

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

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance	)	WC Docket No. 14-192
Pursuant to 47 U.S.C. § 160(c) from	)	
Enforcement of Obsolete ILEC Legacy	)	
Regulatory Obligations that Inhibit	)	
Deployment of Next-Generation	)	
Networks	)	

**COMMENTS OF  
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

ITTA – The Voice of Mid-size Communications Companies hereby submits its comments in response to the Public Notice<sup>1</sup> issued by the Federal Communications Commission (“FCC” or “Commission”) requesting comment on the October 6, 2014 Petition filed by USTelecom seeking forbearance from obsolete legacy regulatory obligations applicable to incumbent local exchange carriers (“ILECs”) that inhibit their investment in next-generation broadband.<sup>2</sup> Because the requirements at issue in the Petition have outlived their utility and now impede the deployment of broadband facilities and the transition to IP services – particularly in the vast rural areas served by ITTA member companies – the Commission should grant the Petition.

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<sup>1</sup> “Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations,” Public Notice, WC Docket No. 14-192 (rel. Nov. 5, 2014).

<sup>2</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192 (filed Oct. 6, 2014) (“Petition”).

## I. INTRODUCTION AND SUMMARY

The Petition seeks forbearance from outdated requirements imposed on Bell Operating Companies (“BOCs”) and/or ILECs in seven categories, all of which are addressed herein.<sup>3</sup> For each of these areas, the Petition demonstrates that the forbearance criteria in Section 10 of the Communications Act are easily satisfied.<sup>4</sup> Section 10 directs the Commission to forbear from applying a statutory provision or regulation to a telecommunications carrier or telecommunications service if enforcement is not necessary to ensure just, reasonable, and non-discriminatory rates or practices or to protect consumers, and if providing such relief would be consistent with the public interest.<sup>5</sup> In examining the latter criterion, the Commission must take into account whether forbearance from enforcing the provision or regulation will promote competition among communications providers, one of the Commission’s foremost priorities under the current Chairman.<sup>6</sup>

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<sup>3</sup> Specifically, the Petition seeks forbearance from remaining Section 271 and 272 obligations and equal access rules, 47 U.S.C. §§ 271, 272, 251(g) (Category 1); the structural separation requirements for independent ILECs, 47 C.F.R. § 64.1903 (Category 2); the requirement to provide an unbundled 64 kbps voice channel when retiring a copper loop and replacing it with fiber, 47 C.F.R. § 51.219(a)(3)(iii)(C) (Category 3); remaining Section 214(e) obligations where a price cap carrier does not receive high-cost universal service support, 47 U.S.C. § 214(e), 47 C.F.R. § 54.201(d) (Category 4); remaining *Computer Inquiry* rules, 47 C.F.R. § 64.702 (Category 5); the obligation to share newly-deployed entrance conduit at regulated rates, 47 U.S.C. §§ 224, 251(b)(4) (Category 6); and rules prohibiting price cap carriers from using contract tariffs for Business Data Services, 47 C.F.R. §§ 61.3(o), 61.55(a), 69.709(b), 69.711(b), 69.727(a), 69.705 (Category 7).

<sup>4</sup> See 47 U.S.C. § 160.

<sup>5</sup> See *id.* at § 160(a).

<sup>6</sup> See, e.g., “The Facts and Future of Broadband Competition,” Prepared Remarks of FCC Chairman Tom Wheeler, 1776 Headquarters, Washington, DC (Sept. 4, 2014), at 6 (reiterating that “[s]ince [his] first day as Chairman of the FCC, [Chairman Wheeler’s] mantra has been consistent and concise: ‘Competition, Competition, Competition’”).

As explained below, given the dramatic shift from ILEC services to nearly ubiquitous intermodal alternatives for residential and business voice services, enforcement of these requirements is no longer necessary to ensure just and reasonable rates and practices or to protect consumers. Moreover, forbearance from such backward-looking regulations, which do not apply to similarly-situated communications providers, is critical to allow ILECs to focus investment on modern networks and services and more effectively compete in delivering to American consumers the promise of the IP revolution. In short, the Commission should grant the Petition to remove unnecessary barriers to investment, innovation, competition, and consumer choice and accelerate the availability of advanced telecommunications capability to all Americans.<sup>7</sup>

## **II. THE OUTDATED REQUIREMENTS IN THE PETITION ARE PREMISED ON AN ILEC-DOMINATED COMPETITIVE LANDSCAPE THAT NO LONGER EXISTS**

