The Commission has requested comments concerning the preservation of principles embodied in the Communications Act that have traditionally defined the relationship between network providers and end-users as all-Internet Protocol (IP) networks replace time-division multiplexed (TDM) circuit-switched voice services.\(^1\)

In the *National Broadband Plan*, the Commission acknowledged that the typical cost per line for Plain Old Telephone Service (POTS) increases as customers leave the Public Switched

Telephone Network (PSTN), given the high fixed costs of providing such service. The Commission also warned of the danger that regulations designed for a different era could misallocate investment that is urgently needed to expand the capacity and extend the reach of broadband Internet access services.

Regulations require certain carriers to maintain POTS—a requirement that is not sustainable—and lead to investments in assets that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services.\(^2\) (citations omitted.)

Finally, the Commission noted the importance of government policies for helping to “ensure that legacy regulations and services did not become a drag on the transition to a more modern and efficient use of resources” in prior transitions in communications.\(^3\) In this proceeding, the Commission appears to be taking the opposite approach inasmuch as it is proposing to expand its Section 214(a) authority. Among other things, the Commission is considering highly-detailed criteria for evaluating the functional equivalence of replacement technologies, and it has tentatively concluded that incumbent local exchange carriers (ILECs) must provide wholesale access to replacement services on the same rates, terms, and conditions as legacy services. The technology transition would benefit from an efficient and predictable approval process, yet these initiatives threaten to turn that process into another over-reaching regulatory regime.

I. THE COMMISSION SHOULD ADOPT HIGHLY FLEXIBLE CRITERIA FOR DETERMINING WHAT CONSTITUTES AN ADEQUATE SUBSTITUTE FOR A RETAIL SERVICE A CARRIER SEEKS TO DISCONTINUE, REDUCE OR IMPAIR

Replacement services are not exact substitutes for legacy services—just as legacy wireline, VoIP and wireless services are not exact substitutes. However, as the Commission has


\(^3\) Id.
already acknowledged, all-IP networks “can dramatically reduce network costs” and allow for “improved and innovative product offerings and lower prices.” Indeed, the “lives of millions of Americans could be improved by the direct and spillover effects” from the transition. The industry is conducting voluntary service-based experiments to examine the impacts of replacing legacy services with IP-based alternatives. The “goal” of these and other experiments and initiatives, as the Commission has explained, is to “fuel the ongoing public dialogue about the technology transitions, ensuring that it is fact-based and data-driven.” It seems premature for the Commission to adopt detailed criteria while the experiments and initiatives are still underway.

The ten attributes that Public Knowledge believes require particular evaluation (para. 94)—as the Commission’s detailed discussion of each attribute (paras. 95-100) indicates—could lead to a highly complex body of criteria, and it has the potential to delay the introduction of new services if the Commission requires equivalent functionalities from new services. As one commenter notes, only 28 percent of residences still take legacy voice service, and that number continues to decline. Meanwhile, the cost of maintaining the legacy network does not decline in direct proportion to the loss of subscribers, therefore delay becomes increasingly costly and siphons a growing amount of investment that is needed in broadband. Maintaining legacy services indefinitely for a small number of users is not an option. The Commission must adopt flexible standards if it wants to avoid this result, and if it truly wishes to avoid issuing “any

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5 Id.
6 Id., paras. 8.
technology mandates.”

As wireless and VoIP both illustrate, technologies differ in their features, functionality and cost, and it’s difficult for anyone predict how they will evolve in terms of limitations and opportunities. It is quite possible that the answer to the question, Are there “benefits from new services (e.g., more choice, lower cost, better features) that would compensate for any differences”? is yes.

II. THE COMMISSION SHOULD NOT IMPOSE NEW WHOLESALE ACCESS OBLIGATIONS

If the Commission truly wishes to avoid imposing “any new wholesale access obligations on incumbent carriers,” then it should not decree that ILECs “must commit to providing competitive carriers equivalent wholesale access on equivalent rates, terms and conditions” in order for the ILEC to receive the Commission’s permission to transition from a legacy service. As another commenter notes, “the Commission has other more appropriate tools with which to regulate rates. Section 201(b), for example, requires that rates be just and reasonable.”

The unbundled access and resale obligations of ILECs were designed for a different era when there were monopoly providers, and when new entrants required wholesale inputs on an interim basis while they built their own networks. Congress gave the FCC authority to forbear from applying the requirements of Section 251(c) when those requirements “have been fully implemented.” Competitive Local Exchange Carriers (CLECs) still have the option to extend their own networks, and now they have the added option of looking to alternative providers of wholesale inputs. AT&T has also stated that wholesale carrier-customers will have the

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8 NPRM, para. 8.
9 Id., para. 110.
10 Id.
opportunity to “obtain bare copper loops and utilize their own electronics to provide high-capacity services to their end-user customers.”\textsuperscript{13}

In any event, business opportunities for CLECs is not the proper focus for the Commission. The relevant inquiry is whether consumers can obtain service from alternate providers. The Commission says,

While we do not seek to impose any new wholesale access obligations on incumbent carriers, we are guided by the mantra that technology transitions should not be used as an excuse to limit competition that exists.\textsuperscript{14}

Later on, the Commission says “[t]echnology transitions must not harm or undermine competition.”\textsuperscript{15} The specific remedy at issue here is to protect CLECs from price increases or other changes in their terms and conditions. Thus, what the Commission is actually doing is protecting competitors. Due to the prevalence of wireless and VoIP offerings, there would be little effect on competition overall. Even if it were clear that technology-appropriate and market-based wholesale rates, terms and conditions would annihilate the CLEC industry—which it is not—to preserve appropriate incentives for investment and innovation, the Commission must accept that there can be winners and losers.

\textsuperscript{13} Comments of AT&T at 52, PS Docket No. 14-174, \textit{et al.} (Feb. 5, 2015).
\textsuperscript{14} \textit{NPRM}, para. 6.
\textsuperscript{15} \textit{Id.}, para. 110.
CONCLUSION

The Commission should stick to its ostensible goals of not wishing to issue any technology mandates and not seeking to impose any new wholesale access obligations. The NPRM, unfortunately, does just the opposite.

Respectfully Submitted,

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_The views expressed herein are those of the author and do not necessarily reflect those of the Discovery Institute._