

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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	)	

**REPLY COMMENTS OF INCOMPAS, FISPA, MIDWEST ASSOCIATION OF  
COMPETITIVE COMMUNICATIONS, AND THE NORTHWEST  
TELECOMMUNICATIONS ASSOCIATION**

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**I. INTRODUCTION AND SUMMARY**

INCOMPAS, the internet and competitive networks association;<sup>1</sup> FISPA;<sup>2</sup> the Midwest Association of Competitive Communications (“MACC”);<sup>3</sup> and the Northwest Telecommunications Association<sup>4</sup> (collectively, the “Competitive Carriers Group”), on behalf of

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<sup>1</sup> INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace.

<sup>2</sup> FISPA is a national consortium of small to mid-range CLECs and service providers whose mission is to unite and advance our priorities of broadband choice, quality, and speed through member collaboration, advocacy, and education.

<sup>3</sup> MACC is a leading Midwest trade association of competitive carriers formed to support an environment that fosters competition in the communications marketplace. MACC members supporting this filing include Birch Communications, First Communications, Granite Telecommunications, TDS Metrocom, and Allstream.

<sup>4</sup> The Northwest Telecommunications Association (NWTa) is an association of Service Providers and small Competitive Carriers that offers broadband and voice service in all of Oregon, Washington, and Idaho. All providers serve some rural markets, many providing only to rural markets.

themselves and their respective members, submit these reply comments in the above-captioned proceeding. The record reflects overwhelming opposition to the USTelecom's Petition by a diverse set of stakeholders. As explained in the oppositions and comments, unbundled network elements and avoided-cost resale voice and data services provide vital competitive choices for voice and fixed broadband services and promote facilities-based investment, especially in underserved urban and rural communities. Competitive carriers utilize UNEs as bridges to connect and invest in new communities. Oftentimes upgrading old lines that have been abandoned by incumbent carriers, they are able to establish a customer base in underserved communities. From there they are able to invest in deploying next-generation networks that bring faster speeds and lower prices.

These stakeholders also explained how consumers and the public interest would be harmed by forbearance from the unbundling and avoided-cost resale obligations as set out in the Telecommunications Act of 1996 and the Commission's rules. If denied access to legacy infrastructure, many competitive providers will not be able to continue providing service to their customers, harming their ability to invest in deployment.

In addition to the multitude of carriers, state and federal agencies, and consumer groups that have filed, thousands of individual consumers and small businesses have submitted distinctive letters asking the Commission to preserve their competitive choice and reject this petition. Many of the letters attest to the superior customer service and speeds, as well as lower prices they receive from competitive providers.<sup>5</sup> They cite how their businesses and families

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<sup>5</sup> See, e.g., Letter from Andrei Broder, to Marlene H. Dortch, Secretary, FCC (filed Aug. 29, 2018); Letter from Deanna Deckard, Owner of Greystone Real Estate, to Marlene H. Dortch, Secretary, FCC (filed Aug. 14, 2018); Letter from Susan Perkins to Marlene H. Dortch, Secretary, FCC (filed Aug. 29, 2018); Letter from Michael J. Richard, Owner of Cajun Computers, to Marlene H. Dortch, Secretary, FCC (filed Aug. 23, 2018); Letter from S. Sud

would be harmed if forced to switch back to an incumbent provider or if faced with broadband price hikes that are a clear objective of USTelecom’s petition.<sup>6</sup>

Competition should drive deployment. By eliminating competitive access to UNEs, USTelecom’s petition threatens the Commission’s deployment agenda. This will harm consumers, small businesses, and critical community institutions such as schools, hospitals, libraries, and public service networks, all of which are served by competitive providers utilizing UNEs and avoided-cost resale.

In contrast, only two parties filed in support of USTelecom’s Petition<sup>7</sup>—one of which is on the board of the association filing the petition and could have submitted its information as part of the initial petition. The two comments filed in support do not ameliorate the procedural faults that require the Petition to be summarily denied, and they suffer the same defects as the Petition by ignoring distinct geographic and product markets. Accordingly, the Commission should immediately grant our Motion for Summary Denial and deny the Petition in its entirety as to

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to Marlene H. Dortch, Secretary, FCC (filed Aug. 31, 2018); Letter from Françoise Tourniaire to Marlene H. Dortch, Secretary, FCC (filed Aug. 30, 2018); Letter from Helen Vanderberg to Marlene H. Dortch, Secretary, FCC (filed Aug. 29, 2018). Unless otherwise noted, all comments, letters, and motions cited herein are to WC Docket No. 18-141.

