

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-)	
Generation Networks)	

MOTION FOR EXTENSION OF TIME

INCOMPAS, on behalf of itself and its members, files this Motion pursuant to Sections 0.459 and 1.46 of the Federal Communications Commission’s rules,¹ respectfully moves that the Commission extends the comments and oppositions by an additional 60 days, and the time for reply comments by an additional 15 days, such that the due date for comments and oppositions would be no earlier than August 6 and reply comments would be due 30 days thereafter.² INCOMPAS is also simultaneously filing a motion to dismiss USTelecom’s Petition³ for violation of the “complete-as-filed” rule, because the Petition clearly relies on confidential data that has not been filed. If the Commission does not dismiss the Petition as required under the rules, an extension is necessary so that all interested parties, including not just INCOMPAS members but also states and interested consumers, can evaluate the impact of this petition, which seeks to eliminate core pro-competition provisions from the landmark Telecommunications Act

¹ 47 C.F.R. §§ 0.459; 1.46.

² The 90 day comment period should begin at the time USTelecom files a complete petition with all the data that was referenced in the pleading.

³ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

of 1996 in every corner of the country. Such an evaluation cannot reasonably be completed and comments prepared within the 30 days provided in the Public Notice.⁴

I. THE PETITION IS A “COMPLEX PETITION” WARRANTING A LONGER COMMENT CYCLE TO PERMIT ADEQUATE TIME FOR INTERESTED PARTIES TO EVALUATE ITS IMPACTS IN ALL LOCAL TELECOMMUNICATIONS MARKETS.

Although the Commission’s *Forbearance Procedures Order* states that the Commission would “typically allow 30 days for comments and 15 days for replies,” it also states that it would use “longer cycles for more complex petitions.”⁵ Under any reasonable interpretation of that standard, the Petition qualifies as “complex.” The legal and factual issues in this proceeding are myriad and complicated, and the forbearance sought by the USTelecom would impact virtually all carriers and both consumer and enterprise (business, governmental, and nonprofit entities) customers of voice and data services. A grant of forbearance from any number of these provisions could have large and irreversible effects on competition in the multi-billion dollar markets for voice and data services used by consumers and businesses across the nation. The Petition also relies on the analysis and conclusions in an economics paper that purports to model

⁴ See *Pleading Cycle Established for Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, Public Notice, DA 18-475 (WCB rel. May 4, 2018). The timing of the release of the Public Notice in fact grants parties less time to prepare comments or oppositions than is normally the case where the deadline is set at 30 days. Under the Commission’s Forbearance Timeline, which it established “to promote transparency and predictability in the Commission’s process for addressing forbearance petitions,” the Commission states that the public notice will be released 15 days after the petition for forbearance is filed. See <https://www.fcc.gov/general/forbearance-timeline#block-menu-block-4>. In the instant case, the Public Notice was released four days after the petition was filed. As a result, parties effectively have 11 fewer days to analyze USTelecom’s petition than would be the case if the Commission had followed its default schedule.

⁵ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, FCC 09-56, 24 FCC Rcd. 9543, ¶ 29 (2009) (“*Forbearance Procedures Order*”).

the impact of the requested forbearance using confidential data.⁶ Interested parties do not have nearly enough time under the current comment cycle to address all of the questions raised by the Petition and its economic analysis, and to prepare necessary comments in order to assist the Commission in its decision-making.

The complexity of these issues calls for careful scrutiny by the Commission and interested parties of the economic analysis, assumptions and data that underlie the Petition. To do that, parties need significantly more time than is allotted under the current comment cycle to marshal the data and economic expertise to evaluate the model presented in the Petition, to study the potential impacts to competition, and to assess the effect of the forbearance sought on “charges, practices, classification, or regulations”; consumer protection, and the public interest as required under Section 10 of the Communications Act.⁷

First, the difficulty of the economic and policy issues raised by the petition should be well familiar to the Commission. Regulators, courts, and industry alike have worked to develop a balanced approach in implementing the unbundling and wholesale provisions in Section 251(c) since their enactment in the Telecommunications Act of 1996. The resulting regulatory balance, which took years to develop and fine tune should not be drastically altered—and potentially eliminated—based on a record of comments and replies to be submitted in less than two months’ time since the Petition was filed.

Second, the sheer breadth of forbearance sought in the Petition warrants more time for interested parties and the public to meaningfully inform the Commission’s decision-making.

⁶ See Hal Singer and Kevin Caves, “Assessing the Impact of Forbearance from 251(c)(3) on Consumers, Capital Investment, and Jobs” at 14 (May 2018), appended as Appendix B to *Petition* (“Singer & Craves”).

⁷ See 47 U.S.C. § 160(a)(1)-(3).

The *Petition* seeks forbearance for all incumbent local exchange carriers in all corners of the country from 13 different statutory provisions, 44 different sections in the Commissions' rules, "all Commission orders requiring compliance with" 47 U.S.C. § 271(c)(2)(B(iii)), and 4 other specific orders of the Commission.⁸ Moreover, the forbearance is sought with respect to all geographic markets nationwide, including rural markets in which state public utility commissions have terminated exemptions from these provisions for rural telephone companies, and would affect multiple product markets for services that use unbundled network elements and TDM special access services as inputs.

Third, the *Petition* asserts that it meets the statutory standard public interest requirement for forbearance by citing a paper describing a model of forbearance from unbundling obligations that purports to show lower price, greater investment and job-creation.⁹ The analysis in the paper cites to prior studies and data sets from dozens of different sources, none of which are provided in the *Petition*. Although some of these appear to be public sources, as noted above the paper also relies on confidential data not available to interested parties or to the Commission. These assumptions in turn drive the paper's conclusions about consumer cost-savings, facilities investment, and job creation.¹⁰ Unpacking these "baseline" assumptions and examining the model would already take more time than is available in the comments cycle, and the lack of access by commenters to the confidential data relied upon by *Petitioner's* economists makes it prejudicially difficult if not impossible to address *Petitioner's* public interest claims. In addition,

⁸ See *Petition* at Appendix A, pp. 1, 3.