Each of the regulatory requirements from which the Petition seeks forbearance is premised on the need for access to BOC and/or ILEC monopoly networks. The Petition provides overwhelming evidence that these bottlenecks no longer exist.<sup>8</sup> For example, ILECs have lost 60 percent of their switched access lines since 2000, and their traditional wireline voice networks now serve less than one-third of homes passed and account for less than 18 percent of voice connections.<sup>9</sup> These seismic shifts in the marketplace can be attributed, among other factors, to

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<sup>7</sup> See 47 U.S.C. § 706(a) (“The Commission... shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans... by utilizing... regulatory forbearance [and other] measures that promote competition in the local telecommunications market...”).

<sup>8</sup> See Petition at 8-16.

<sup>9</sup> See *id.* at 9, 11, 13. Data provided in the Commission’s most recent *Local Telephone Competition Report* indicates an even further decline in ILEC voice market share between June and December 2013. See Industry Analysis and Technology Division, FCC, *Local Telephone Competition: Status as of December 30, 2013* (rel. Oct. 16, 2014), available at:

increasing percentages of American consumers cutting the cord in favor of wireless voice connections. Indeed, by the second half of 2013, 41 percent of U.S. households were wireless-only and about 34 percent of households with both landline and wireless connections mostly relied on their wireless service.<sup>10</sup> By the end of 2015, more than 50 percent of households nationwide will be wireless-only and only about 10 percent will receive most or all of their voice service from ILECs.<sup>11</sup> Given these facts, and as shown conclusively in the declarations included with the Petition, it is now beyond question that wireless voice services are an effective competitive alternative to wireline voice services.<sup>12</sup>

When robust competition from cable providers, competitive local exchange carriers (“CLECs”), and over-the-top (“OTT”) voice applications is factored in, it is clear that the market for voice services has shifted away from an ILEC-centric monopoly to one in which most consumers have a plethora of options for communications services. For instance, the Commission’s most recent telephone competition report found that VoIP subscriptions now represent half of all residential fixed voice connections, and that of these connections, non-ILEC VoIP lines accounted for more than 39 percent while ILEC VoIP connections accounted for less than 11 percent.<sup>13</sup> This data does not even track the gains of non-interconnected VoIP services

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*(footnote cont’d.)*

[https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329975A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf) (“October 2014 Local Competition Report”).

<sup>10</sup> Petition at 12; Declaration of Dr. Kevin Caves, attached to Petition at Appendix B, ¶ 26 (“Caves Decl.”).

<sup>11</sup> Patrick Brogan, “Consumers Continue Shift Away From Landline – Regulations Are Behind,” USTelecom Blog, available at: <http://www.ustelecom.org/blog/consumers-continue-shift-away-landline-%E2%80%93-regulations-are-behind>.

<sup>12</sup> See Caves Decl.; Declaration of Professor John Mayo, attached to Petition at Appendix C.

<sup>13</sup> *October 2014 Local Competition Report*, Figure 4.

such as Skype, which reported approximately 25 million connected U.S. users as of December 2010.<sup>14</sup> Nor does the Commission’s data account for the emerging preference among consumers to communicate via text messaging, email, social networks, and newer platforms that allow converged communications by voice, text, and video, such as iMessage, SnapChat, WhatsApp, and other applications.<sup>15</sup>

There have been similar developments in the marketplace for business services, with ILEC business line counts declining by 27 percent from 2008 to 2013 and cable and CLEC providers aggressively and successfully marketing their enterprise voice services throughout the country.<sup>16</sup> The Petition also demonstrates that ILECs are not dominant in the provision of long distance service, and that the stand-alone long distance market has effectively ceased to exist.<sup>17</sup> As noted in the Petition, “[c]ompetition from wireless carriers, VoIP operators, and other sources has rendered the distinction between local and long distance calling increasingly obsolete.”<sup>18</sup> Indeed, the Commission recognized almost a decade ago that “long distance service purchased on a stand-alone basis is becoming a fringe market” given the availability of a variety of all-distance alternatives for consumers from non-ILEC providers.<sup>19</sup>

In light of vibrant competition in the market for voice services, it makes no sense to saddle ILECs with legacy regulatory obligations intended to address bottleneck power and other marketplace dynamics that no longer exist. As Chairman Wheeler observed earlier this year,

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<sup>14</sup> Caves Decl. ¶ 13.