<sup>6</sup> *See, e.g.*, Letter from Robert Clark, Owner of Canal Pointe Capital, to Marlene H. Dortch, Secretary, FCC (filed Aug. 8, 2018); Letter from Charles Cole, CFO of Chaparral House, to Marlene H. Dortch, Secretary, FCC (filed Aug. 30, 2018); Letter from Gary Martin to Marlene H. Dortch, Secretary, FCC (filed Aug. 29, 2018); Letter from Rob Meyer to Marlene H. Dortch, Secretary, FCC (filed Aug. 29, 2018); Letter from Judith Windt to Marlene H. Dortch, Secretary, FCC (filed Aug. 28, 2018); Letter from John & Mary Jo Morman to Marlene H. Dortch, Secretary, FCC (filed Aug. 16, 2018).

<sup>7</sup> 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”).

Category 1 (UNEs and avoided-cost resale) and the Section 272 (non-discrimination) portion of Category 2.<sup>8</sup>

## **II. CONSUMERS AND SMALL BUSINESSES, STATE REGULATORS, AND COMPETITIVE CARRIERS UNIFORMLY OPPOSE THE PETITION**

A diverse range of parties—including consumers,<sup>9</sup> state utilities regulators,<sup>10</sup> competitive carriers from across the country,<sup>11</sup> and others<sup>12</sup>—oppose the Petition. These comments illustrate

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<sup>8</sup> Motion for Summary Denial of INCOMPAS et al. (filed Aug. 6, 2018) (“Motion for Summary Denial”); *see also* Letter from Jeffrey R. Strenkowski, Vice President of Uniti Fiber, to Marlene H. Dortch, Secretary, FCC (filed Aug. 30, 2018) (supporting motions for summary denial of INCOMPAS and of Cox Communications, Inc.).

<sup>9</sup> *See, e.g.*, Comments of the Electronic Frontier Foundation (filed Aug. 6, 2018); Comments of the Center for Democracy & Technology (filed Aug. 6, 2018); Opposition of Public Knowledge et al. (filed Aug. 6, 2018). A number of individual consumers have filed in the docket expressing their support for their individual provider, as well as their support for competition and the freedom to choose from more than one or two providers.

<sup>10</sup> *See* Comments Submitted on Behalf of the Public Utilities Commission of Ohio (filed Aug. 3, 2018); Comments of the Michigan Public Service Commission (filed Aug. 6, 2018) (“Mich. PSC Comments”); Comments of the California Public Utilities Commission (filed Aug. 6, 2018), Comments of the Pennsylvania Public Utility Commission (filed Aug. 6, 2018) (“Pa. PUC Comments”).

<sup>11</sup> *See, e.g.*, Comments of Blackfoot Communications, Inc. (filed Aug. 6, 2018) (opposing forbearance for “very rural” markets such as Montana, Idaho, and Wyoming); Comments on Behalf of Full Service Network LP to the Petition for Forbearance of USTelecom—The Broadband Association (filed Aug. 6, 2018); Opposition of Snowcrest (filed Aug. 6, 2018); Opening Comments of Raw Bandwidth Telecom Inc. and Raw Bandwidth Communications, Inc. on the Petition of USTelecom for Forbearance (filed Aug. 6, 2018); Comments of Worldnet Telecommunications, Inc. (filed Aug. 6, 2018); Opposition of U.S. TelePacific Corp. et al. (filed Aug. 6, 2018); Opposition of First Communications, LLC (filed Aug. 6, 2018); Opposition of MelTel (filed Aug. 6, 2018); Opposition of Access Point Inc. et al. (filed Aug. 6, 2018); Opposition of Granite to USTelecom’s Forbearance Petition (filed Aug. 6, 2018); *see also* Opposition of INCOMPAS et al. (filed Aug. 6, 2018) (“INCOMPAS Opposition”); Comments of CALTEL (filed Aug. 6, 2018); Comments of the Michigan Internet and Telecommunications Alliance on Petition for Forbearance of USTelecom (filed Aug. 6, 2018) (“MITA Comments”); Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom (filed Aug. 6, 2018) (“Sonic Opposition”); Comments of ICG CLEC Coalition (filed Aug. 7, 2018).

