

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

In the Matter of:	)	
	)	WC Docket No. 19-308
Modernizing Unbundling and Resale	)	
Requirements in an Era of Next-Generation	)	
Networks and Services	)	
_____	)	

**REPLY COMMENTS OF THE
MICHIGAN PUBLIC SERVICE COMMISSION**

Introduction

The Michigan Public Service Commission (MPSC) submits these reply comments to the Federal Communications Commission (Commission or FCC) in response to the above captioned Notice of Proposed Rulemaking (NPRM)¹. In the NPRM the FCC proposes to find that competitive local exchange carriers (CLECs) are not impaired without access to certain unbundled network elements (UNEs) currently required to be provided by incumbent local exchange carriers (ILECs). For the reasons stated below, the MPSC agrees with commenters in this docket that argue that the FCC should perform a more in-depth market analysis of the current

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).

broadband market, based on more recent data, before any decisions regarding these UNEs are made.

As part of its analysis, the Commission should carefully consider the potential impacts of eliminating the requirement to provide UNEs on the broadband market. While the MPSC agrees with the FCC that competition based on competitive facilities is preferable to reliance on ILEC facilities via UNEs, the MPSC believes elimination of these UNEs, at this time, would be premature, based on the high barriers to market entry that exist without access to these UNEs. The FCC should examine the potential impact eliminating the UNE requirements being proposed here on competitive providers as well as residential and business consumers of broadband services.

The FCC should also carefully consider any potential impacts the elimination of the requirements detailed in the NPRM would have on public safety.

The FCC Should Perform an In-Depth Market Analysis with Updated Data

The MPSC agrees with the California Public Utilities Commission (CPUC), INCOMPAS, Public Knowledge, and the many CLECs that have commented on the use of FCC Form 477 data in this proceeding and supports the CPUC's call for an in depth market analysis that takes availability and pricing of broadband into consideration². As stated by these commenters, Form 477 likely overstates the availability of broadband and has been acknowledged by the FCC in hearings before Congress to need revision to give an accurate view of the current state of the

² Comments of the California Public Utilities Commission, (February 5, 2020), p 3.

telecommunications industry. The MPSC also agrees with the CPUC that, due to the age of the data used in the Business Data Services Order and the rapid pace of change in the telecommunications industry, classifications made in that order should not be relied upon here.³

The CPUC also comments on the NPRM's use of future 5G wireless deployment as evidence that UNEs are no longer necessary for entry into the broadband market. The MPSC supports the CPUC's assertion that relying on potential 5G deployment plans is currently problematic. 5G is still an emerging technology and while it does have a lot of potential there are still many uncertainties about its capabilities and future deployment. The MPSC agrees that while 5G has potential it should not be relied upon for policy making until it is more widely available and there is more data on 5G in actual use.

The MPSC encourages the Commission to reject outdated or potentially inaccurate data and delay any decisions regarding eliminating UNEs until it can perform a more in-depth analysis of the broadband market. This will allow the FCC to get a more accurate view of the current competitive landscape and to make policy that will more effectively foster competition and benefit consumers. This data collection and market analysis would also have benefits in future proceedings and would aid the FCC and state commissions in policy making that will lead to increased broadband availability to more consumers at competitive prices.

³ *Id.*

UNEs Are Still Necessary for CLECs to Provide Competitive Broadband

The MPSC also urges the Commission to carefully evaluate the effect the elimination of these UNEs would have on the competitive market. Many CLEC commenters in this docket have argued that these UNEs are frequently used as a steppingstone to enter new markets and to otherwise gain access to customers that would otherwise be inaccessible or cost prohibitive to them. In Michigan, the MPSC has been contacted by several CLECs currently providing broadband service that have expressed similar concerns. As stated by INCOMPAS in its comments, if many of the UNEs discussed in the NPRM were eliminated, substitute services from the incumbent would be much more expensive, assuming they were available at all.⁴ The MPSC shares this concern. Absent the requirement to make UNEs available, the incumbents would have little incentive to offer these services to CLECs at competitive pricing, or to even offer them at all.