<sup>15</sup> *Id.* ¶ 13.

<sup>16</sup> *See* Petition at 13-15.

<sup>17</sup> *See id.* at 15.

<sup>18</sup> Caves Decl. ¶ 91

<sup>19</sup> *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 91 (2005).

“[d]ue in part to outdated rules, the majority of capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all.”<sup>20</sup> He also observed that “the elimination of circuit-switched monopoly markets certainly obviates the need for old monopoly based-regulation of that technology.”<sup>21</sup> Granting the forbearance relief requested in the Petition would advance the Commission’s pro-competition and pro-deployment goals and allow ILECs to focus their resources on the provision of advanced telecommunications capabilities, rather than compliance with obsolete requirements designed for a bygone era. Such relief would be particularly beneficial for consumers in the predominantly rural areas served by ITTA member companies. Absent the unnecessary financial and related constraints imposed by these outdated requirements, small and mid-size carriers would be able to focus their finite resources on investment in expanded broadband infrastructure and more robust broadband speeds where they are needed most.

### **III. THESE OUTDATED REQUIREMENTS ARE NOT NECESSARY TO ENSURE JUST AND REASONABLE RATES AND PRACTICES OR TO PROTECT CONSUMERS**

The Petition does not seek forbearance from the core common carrier and ILEC obligations contained in Sections 201, 202 and 251<sup>22</sup> of the Act and therefore will not interfere with the Act’s “enduring values” relating to public safety, universal service, competition, and

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<sup>20</sup> Prepared Remarks of FCC Chairman Tom Wheeler, Silicon Flatirons, University of Colorado Law School, Boulder, Colorado (Feb. 10, 2014), at 5, *available at*: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-325531A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-325531A1.pdf).

<sup>21</sup> Tom Wheeler, *Net Effects: The Past, Present and Future Impact of our Networks*, at 20 (Nov. 26, 2013) (“*Net Effects*”), *available at*: [http://transition.fcc.gov/net-effects-2013/NET\\_EFFECTS\\_The-Past-Present-and-Future-Impact-of-Our-Networks.pdf](http://transition.fcc.gov/net-effects-2013/NET_EFFECTS_The-Past-Present-and-Future-Impact-of-Our-Networks.pdf).

<sup>22</sup> 47 U.S.C. §§ 201, 202, 251.

consumer protection.<sup>23</sup> These values will continue to be preserved and advanced notwithstanding grant of the Petition. Moreover, given the marketplace shift to non-ILEC network services, the asymmetric regulatory obligations from which the Petition requests forbearance are not necessary to ensure just and reasonable rates and practices or to protect consumers. For example, remaining Section 271 and 272 obligations and equal access requirements are not necessary to protect long distance competition in an environment in which wireless, VoIP, and traditional wireline providers aggressively compete through all-distance calling plans.<sup>24</sup>

Similarly, the structural separation requirements of Rule 64.1903 are irrelevant in this all-distance marketplace and the Commission should forbear from enforcing these requirements for both price cap and rate-of-return ILECs, as applicable. The rule's broad application to independent rate-of-return carriers due to cost misallocation concerns is unwarranted. As demonstrated in the Petition, these concerns have become moot based on increased marketplace competition, changes the FCC adopted in the *USF/ICC Transformation Order*, and the lack of incentives for companies participating in the NECA pool, particularly average schedule companies, to engage in cost-shifting behavior.<sup>25</sup> The Commission also should relieve BOCs and other price cap ILECs of the special access performance metrics and imputation requirements with which they must comply as a result of receiving previous relief from structural

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<sup>23</sup> See *In the Matter of Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket Nos. 13-5, 12-353, Order, 29 FCC Rcd 1433, 1433, ¶ 23 (rel. Jan. 31, 2014).

<sup>24</sup> See Petition at 16-38.

<sup>25</sup> See *id.* at 38-50.

separation requirements.<sup>26</sup> As demonstrated above, there is no valid basis to maintain obligations designed to protect long distance competition in a world that assumed the need for separate local and long distance services and providers.

