

July 13, 2018

Corrected Ex Parte via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In re 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)

Dear Ms. Dortch,

On July 11, 2018, Karen Reidy, Vice President, Regulatory Affairs of INCOMPAS; Dane Jasper, CEO of Sonic Telecom, LLC; Carson Coffman, President/COO of Socket Telecom; Tamar Finn, outside counsel to U.S. TelePacific Corp., dba TPx Communications (“TPx”); Thomas Jones, outside counsel to Granite Telecommunications, LLC (“Granite”); Julie Veach, outside counsel to Sonic Telecom, LLC and INCOMPAS; and I, outside counsel to INCOMPAS, met with Madeleine Findley, Daniel Kahn, Terri Natoli, and Megan Capasso of the Wireline Competition Bureau. In addition, Eric Ralph, Pamela Megna, and Michele Berlove of the Wireline Competition Bureau; Daniel P. Friesen, Co-Founder of IdeaTek Telcom, LLC; John Hoehne and Joel Miller, COO and General Counsel of Access One, respectively; Paula Foley, Regulatory Counsel of Granite; Dan Bubb, President of Gorge Networks; Joseph Morris, Board Member of First Communications, LLC; Matt Kohly, Director of Government and Carrier Relations of Socket Telecom, LLC; Douglas Denney, Vice President, Costs & Policy of Allstream Business U.S., Inc.; Roger Fleming of Northfork Strategies, on behalf of Allstream; Jeff Buckingham, President and Chief Customer Officer of Digital West Networks, Inc.; Brian Worthen, CEO of Mammoth Networks; Kerem Durdag, COO of Biddeford Internet Corporation dba GWI; William Hunt, Senior Vice President, General Counsel, and Secretary of TPx.; Dusan Janjic, President of Virginia Global Communications Systems, Inc.; Mia Guizzetti Hayes, outside counsel to Granite; and Henry Shi and Mengyu Huang, both outside counsel to INCOMPAS, joined the meeting by phone.

The participating service providers described their competitive service offerings and business models, including the unbundled network elements (“UNEs”) and Section 251(c)(4) resale services that are critical to their ability to serve consumers and facilitate fiber deployment. Many of the providers utilize unbundled bare copper DS0 loops to provide residential and business customers with voice and data services. Providers discussed how DS0 loops can be used with vDSL, aDSL2+, and Ethernet over Copper to deliver faster speeds per loop. Moreover, access to unbundled DS0 loops allows providers to multiply speeds through pair bonding and thereby offer some consumers substantially faster speeds than what the incumbent local exchange carrier (“ILEC”) offers.

Access to UNEs such as DS0, DS1, and enhanced extended loops (“EELs”) also allows competitive local exchange carriers (“CLECs”) to serve underserved rural and urban areas, including areas where the CLEC is the only available broadband provider. These areas in which CLECs are providing broadband and the ILEC and any cable provider are not, or not at comparable levels of speed or quality, include areas served by CenturyLink and AT&T, among others. In some cases, CLECs have used UNEs to be the first to market with high bandwidth mass market broadband services, pushing both the ILEC and incumbent cable provider to upgrade their offerings. In other areas, ILECs may offer broadband service but face no competition from cable providers; CLECs utilize UNEs to offer these customers their only competitive alternative to the incumbent carrier’s services, which again forces the ILEC to improve its offerings, either in speed or price.

We discussed the importance of unbundled DS1 loops to reach remote customers and the importance of EELs to allow CLECs to serve voice and broadband customers at multiple central offices from a single switch, which is important for both rural and urban service. In addition, some providers place remote terminals in rural locations, feed the terminals with T1 circuits and EELs, and then use unbundled DS0 loops to reach end-users. Some providers also use unbundled DS1 or EELs to provide enterprise customers, such as hospitals and emergency services, with the Primary Rate Interface service that they otherwise would be unable to obtain. Other providers use unbundled subloops interconnected at ILEC remote terminals to serve customers that are otherwise unreachable. And even in areas in which the ILEC, and sometimes cable, is providing enterprise quality broadband services, DS0, DS1 and DS3 UNE loops, subloops and EELs enable CLECs to provide both additional competition to ILEC and cable providers, and to target specific types of users with more unique needs, including public safety, state and local governments, schools, libraries, health care providers and financial institutions. As the Commission is well aware, the vast majority of locations in the country that utilize business data services are served only with ILEC facilities – a number that is even higher for locations that utilize less than 50 Mbps of total capacity. For these customers, UNEs provide the only competitive alternative not tied to the ILEC’s service, at least until additional facilities are built – which the Commission has elsewhere acknowledged is not likely to occur for several years (if at all). This competition remains critical to ensuring that these users continue to receive up-to-date solutions, improved quality and attentive customer service – all aspects that are best delivered through robust retail market competition.

