliminate avoided-cost resale obligations in non-price cap ILEC service areas. The 1996 Federal Telecommunications Act (1996 Act) originally ordered these requirements to open ILEC territories to competition.

The CPUC in past comments has opposed the FCC's removing requirements for unbundled network elements (UNEs) without considering both market-specific data and the impact on public safety.² The CPUC reiterates those comments here, and recommends that the FCC take the following actions before moving forward with this proposal:

- The FCC should conduct a new market analysis by collecting data on current telecommunications markets including data on broadband pricing. Any FCC forbearance from provisions of the 1996 Act should be based on current data, not on outdated data and industry promises, which the *NPRM* cites.

¹ *Notice of Proposed Rulemaking (NPRM), In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, (FCC 19-119) (rel. November 25, 2019).

² CPUC Comments filed August 6, 2018, *In the Matter of Petition to USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c)*, WC Docket 18-141 (filed May 4, 2018).

- The FCC must consider the impact on public safety of removing these obligations. It is unclear from the *NPRM* how the proposed eliminations would affect the existing 9-1-1 and the future Next Generation 9-1-1 services.

These comments address just some of the issues raised by the *NPRM*. Silence on any issue should not be construed as agreement or disagreement. The CPUC reserves the right to comment further in the reply round.

II. DISCUSSION

As the *NPRM* notes, the FCC has authority to forbear from regulations set forth in the 1996 Act if it determines that the regulations meet the following requirements: (1) enforcement of such regulation or provision is not necessary to ensure that charges and practices are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.³ In addition, the FCC must consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions” as part of the public interest inquiry.⁴ The FCC must determine that these requirements are met before eliminating any of the proposed unbundling and resale obligations. The FCC cannot do so without performing a new analysis of the market and without considering impacts on public safety.

³ 47 U.S. Code § 160(a).

⁴ 47 U.S. Code § 160(b).

A. New Market Analysis is Necessary to Assess Whether Forbearance is in the Public Interest.

The FCC should perform an in-depth study of the current telecommunications market before eliminating unbundling and resale requirements that enable broader service options at competitive pricing. The *NPRM* cites outdated data and industry promises in proposing some of these eliminations. For example, the *NPRM* refers to findings made from data collected as of December 31, 2013 in the FCC's 2017 Business Data Services (BDS) Order. This dataset is old and therefore outdated. The FCC should not rely on flawed and outdated data, as the *NPRM* does by using flawed Form 477 data that overstates broadband availability. Instead, the FCC should conduct an extensive data collection to understand current market conditions of Broadband availability in the residential and business markets. The in-depth study should also collect broadband pricing data to review broadband affordability. Competitive pricing is an important indicator of competition in the market and should be reviewed.

The *NPRM* also uses Verizon's and AT&T's future 5G plans as evidence that certain UNEs are no longer necessary.⁵ It is problematic that the *NPRM* uses industry announcements as justification for a potential policy change given that 5G benefits have not yet been demonstrated. A December 31, 2019 Wall Street Journal article reported that 5G in South Korea has been underwhelming even though it has been widely deployed.⁶ Uncertainties about 5G abound; the FCC should not enact policy changes

⁵ *NPRM* at para. 40.

⁶ See The Wall Street Journal, 5G Underwhelms in Its First Big Test, https://www.wsj.com/articles/5g-underwhelms-in-its-first-big-test-11577788203?mc_cid=bbb1e39e5&mc_eid=302075a2b7, last visited January 6, 2020.

based on a technology that is not yet widely available and industry promises that may not be realized.

In 2018, the CPUC commented on the USTelecom Forbearance Petition, noting that granting forbearance would risk further consolidating the market in California to one dominant provider in the business voice, mobile backhaul, and other wholesale services.⁷ Other state commissions – Pennsylvania, Michigan, Ohio, and Minnesota – in their comments cautioned the FCC against granting forbearance precipitously, as unbundling requirements are essential for competition. These states, and California, asked the FCC to take a closer look at unbundled network elements in the current market. The CPUC renews that request and urges the FCC to perform an in-depth study on current market conditions before removing important competitive measures.

