



Federal Communications Commission
Washington, D.C. 20554

February 3, 2021

DA 21-111

SMALL ENTITY COMPLIANCE GUIDE

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

FCC 20-152

WC Docket No. 19-308

Released October 28, 2020

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

The Telecommunications Act of 1996 (the 1996 Act) changed the focus of telecommunications law and policy from the regulation of monopolies to the encouragement of robust intermodal competition. In the nearly quarter-century since the passage of the 1996 Act, the telecommunications marketplace has transformed to a marketplace characterized by competition and technological innovation. Former monopolist incumbent local exchange carriers (LECs) are now one of many intermodal competitors, facing fierce competition from competitive LECs, cable providers, and wireless providers, among others.

The Commission has repeatedly adjusted the incumbent local exchange carriers-specific obligations in the 1996 Act, including unbundling and resale requirements, to account for changed circumstances. In the *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Report and Order, WC Docket No. 19-308, FCC 20-152 (rel. Oct. 28, 2020) (*Report and Order*), the Commission continued to modernize these requirements and ended unbundling and resale requirements where they stifled technology transitions and broadband deployment. The *Report and Order* preserved unbundling requirements where they are still necessary to realize the 1996 Act's goal of robust intermodal competition benefiting all Americans.

Specifically, the *Report and Order*: (1) eliminated unbundling requirements, subject to reasonable transition periods, for enterprise DS1 and DS3 loops in areas with sufficient evidence of competition, broadband-capable DS0 loops and subloops in the most densely populated areas, voice-grade narrowband loops nationwide, multiunit premises subloops and network interface devices nationwide, and operations support systems nationwide except for the purposes of managing other unbundled network elements, number portability, and interconnection; (2) preserved the unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition; (3) eliminated unbundling requirements for dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, but provided an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by competitive LECs that may harm consumers; and (4) forbore from the Avoided-Cost Resale obligation where it still existed, subject to a three-year transition period.

II. COMPLIANCE REQUIREMENTS

The *Report and Order* makes rule changes to the unbundled network element requirements in section 51.319 and forbears from the avoided-cost-resale requirements in sections 51.605, 51.607 through 51.609, and 51.611.

Broadband Capable DS0 Copper Loops and Associated Copper Subloops (47 CFR §§ 51.319(a)(1), 51.319(a)(1)(vi))

- Under the amended rules, the unbundling requirements for new orders of broadband-capable DS0 loops—used predominantly to serve residential and small and medium businesses—and associated copper subloops that connect certain end-user premises with these local loops in the most densely populated areas (urbanized areas or areas of 50,000 or more people) are eliminated as of February 8, 2021. However, these unbundling requirements are preserved in less densely populated areas (rural areas or urban clusters), where there may be greater barriers to broadband deployment. [47 CFR § 51.319(a)(1)]
- As of February 8, 2021 (the effective date of the rules adopted in the *Report and Order*), incumbent local exchange carriers are required to provide a 48-month transition period to existing customers for DS0 Loops, with new orders allowed during the first 24 months. Incumbent local exchange carriers may raise rates to by up to 25% during the final 12 months of the transition

period. As of February 10, 2025, incumbent local exchange carriers are no longer required to maintain existing DS0 Loops in urbanized areas. [47 CFR § 51.319(a)(1)(vi)]

DS1 and DS3 Loops (47 CFR §§ 51.319(a)(4)(i), 51.319(a)(4)(iii), 51.319(a)(5)(i), 51.319(a)(5)(iii))

- Under the amended rules, the unbundling requirements for enterprise DS1 and DS3 loops are eliminated, subject to a transition period, in areas with sufficient evidence of competition—i.e., the counties and study areas the Commission has deemed competitive pursuant to the Competitive Market Test established in the *Business Data Services Order* (see *Business Data Services Order*, 32 FCC Rcd 3459, 3521-27, paras. 135-44 (2017)). [47 CFR §§ 51.319(a)(4)(i), 51.319(a)(5)(i)]
- The *Report and Order* preserves DS1 and DS3 loop obligations in non-competitive and grandfathered counties—i.e., areas without sufficient evidence of competition.
- As of February 8, 2021, incumbent local exchange carriers are required to provide a 42-month transition period for DS1 loops, with new orders allowed during the first 24 months. As of August 8, 2024, incumbent local exchange carriers are no longer required to maintain existing DS1 Loops. [47 CFR § 51.319(a)(4)(iii)]
- As of February 8, 2021, incumbent local exchange carriers are required to provide a 36-month transition period for existing DS3 loops with no additional period for placing new orders. As of February 8, 2024, incumbent local exchange carriers are no longer required to maintain existing DS3 Loops. [47 CFR § 51.319(a)(5)(iii)]