In addition, we discussed the importance of unbundled interoffice dark fiber transport for providing service to rural markets. USTelecom’s Petition relies on blanket assertions that unbundling obligations for all UNEs are no longer necessary and fails to assess the impact of critical UNEs such as interoffice dark fiber transport.¹ Unbundled dark fiber interoffice facilities connect to central offices in Tier 3 (*i.e.*, rural) markets² and are the only cost-effective backhaul to these areas. They provide the middle-mile fiber for CLECs to connect to their own last-mile

¹ See 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”).

² 47 C.F.R. § 51.319(d)(2)(iv).

facilities to reach rural areas and to connect ILEC central offices where they are collocated and integral parts of the CLECs' backbone networks for both primary and critical redundancy connectivity. By definition, to be available as a UNE, unbundled dark fiber transport must consist of unused, excess ILEC fiber.³ Allowing CLECs access to this UNE enables competitive providers to harness this excess fiber to offer innovative services to rural areas. Eliminating access to this UNE, on the other hand, severely impedes CLECs' ability to serve these remote communities.

There are no economically viable alternatives to unbundled interoffice dark fiber transport. The high cost to CLECs of overbuilding to replace access to this excess ILEC fiber is prohibitive. Even in theoretical situations where a CLEC may be able to purchase commercial fiber transport to connect closer to the necessary central offices and purchase from the ILEC the remaining transport to connect to the central offices, this option substantially increases the CLECs' cost. In this scenario, the CLEC must purchase multiple services at higher prices than unbundled dark fiber transport and must provide its own electronics for each end of the multiple transport segments. Additionally, few vendors sell dark fiber due to its high capacity, and commercial alternatives are limited to larger metropolitan markets. The majority of central offices are in Tier 2 or Tier 3 markets where commercial interoffice dark fiber is broadly unavailable. While ILECs offer an alternative product, 10G metro Ethernet backhaul, it costs 20 to 30 times more than unbundled dark fiber, and provides only a fraction of the capacity. No comparable replacement exists for unbundled interoffice dark fiber transport.

We also discussed the lack of special access or commercial alternatives for certain UNEs. Bare copper DS0 loops do not exist as a business data service. Nor are bare copper DS0 loops available commercially to support plain old telephone service ("POTS"). DS1 and DS3 loops and transport, while available as a business data service, would no longer be economical because of the significant increase in price. Special access rates available to CLECs will increase substantially (by many multiples), depending on the area, compared to UNEs. This price hike would eliminate the CLEC's ability to offer its services on any competitive basis. Even if a CLEC is not forced to withdraw from a market, it would have to pass on higher costs to the customer. Thus, elimination of DS1 and DS3 UNEs would result in price increases across the marketplace. Significant numbers of customers, including the many school districts, hospitals, churches, libraries, and municipalities that CLECs serve, would be unable to absorb the costs. Faced with limited options in the market, these customers may be forced to purchase, at a higher cost, a level of service that is not necessary to meet their needs. Eliminating access to cost-effective UNEs would impede and may eliminate CLECs' ability to offer bundled and innovative services — such as high speed Internet, IP telephony, managed services, and cloud and data security — and to push ILECs to improve their own technologies and rates.

Even in urban areas, customers outside the central business district often face limited choices of voice and data providers. This especially impacts customers such as community services organizations, school districts, and hospitals that serve lower-income neighborhoods. Similar to their rural counterparts, underserved urban areas lack competitive alternatives from cable providers. Without competitive pressure from CLECs, ILECs not only lack incentives to

³ *Id.* ("Dark fiber transport consists of unactivated optical interoffice transmission facilities.").

decrease prices but also, in many underserved areas, lack incentives to upgrade to fiber networks. CLECs thus play a critical role in these communities by providing UNE-based voice and data services, which in turn serve as the road map for building the CLECs' own fiber networks.

Access to UNEs allows CLECs to establish and grow a customer base in underserved urban and rural areas until it is financially feasible to replace the UNE-based loop network with the CLECs' own fiber networks and transition customers to fiber services. Consequently, forbearance from Section 251(c)(3)'s unbundling obligations would significantly inhibit or eliminate CLECs' ability to continue building their fiber networks and transitioning customers. Furthermore, because of the substantial volume and term commitments needed to achieve reasonable business data service pricing, wholesale business data services (whether TDM special access or Ethernet) do not provide the same migration path. With UNEs, the CLEC only needs to purchase the UNE for as long as it needs it, and can cutover to its own facilities upon completion.