While facilities-based competition is preferable, the high cost of entry is frequently a barrier to competition. The use of UNEs allows competitors to establish themselves in a market before making the substantial investment in fiber deployment and other infrastructure, like 5G and other wireless technology that requires backhaul, which is sometimes provided using UNEs such as dark fiber transport. As detailed by INCOMPAS in its comments, CLECs are still incentivized to transition to using their own facilities once that becomes economically viable

⁴ Comments of INCOMPAS and the Northwest Telecommunications Association, (February 5, 2020), pp 39-41

because even without action by the FCC, a “natural forbearance” from continuing to rely on UNEs occurs as copper wire is retired and incumbents upgrade their networks.⁵ The MPSC agrees that allowing this “natural forbearance” to happen, based on market conditions and timing in specific markets, is a better option for the broadband market than the UNE elimination proposed in the NPRM. Eliminating these UNEs prematurely could have a chilling effect on the market and slow deployment of advanced services rather than spur competition as intended by the 1996 Telecommunications Act. As stated by Public Knowledge in its comments, CLECs without access to UNEs would be less likely to enter new markets and may be forced to dramatically raise prices or discontinue service in existing markets⁶. As previously stated in these reply comments, the MPSC has been contacted by several CLECs that operate in the state of Michigan expressing similar concerns that without access to UNEs they would be unable to provide customers with the broadband services they demand at an economically acceptable price.

The Commission should also consider the more than 11,000 consumer letters submitted into the record in this proceeding by Public Knowledge. While they were originally filed as part of *In the Matter of Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. Sec 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, the MPSC agrees with Public Knowledge that they remain relevant in this docket.⁷ These consumer letters

⁵ *Id.* at 33-34.

⁶ Comments of Public Knowledge, (February 5, 2020), p 9.

⁷ Public Knowledge Cover Letter and Attachments, (February 4, 2020).

clearly indicate a broad concern about the effects the elimination of these UNEs would have on broadband competition. The Commission should more thoroughly investigate these concerns before making the types of policy changes proposed in the NPRM.

The FCC Must Evaluate the Impact on Public Safety

The MPSC joins the CPUC in its concern over the impact the proposals in the NPRM would have on public safety. As stated by the CPUC, in the review of the *Restoring Internet Freedom Order*, the D.C. Circuit Court of Appeals found that the FCC must consider the effect its actions have on public safety and remanded that order to the Commission to address the failure to consider this requirement.⁸ The MPSC agrees with the CPUC that the Commission should carefully consider the impacts that its proposals in the NPRM would have on public safety, such as Next Generation E-9-1-1 for example.⁹ Failure to consider the impact of the NPRM on public safety and proceeding with eliminating these requirements could undermine public safety by, for example, threatening CLEC customers' access to emergency services via the E-9-1-1 system.

Conclusion

The MPSC appreciates this opportunity to comment on the NPRM. The elimination of the UNE requirements proposed in the NPRM have the potential to dramatically change the landscape for competitive broadband providers. The MPSC

⁸ Comments of the California Public Utilities Commission, (February 5, 2020), p 4.

⁹ Id. P. 5-6.

urges the Commission to delay any action on these proposals until it has had the opportunity to collect updated data and to perform an in-depth analysis of the telecommunications market. The data currently available through the FCC Form 477 process is potentially inaccurate and the Commission has already begun the process of modernizing that data collection. The Commission should wait until that process is completed and new data is submitted by providers before proceeding. That would allow the FCC to get a more accurate picture of the competitive landscape that exists today and to make the best decision to benefit consumers.

The MPSC also urges the FCC to carefully consider the impact this NPRM will have on CLECs and the customers they currently serve. The record has many comments from competitive providers and industry associations discussing how the UNEs at issue in this proceeding are used by them and how their elimination would negatively impact broadband availability. The Commission should carefully consider these concerns before making policy changes that will have such a wide-reaching impact. The FCC must also evaluate the impact the proposals in the NPRM would have on public safety and any potential harms that could result.

Given the concerns raised by commenters, the FCC should delay reaching any decision on the proposals in the NPRM until up-to-date data can be collected, an in-depth market analysis can be performed, the concerns raised by CLEC and consumer commenters can be carefully evaluated, and the potential impacts on public safety can be addressed.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION**

Steven D. Hughey (P32203)
Assistant Attorney General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

DATED: March 20, 2020