<sup>12</sup> *See* Letter from Major L. Clark, Acting Chief Counsel, Office of Advocacy, U.S. Small Business Administration, and Jamie Belcore Saloom, Assistant Chief Counsel, Office of

the continued importance of UNEs and avoided-cost resale for ensuring that customers of all types have access to competitive choices, and in some cases *any* choice, for voice and data services that are suitable to their specific needs. For example, the Michigan Public Service Commission observed that “[i]n Michigan specifically, there are many places in the Upper Peninsula and northern Lower Peninsula of the state that lack broadband” and similarly lack reliable wireless service.<sup>13</sup> As a result, “traditional wireline service may be the only reliable voice service available in these areas.”<sup>14</sup> Maintaining Section 251’s UNE and avoided-cost resale obligations allow these areas to remain “open to competition and the benefits it brings.”<sup>15</sup> Otherwise, “it is likely that these areas would have no competition at all due to the higher barrier[s] to entry.”<sup>16</sup>

Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MelTel”), one of the many competitive carriers that utilize avoidedcost resale to tailor services to meet the needs of niche markets, explained that its customers include government agencies with “special needs that require the provision of traditional TDM” service provided by MelTel.<sup>17</sup> For example, one of MelTel’s largest customers is “a federal agency that has significant law

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Advocacy, U.S. Small Business Administration, to Marlene H. Dortch, Secretary, FCC, at 3, CG Docket Nos. 18-152 & 02-278, WC Docket Nos. 17-84 & 18-141, GN Docket No. 17-258, WT Docket No. 17-79 (filed Aug. 1, 2018); Letter from Bethany Dentler et al., Medina County Fiber Network, to Marlene H. Dortch, Secretary, FCC (filed Aug. 2, 2018); Motion for Partial Summary Denial and Comments of Cox Communications, Inc. (opposing forbearance with respect to 911/E911 databases, operations support systems, and subloops for multiunit premises wiring).

<sup>13</sup> Mich. PSC Comments at 3.

<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> Declaration of Sean J. Sullivan ¶ 19 (appended to Opposition of MelTel) (“Sullivan Decl.”).

enforcement and public safety responsibilities, many in remote locations throughout the country. This agency depends on the reliability of traditional TDM service to ensure that critical communications functionality is available wherever and whenever it is needed.”<sup>18</sup> According to MelTel, “there is no question that the avoided-cost resale requirement remains necessary to promote competition and ensure reasonable rates for traditional TDM service,” because it serves as “a counterweight” preventing ILECs from either refusing to enter into commercial negotiated whole agreements entirely or demanding higher rates to force out their direct competitors.<sup>19</sup>

Moreover, the comments filed explain how UNEs and avoided-cost resale continue to serve the critical market-opening functions envisioned by Congress in Section 251(c) of the Telecommunications Act of 1996, particularly in underserved areas. As the Michigan Internet and Telecommunications Alliance noted, “CLECs build out redundant networks when they have accumulated, via the availability of UNEs, a sufficient mass of customer[s] to support the capital investment.”<sup>20</sup> Competitive carriers like Clear Rate Communications, which serves “hundreds of schools districts and thousands of businesses throughout the country,” have “begun investing millions of dollars to construct fiber direct to the customer,” in addition to the “millions of dollars [it invested] in switch sites, data centers, collocation, and related equipment to provide internet and dial tone over the past several years.”<sup>21</sup> “Because UNEs enabled Clear Rate to acquire a density of customers, in distinct areas, Clear Rate was able to replace UNEs with its own facilities wherever and whenever such density economically permitted Clear Rate to do so”

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<sup>18</sup> *Id.*

<sup>19</sup> Opposition of MelTel at 7-8.

<sup>20</sup> MITA Comments at 8.

<sup>21</sup> Declaration of Thane Namy ¶ 4, appended as Appendix C to MITA Comments.

and now “is able to serve a significant percentage of its customers with its own fiber service and facilities without any reliance on UNEs.”<sup>22</sup>

Similarly, Sonic echoes the benefits that consumers are experiencing as a result of the 1996 Telecom Act regime in creating the opportunity for the bridge to broadband.<sup>23</sup> Sonic has been able to enter the market and invest in facilities to upgrade the incumbent’s own network, attracting customers to its higher speeds and better service.<sup>24</sup> As customer demand in an area increases, Sonic is then able to deploy fiber, bringing even faster speeds at lower prices to consumers.<sup>25</sup> In response, the incumbents are then building their own fiber or upgrading their networks, as well as dropping their prices—all to the benefit of consumers—even when they *do not* switch to Sonic.<sup>26</sup> Sonic also pointed out the fallacy that broadband deployment everywhere is possible, specifically highlighting the construction barriers it faces even in areas where it has a business case to build.<sup>27</sup> The availability of UNEs still allow it to serve customers where it cannot build due to these barriers—allowing consumers to still benefit from competition.<sup>28</sup>

The comments in the proceeding also further highlight the paucity of evidence in the Petition to support granting it. The Pennsylvania PUC accurately observed that the Petition “provided no geographic, company-specific and disaggregated analysis to support the relief

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<sup>22</sup> *Id.* ¶¶ 7-8.