Subloops (47 CFR §§ 51.319(b), 51.319(b)(3)(i))

- Under the amended rules, effective as of February 8, 2021, incumbent local exchange carriers must provide a requesting telecommunications carrier with nondiscriminatory access to subloops on an unbundled basis only where the underlying loop is still available on an unbundled basis. [47 CFR § 51.319(b)(1)]
- The technical feasibility rule in this section is amended to remove “subloop access to multiunit premises wiring” as the *Report and Order* eliminates the multiunit premises subloop unbundling requirement subject to a reasonable transition period (see *infra*). [47 CFR § 51.319(b)(3)(i)]

Dark Fiber Transport (47 CFR § 51.319(d)(2)(iv), redesignated as 47 CFR § 51.319(c)(2)(iv))

- Under the amended rules, unbundling requirements for dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks are eliminated for new orders as of February 8, 2021. Whether a competitive fiber network is located within a half-mile is determined based on the list of approximately 11,000 Tier 2 and Tier 3 wire centers identified as having competitive fiber by the Wireline Bureau in administering the forbearance granted in the *UNE Transport Forbearance Order* (see *Wireline Competition Bureau Releases List of Common Language Location Identification Codes for Price Cap Incumbent Local Exchange Carrier Wire Centers Subject to UNE Transport Forbearance*, Public Notice, WC Docket No. 18-141, 34 FCC Rcd 6445 (WCB 2019) (*Wire Center Public Notice*)).
- As of February 8, 2021, incumbent local exchange carriers are required to provide an eight-year transition period, with no new orders permitted, for existing circuits. As of February 8, 2029, incumbent local exchange carriers are no longer required to maintain existing Dark Fiber Transport provisioned from wire centers identified in the *Wire Center Public Notice*.

Operations Support Systems (47 CFR § 51.319(f), redesignated at 47 CFR § 51.319(e))

- The *Report and Order* eliminated the operations support systems unbundling requirements nationwide except for the purposes of managing other unbundled network elements, number portability, and interconnection, with transition periods coinciding with those for the various unbundled elements.

Elimination of Certain Unbundling Requirements Nationwide (47 CFR §§ 51.319(a)(1)(as it relates to analog loops), (a)(2)(ii)-(iii), (a)(3)(iii)(C), (b)(2), and (c))

- The Commission eliminated the following unbundling requirements nationwide: voice-grade narrowband loops, which includes analog loops, hybrid loops, and 64 kbps voice-grade channel over fiber loops; multiunit premises subloops; and network interface devices.
- As of February 8, 2021, incumbent local exchange carriers are required to provide a three-year transition period for existing customers, with no new orders permitted, for the requirements related to the eliminated voice-grade narrowband loops, and for multiunit premises subloops and network interface devices. As of February 8, 2024, incumbent local exchange carriers are no longer required to provide these requirements for existing customers. [47 CFR §§ 47 CFR § 51.319(a)(1)(v), 51.319(b)]

Forbearance from Avoided-Cost Resale Requirement (47 CFR §§ 51.605, 51.607-51.609, and 51.611)

- The *Report and Order* forbore from the Avoided-Cost Resale obligation where it still existed (i.e., non price-cap areas, as the Commission already granted forbearance from the Avoided-Cost Resale requirement in price cap areas in August 2019), subject to a three-year transition period, with no new orders permitted, starting February 8, 2021. As of February 8, 2024, incumbent local exchange carriers are no longer required to provide the Avoided-Cost resale requirement to existing customers.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* will become effective on February 8, 2021.

V. INTERNET LINKS

A copy of the *Report and Order*, is available at: <https://ecfsapi.fcc.gov/file/1028298717747/FCC-20-152A1.pdf>.

A copy of the Federal Register Summary of the *Report and Order* is available at: <https://www.federalregister.gov/documents/2021/01/08/2020-25254/modernizing-unbundling-and-resale-requirements-in-an-era-of-next-generation-networks-and-services>.