USTELECOM ISSUE BRIEF

USTELECOM | THE BROADBAND ASSOCIATION

Evolving Regulations to Reflect Competition: USTelecom's Unbundled Network Elements (UNE) Forbearance Petition

USTelecom has petitioned the FCC seeking forbearance from 1990's-era rules requiring broadband providers to unbundle and resell portions of their networks at government-set rates. Upon grant of the petition, incumbent local exchange carrier (ILEC) networks will remain available for resell to competitive carriers at market rates.

HISTORY ▶ In the 1996 Telecommunications Act, Congress adopted an expansive set of network-sharing obligations to break open the marketplace for telecommunications offerings – in particular, the local telephone market. Congress and the FCC applied these network-sharing rules exclusively to ILECs and required them to offer unbundled network elements (UNEs) to competing carriers at discounted rates set by state commissions.

Congress and the FCC envisioned a future in which ILECs faced substantial competition from facilities-based rivals. Congress expressly contemplated that, when competition arrived, the 1996 measures would be unnecessary and burdensome to ILECs. In Section 10 of the Telecommunications Act, Congress articulated that the FCC *shall* forbear from enforcing regulations that marketplace developments rendered unnecessary or not in the public interest.

MARKET EVOLUTION ▶ Competition has firmly taken hold and, since the adoption of these mandates, there has been a staggering decline in ILEC local voice subscriptions: 186 million in 2000 to a projected 35 million in 2018. In residential markets, only 11 percent of U.S. households are projected to have an ILEC local voice line by the end of 2018.

Sixty percent of Americans will have abandoned wireline voice service entirely in favor of wireless alternatives by the end of 2018. Of the remaining forty percent, a majority will obtain service from a non-ILEC (typically cable or voice over Internet protocol "VoIP.")

About ninety percent of the country's housing units and population are served by a cable competitor, companies that are aggressively and successfully bidding to serve small businesses as well. In addition to "last-mile" connections, there is nearly ubiquitous competition for "transport" networks that deliver traffic across the country on a nearly nationwide basis.

FORBEARANCE IS IN THE PUBLIC INTEREST ▶

- Updating regulations to reflect the current state of competition will encourage even more competition. Over 10 years, consumers would benefit in excess of $1 billion, possibly as much as $5.9 billion in reduced prices, and capital investment would rise by up to $1.8 billion;
- New investments would create between 2,200 and 3,200 new jobs per year, and spillover effects would create an additional 4,400 to 6,400 jobs per year;
- Overall, forbearance would likely increase GDP between $359 million and $542 million annually over 10 years.

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BOTTOM LINE ▶ It is time for the FCC to forbear from enforcing ILEC-specific UNE and resale requirements. A unique and intrusive regulatory regime solely on providers that hold a small and shrinking share of the market distorts competition and harms consumers.

USTelecom's petition proposes a long term transition that gives competitive local exchange carriers (CLECs) three additional years (a full 25 years after original implementation) to build or negotiate agreements for facilities and services before the mandates expire. If the Commission elects not to grant nationwide relief, at a minimum, the record supports a grant of partial forbearance from the continued provisioning of UNEs and ILEC-specific resale mandates in any areas presently subject to competition for voice and broadband service.

OF NOTE ▶ The FCC granted similar forbearance relief to ILECs from legacy rules adopted under Presidents Clinton, Bush and Obama in 2013 and 2015, and granted ILECs relief from certain dominant carrier regulations in 2016. The FCC has until August 2, 2019 to rule on USTelecom's petition, having already approved a portion of it in April 2019.