<sup>23</sup> *See, e.g.*, Sonic Opposition at 1, 3-14, 18-20.

<sup>24</sup> *Id.* at 2-8.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *See id.* at 18 (observing that “in most of the markets where [Sonic] has deployed fiber, it has been the first in a market to broadly do so, often soon followed by AT&T’s fiber deployment or by upgrades by Comcast or Wave”).

<sup>27</sup> *Id.* at 19-20.

<sup>28</sup> *Id.* at 20-21.

requested in its Petition on a national basis,” and thus “has not demonstrated the emergence of sufficient competition in any specific geographic or relevant product market” to meet the forbearance requirements.<sup>29</sup> As discussed below, Verizon’s comments, one of only two filed in support of the Petition, suffer from the same evidentiary and methodological shortcomings, and cannot provide sufficient support for granting forbearance.<sup>30</sup>

### **III. VERIZON’S COMMENTS DO NOT AND CANNOT SAVE THE PETITION FROM SUMMARY DENIAL**

Verizon’s comments (and attached economist declaration) do not—and cannot—cure the Petition of its failure to present sufficient evidence and analysis to establish a *prima facie* case for forbearance.<sup>31</sup> The Commission will deny “[a] petition that *on its face* is incomplete or defective.”<sup>32</sup> USTelecom’s failure to file with its Petition all “facts, information, data, and arguments on which [it] intends to rely [on]” violates the complete-as-filed rule and warrants summary denial.<sup>33</sup> Although “the Commission will consider evidence filed in the record by third parties that is favorable to the petitioner’s position” to determine whether a petition has met its *overall burden of proof*, the *Forbearance Procedures Order* makes clear that the burden of production “requires that the petitioner state a complete *prima facie* case *in the petition*.”<sup>34</sup>

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<sup>29</sup> See Pa. PUC Comments at 9-10.

<sup>30</sup> See Comments of Verizon (filed Aug. 6, 2018) (“Verizon Comments”).

<sup>31</sup> *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd. 9543, 9553, ¶ 17 (2009) (“*Forbearance Procedures Order*”).

<sup>32</sup> *Id.* ¶ 27 (emphasis added).

<sup>33</sup> *Id.* ¶ 17.

<sup>34</sup> *Id.* ¶ 21 (emphasis added).

Submitted well after the Petition as a separate filing, Verizon's comments do not change the fact that USTelecom failed to meet this burden of production.<sup>35</sup>

Moreover, allowing Verizon's comments to save a defective petition from summary denial would frustrate the intent of the complete-as-filed rule. The Commission implemented the rule to promote efficiency and fairness.<sup>36</sup> As a member of USTelecom, Verizon could have submitted its filing and economist declaration as part of USTelecom's Petition. It did not. Allowing Verizon to save USTelecom from summary denial would set a standard in which petitioners could circumvent the complete-as-filed rule by stating an incomplete *prima facie* case and then having their individual members "cure" it later in the comments process. This creates the exact outcome that the complete-as-filed rule seeks to avoid: Interested parties would need to "keep[] up with a petitioner's unfolding arguments and evidence," which not only "frustrate[es] their efforts to respond fully and early in the process" but also "unreasonably burdens [their] resources."<sup>37</sup>

Additionally, even if the information and data submitted by Verizon were somehow (unlawfully) deemed to be part of the Petition, the Petition would remain incomplete as filed. Like the Petition, Verizon relies on generalized data assessing competition and the use of unbundled network elements and avoided-cost resale at the national level.<sup>38</sup> Verizon fails to

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<sup>35</sup> Separately, USTelecom's subsequent filing of "some underlying information" also does not and cannot save it from summary denial: "[N]ot only does that continue to violate the 'complete-as-filed' rule, but [USTelecom] has still not filed all underlying information, including the interviews conducted by its economist, on which it relies." Motion for Summary Denial at 7.

<sup>36</sup> *Forbearance Procedures Order* ¶ 12.

<sup>37</sup> *Id.*

<sup>38</sup> Verizon Comments at 7-19.

provide the granular analysis required by the *Qwest Phoenix Forbearance Order* to assess the effect of USTelecom's sweeping forbearance on competition and consumers in specific product and geographic markets.<sup>39</sup> Consequently, Verizon's comments do not save the Petition from summary denial.