B. The FCC Must Consider the Impact on Public Safety.

As the D.C. Circuit Court of Appeals found in its review of the *Restoring Internet Freedom Order*, the FCC “is ‘required to consider public safety by ... its enabling act.’”⁸ In that proceeding, California and other parties had raised public safety concerns about the FCC’s proposal to eliminate open Internet rules adopted in 2015. The Court found the “Commission’s disregard of its duty to analyze the impact of the 2018 Order on public safety renders its decision arbitrary and capricious in that part and warrants a remand with direction to address the issues raised.”² Similarly here, the FCC has a legal

⁷ CPUC Comments filed August 6, 2018, *In the Matter of Petition to USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c)*, WC Docket 18-141 (filed May 4, 2018), at p. 18.

⁸ *Mozilla Corp. v. FCC*, 940 F.3d 1, 59 (D.C. Cir. 2019), citing *Nuvio Corp. v. FCC*, 473 F.3d 302, 307 (D.C. Cir. 2006).

² *Id.*, p. 63.

obligation to consider the potential public safety impacts before removing each proposed requirement.

In addition to the uncertainty of the impact on competition, it is unclear how the *NPRM*'s proposed UNE eliminations will affect the existing 9-1-1 and the future Next Generation 9-1-1 services. With the recent destruction and devastation caused by wildfires in California, the FCC should not move this *NPRM* forward without considering public safety and the resiliency of the communications networks. The CPUC is currently examining the resiliency of the communications network considering the recent wildfires and power shutoffs.¹⁰

For example, the FCC should consider the public safety impact of removing Operations Support Systems (OSS) as a standalone unbundling requirement. OSS “consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases and information.”¹¹ ILECs must provide maintenance and repair to competitive local exchange carriers (CLECs) that interconnect to ILECs’ networks. Without this requirement, CLECs may struggle to resolve maintenance and repair issues that ultimately could adversely affect an end-user’s ability to reach emergency services. A 2019 complaint filed by the Utility Telecom Group, LLC (UTG) with the CPUC illustrates this point.

UTG interconnects with AT&T California for network services like E-911 routing and unbundled interoffice transport and loops. UTG alleges “there has been a noticeable

¹⁰ *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program*, R.18-03-011 (Cal. P.U.C. March 22, 2018). Phase 2 of this proceeding is considering network resiliency. The Scoping Ruling is available at: <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=324941921>.

¹¹ *NPRM* at para. 83.

deterioration in the quality of AT&T California’s legacy time division multiplexing (“TDM”) based network operations” leading to extended outages that impact UTG customers.¹² UTG asserts that these outages “affect customers’ ability to complete ordinary communications, but outages can also impact the completion of 911 calls. . .”¹³ UTG further alleges that AT&T California failed to address an outage in a timely manner providing slow updates and forcing the CLEC to escalate the issue further in AT&T California. The allegations in this complaint underscore that OSS is an important UNE which enables CLECs to interconnect with ILECs.¹⁴ The FCC should consider the impact on public safety if it removes standalone OSS unbundling obligation even if it keeps OSS as a requirement for UNEs.

The FCC must consider the impact on public safety for each requirement it proposes to remove. Failure to do so and subsequently removing these requirements could have serious impacts on CLEC customers’ ability to reach emergency services.

III. CONCLUSION

The CPUC appreciates this opportunity to provide these comments to the FCC in response to this *NPRM*. The FCC should not move forward with this *NPRM* without first getting updated data on current market conditions so that it can perform an analysis that

¹² *Utility Telecom Group, LLC v. Pac. Bell Tel. Co.*, C.19-10-010, at 3 (Cal. P.U.C. October 22, 2019), available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M318/K595/318595554.PDF>.

¹³ *Id.*

¹⁴ The CPUC has not resolved this complaint, and its mention in these comments is illustrative only; the CPUC is not here prejudging the merits of the complainant’s allegations.

better informs policy on UNEs. Further, the FCC must consider the impact on public safety and 9-1-1 networks which rely on unbundling and resale requirements.

Respectfully submitted,

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