On Section 251(c)(4)'s resale provisions, providers discussed the importance of resale services for providing POTS to consumers. Access to resale services is critical because ILECs do not offer commercial wholesale voice platform agreements in all markets. In these cases, CLECs rely on purchasing resale services to serve customers. Even in markets where ILECs offer commercial wholesale platform agreements, resale remains important because some ILECs restrict the types of customers and/or the services and features that can be served using those commercial agreements. For example, some ILECs exclude all customers served by fiber or all remote-call forwarding services, rendering resale the only viable option. Moreover, the availability of Section 251(c)(4) resale functions as a constraint on the prices that ILECs offer under wholesale commercial agreements.

Lastly, we discussed the fact that the existing UNE rules incorporate a natural elimination of unbundling obligations. For DS0 loops, there is no obligation to unbundle fiber-to-the-premises or fiber-to-the-curb loops.⁴ Accordingly, ILECs can eliminate their DS0 unbundling requirements when they retire their copper loops. This "natural forbearance" built into the existing rules maintains comparative parity and incentivizes ILECs to speed up fiber deployment. At the same time CLECs also have incentive to deploy fiber rapidly; failure to build their own fiber networks by the time ILECs complete copper retirement would lock CLECs out of these markets and place them at a severe competitive disadvantage. In contrast, granting USTelecom's forbearance petition would remove a powerful incentive for all providers to deploy fiber, and only continue to encourage the disparity of next-generation broadband development in underserved markets. Without any unbundling or resale obligations, ILECs gain the ability to squeeze more profits from their existing copper networks, while simultaneously blocking CLECs from utilizing UNEs to push the ILECs (and cable) to improve their broadband services. Forbearance also expands the profitability of ILECs' existing copper networks by increasing their ability to impose substantial price increases in markets where CLECs, without access to UNEs and resale, no longer can offer competitive alternatives and are forced to withdraw.

⁴ See 47 C.F.R. § 51.319.

A nationwide hard deadline for full cessation of all UNE obligations, as suggested by USTelecom,⁵ creates similar problems. Though many competitive providers are investing in fiber deployment and building out their own facilities, a full transition away from copper and UNE-based services will take CLECs at least as long as it will take the ILECs. USTelecom's proposed transition period of less than three years falls woefully short; it is unlikely that the ILECs themselves could complete a full transition to fiber networks during that same time. Given the current deployment trajectory with ILECs and CLECs both racing to replace copper, a full nationwide fiber-speed deployment remains in the distant future, making this UNE forbearance extremely premature. Additionally, geographic markets nationwide are not uniform. Providers will require more time to transition in Tier 2 and Tier 3 markets. In some rural areas, providers may lack financially justifiable reasons to deploy fiber. A nationwide forbearance deadline — which is very different from wirecenter-by-wirecenter copper retirement — thus fails to provide CLECs with enough time to transition all their markets. Instead, the inadequate timeframe forces CLECs to choose the markets where they are financially and technologically most likely to complete the transition away from UNE-based services. Where CLECs can no longer provide service without access to UNEs, they will have to withdraw. In this calculus, the most remote and underserved areas are also most likely the first to lose competitive providers and critical services.

Rather than forcing a one-size-fits-all timeframe onto a diverse marketplace, the Commission should adhere to the “natural forbearance” under its current rules. In markets where ILECs have completed copper retirement, they gain full relief from DS0 unbundling obligations. In markets where ILECs have yet to discontinue copper, CLECs should be able to retain access to UNEs. This natural forbearance ensures that CLECs can continue providing consumers in underserved areas competitive alternatives to ILECs' copper services.

Please let me know if you have any questions.

Sincerely,



John Nakahata
Counsel to INCOMPAS

cc: Madeleine Findley Michele Berlove
Eric Ralph Megan Capasso
Daniel Kahn
Terri Natoli
Pamela Megna

⁵ Letter from Jonathan Banks et al., Senior Vice President, Law & Policy Deputy General Counsel for USTelecom, to Marlene H. Dortch, Secretary, FCC, at 1, WC Docket No. 18-141 (filed June 21, 2018) (revising the Petition's request for an 18-month transition period to a proposed February 4, 2021 deadline for full relief from UNE obligations).