Fundamental changes to the voice marketplace also have eliminated the utility of and need for the *Triennial Review Order's* requirement for ILECs to provide an unbundled 64 kbps voice channel when they retire copper loops and replace them with fiber, given competition from wireless providers, cable companies, and OTT VoIP providers.<sup>27</sup> Marketplace and regulatory changes also have negated the need for Section 214(e) Eligible Telecommunications Carrier (“ETC”) service obligations in areas where a price cap carrier does not receive high-cost universal service support.<sup>28</sup> Where consumers have at least one other option for voice service in a given area, there is no policy or legal justification for requiring continued ILEC compliance with ETC obligations if the ILEC is not receiving high-cost support.<sup>29</sup>

Similarly, the Commission’s *Computer Inquiry* requirements are rooted in a distant past when incipient enhanced service providers (“ESPs”) were dependent on telephone companies’ narrowband TDM-based networks to provide their services.<sup>30</sup> Given the migration to IP-based broadband and wireless networks, these requirements no longer serve a useful purpose. Indeed, telecommunications companies provide only a quarter of residential fixed connections offering at least 6 Mbps downstream and 1.5 Mbps upstream.<sup>31</sup>

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<sup>26</sup> *See id.* at 50.

<sup>27</sup> *See id.* at 51-58.

<sup>28</sup> *See id.* at 60-67.

<sup>29</sup> *See id.* 60-73.

<sup>30</sup> *See id.* at 73-84.

<sup>31</sup> *See id.* at 73, 79-80.

Asymmetric obligations for ILECs to share access to newly-constructed entrance conduit are unnecessary as well, given that ILECs have no advantage in deploying such infrastructure.<sup>32</sup> Finally, restrictions on the use of contract tariffs for Business Data Services are unnecessary, given that generally available tariff provisions will guarantee that customers can continue to buy these services at regulated tariffed rates, terms, and conditions from price cap ILECs, and those customers can also obtain substitute services from cable and other providers.<sup>33</sup>

#### **IV. FORBEARANCE FROM THESE REQUIREMENTS WILL PROMOTE THE PUBLIC INTEREST BY FACILITATING THE DEPLOYMENT OF NEXT-GENERATION NETWORKS AND SERVICES**

In addition to being unnecessary, forbearance from these requirements will serve the public interest by enabling ITTA member companies and other ILECs to focus limited budgets on crucial broadband deployment and the IP transition. For example, elimination of redundant and unnecessary Section 271 and 272, equal access, and Rule 64.1903 requirements would reduce unnecessary and unproductive compliance costs and allow BOCs and ILECs to invest their limited resources in modern networks and services.<sup>34</sup> Similarly, forbearance from the requirement for ILECs to provide an unbundled 64 kbps voice channel when they retire copper loops and replace them with fiber will reduce the cost of deploying this critical infrastructure.<sup>35</sup> By forbearing from Section 214(e) service obligations where a price cap carrier does not receive high-cost universal service support, the Commission will promote competitive neutrality, enable price cap ILECs' ability to invest in and deploy broadband facilities, and conform the

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<sup>32</sup> *See id.* at 85-90.

<sup>33</sup> *See id.* at 94-111.

<sup>34</sup> *See id.* at 26-28, 33, 36, 50.

<sup>35</sup> *See id.* at 59-60.

Commission's interpretation of this provision to the current high-cost regime.<sup>36</sup> Forbearance from enforcement of *Computer Inquiry* obligations will allow BOCs and other ILECs to redeploy resources currently devoted to anachronistic regulatory requirements, such as Comparable Efficient Interconnection and Open Network Architecture requirements, to more productive purposes.<sup>37</sup> Elimination of current asymmetric conduit access obligations for newly-deployed entrance conduit will give all LECs incentives to invest in new facilities, thereby increasing effective competition.<sup>38</sup> Finally, allowing price cap ILECs to use contract tariffs for Business Data Services in all geographic areas will allow customers to obtain these services at reduced rates and on more flexible terms and conditions, thus increasing customer choice and improving competitive conditions.<sup>39</sup>

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<sup>36</sup> *See id.* at 67-73.

<sup>37</sup> *See id.* at 81-84.

<sup>38</sup> *See id.* at 90-94.

<sup>39</sup> *See id.* at 94-115.

## V. CONCLUSION

The Petition clearly demonstrates that robust competition in the voice marketplace and the shift from legacy services to wireless and IP-based alternatives have rendered the subject requirements unnecessary to ensure just, reasonable, and non-discriminatory rates or to protect consumers. Enforcing these obligations only against ILECs disserves the public interest by diverting resources away from deployment of new and advanced services and inhibiting competition in the broadband marketplace. The Commission should grant the Petition to eliminate barriers to investment in next-generation networks and promote competition, innovation, and consumer choice in high-speed broadband services.

Respectfully submitted,

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