⁹ See *Petition* at 31-32; Singer & Craves at 3-4.

¹⁰ See Singer & Craves. at 19-20 (modeling consumer spend from baseline); Singer & Craves at 22-23 (describing quantification of consumer welfare from modeled lower prices and extrapolating the effect thereof on employment).

because this data has not been filed, no protective orders have been issued for this docket and the ordinary process for clearing counsel and experts for access to confidential materials has not begun. In these circumstances, the Commission has recognized that “complete comments likely will require parties to expend significant time and resources gathering the factual and economic data necessary to provide us with a complete record,” and have granted extensions.¹¹

Fourth, as noted above, the forbearance sought, if granted, would impact a range of different downstream retail services that currently use UNEs as inputs. Among INCOMPAS’s members, some competitive providers use UNEs or Section 251(c)(4) resale to offer broadband and/or voice services primarily to residential customers, while others use DS0 UNEs to offer Ethernet-over-copper, while still others use DS1 and DS3 loops to provide TDM business data services. Given the range of services, providers, and ultimate end users, interested parties will likely have a diverse range of views and issues raised in the opening comments round to review and address in the reply comments.

Accordingly, an extension of the time for initial comments by an additional 60 days, and of the reply comment round to 30 days following the initial comments “will allow interested parties to better analyze and vet their positions” and to “provide the Commission a more robust record in this proceeding.”¹²

¹¹ *Verizon Tel. Cos. Petition for Forbearance from the Current Pricing Rules for the Unbundled Network Element Platform*, Order, DA 03-2333, 18 FCC Rcd. 14,600, 14,601 ¶ 4 (2003).

¹² Motion of USTelecom for Extension of Time to File Reply Comments at 4, WC Docket No. 10-90, CC Docket No. 01-92 (filed Nov. 9, 2017); *see also Connect America Fund*, Order, DA 17-1106, 32 FCC Rcd. 9409, ¶ 5 (WCB rel. Nov. 9, 2017) (granting extension in part).

II. AN EXTENSION OF TIME WILL NOT CAUSE UNDUE DELAY OR PREJUDICE AND WILL BE MORE CONSISTENT WITH TIME FROM FILING TO THE COMMENT DEADLINE FOR FORBEARANCE PETITIONS

Extending the comment and reply due dates to August 6, 2018 and September 5, 2018, respectively, will cause no delay in resolving this petition. The Commission's statutory one-year deadline (absent an extension) for acting on the petition will not occur until May 4, 2019. At this early stage in the proceeding, the Commission could only benefit from providing more time for the parties to develop a robust and more complete record, allowing interested parties more completely to present their concerns during the comment periods and providing the Commission with a more complete record to analyze by the end of the comment periods.

The Commission has commonly had a comment deadline that occurred longer from the initial filing of the petition for forbearance than the 34 days allotted by the Public Notice. For example:

- For AT&T's 2016 petition for forbearance with respect to certain tariffing rules related to tandem switching and tandem switched transport charges, the petition was filed on September 30, 2016, but the initial comments were not due until December 2, 2016.¹³
- For US Telecom's 2014 forbearance request that included, *inter alia*, a single unbundled network element requirement and various Section 272 requirements, the petition was filed October 6, 2016, but the initial comments were not due until December 5, 2016.¹⁴
- For CenturyLink's 2013 petition for forbearance from various dominant carrier and *Computer Inquiry* regulations, the petition was filed December 13, 2013, but the initial comments were not due until February 13, 2014.¹⁵

¹³ See *Pleading Cycle Established for Comments on AT&T's Petition for Forbearance from Certain Tariffing Rules*, Public Notice, DA 16-1239, 31 FCC Rcd. 11,935 (2016).

¹⁴ See *Pleading Cycle Established for Comments on United States Telecom Ass'n Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations*, Public Notice, DA 14-1585, 29 FCC Rcd. 13,535 (2014).

¹⁵ See *Pleading Cycle Established for Comments on CenturyLink Petitions for Forbearance*

- For US Telecom’s 2012 petition for forbearance from equal access, open network architecture, cost assignment, and continuing property records, the petition was filed February 16, 2012, but initial comments were not due until April 9, 2012.¹⁶

This Petition involves issues that are even broader, with a wider impact on competition in local telecommunications and other markets, and thus a slightly longer period between petition filing and comment deadline is warranted. The Commission will still have an adequate period to complete its review and deliberations.

from or Interim Waiver of Dominant Carrier and Computer Inquiry Tariffing Requirements on Enterprise Broadband Services, Public Notice, DA 14-36, 29 FCC Rcd. 254 (2014).

¹⁶ See *Pleading Cycle Established for Comments of United States Telecom Ass’n Petition for Forbearance from Certain Telecommunications Regulations*, Public Notice, DA 12-352, 27 FCC Rcd. 2326 (2012).

III. CONCLUSION

For the reasons stated above, the Commission should grant the motion and extend the comment due date in the above-captioned proceeding from June 7, 2018 to no earlier than August 6, 2018, but in any event 90 days after USTelecom files a complete-as-filed petition, and the reply comments due 30 days thereafter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the foregoing document with the Federal Communications Commission via the ECFS filing system. I also certify that the foregoing document is being served this day on all parties identified in the attached Service List via e-mail.

/s/ Alexandra Green
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