#### **IV. ON THE MERITS, VERIZON'S ARGUMENTS FOR FORBEARANCE LACK SUFFICIENT SUPPORTING EVIDENCE AND SUFFER THE SAME DEFECTS AS THE PETITION**

Verizon also fails to sufficiently support the Petition on the merits and, in fact, employs the Petition's same flawed reasoning. First, as discussed above, Verizon refers to generalized data to assert nationwide competition on an aggregated basis, instead of defining specific geographic and product markets and engaging in a market-by-market analysis of whether sufficient competition exists to warrant forbearance. Verizon similarly asserts that UNEs and avoided-cost resale play a small and diminishing role at the national level.<sup>40</sup> But this claim similarly ignores the critical role of UNEs and avoided-cost resale in the specific markets where they remain available.<sup>41</sup> Like the Petition, Verizon fails to provide the necessary competition analysis to support forbearance.

Second, Verizon fails to explain how existing unbundling regulations or avoided-cost resale, which focus primarily on the existing networks built during the regulated monopoly era and have significantly limited application to upgraded fiber and IP networks, could

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<sup>39</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd. 8622, 8634-35 ¶¶ 26 n.77, 28 (2010) ("*Qwest Phoenix Forbearance Order*"). For a detailed discussion of the *Qwest Phoenix* analytical framework and its application, see Motion for Summary Denial at 11-24.

<sup>40</sup> Verizon Comments at 8-9, 13, 19.

<sup>41</sup> See INCOMPAS Opposition at 65-68 (discussing the Petition's similar flawed analysis).

disincentivize ILECs from investing in *new* facilities.<sup>42</sup> The Commission already substantially relieved ILECs of obligations to unbundle fiber loops, particularly in the mass market.<sup>43</sup> Verizon fails to explain why ILECs face disincentives from investing in new facilities when doing so actually provides a path for “natural forbearance” through the retirement of legacy facilities.<sup>44</sup> As the Competitive Carriers Group discussed in its initial comments, this natural elimination of UNE obligations incentivizes ILECs to speed up fiber deployment to shed the “administrative and compliance costs” they associate with unbundling.<sup>45</sup> If anything, wholesale elimination of unbundling and avoided-cost resale obligations would remove competitor access and expand the profitability of ILECs’ existing copper networks, dampening their incentives to invest in new facilities.<sup>46</sup>

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<sup>42</sup> See Verizon Comments at 22, 24; Andres V. Lerner, *An Economic Analysis of the Impact of Forbearance from 251(c)(3) on Competition and Investments* ¶¶ 40-41 (Aug. 6, 2018) (attached to Verizon Comments as Exhibit A) (“Lerner”) (discussing disincentives to invest by ILECs). Contrary to Verizon’s claims, the record also demonstrates that unbundling mandates facilitate competitive carriers’ facilities-based investment. See, e.g., INCOMPAS Opposition at 42, 45-50.

<sup>43</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exch. Carriers*, Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 17083-85, 17102-336, ¶ 164-68, 197-566 (2003) (“*TRO Order*”) (explaining and applying impairment standard); *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd. 2533, 2536-37, ¶¶ 3, 5 (2005) (“*TRRO Order*”) (excluding high capacity loops and interoffice dedicated transport UNEs from the most competitive areas and excluding UNEs from “sufficiently competitive” long distance and wireless markets); INCOMPAS Opposition at 9, 20-25.

<sup>44</sup> See 47 C.F.R. § 51.319; 47 C.F.R. § 51.319(a); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, Memorandum Opinion and Order, 31 FCC Rcd. 6157, 6162, ¶ 11 (2015) (eliminating requirement to unbundle a 64 kbps channel over fiber loops); INCOMPAS Opposition at 21, 52.

<sup>45</sup> INCOMPAS Opposition at 52.

<sup>46</sup> *Id.*; see also Letter from John Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, at 4 (filed July 13, 2018).

Third, neither Verizon nor the Petition offers sufficient support for the claim that forbearance would benefit consumers and the public interest by accelerating consumer migration to next-generation services.<sup>47</sup> As explained in the comments, forbearance would harm consumers precisely because these services are not available in many areas except from competitive providers that combine UNEs and their own equipment and facilities.<sup>48</sup> This claimed benefit would exist only if consumers are currently ignoring the plethora of better, cheaper alternatives available to them in favor of offerings based in part on the ILECs' legacy networks. Verizon, in an attached report, attempts to explain this implausible assertion with a conclusory statement "that communications services are characterized by significant customer 'stickiness,' as consumers often delay switching to superior or lower-priced services even when those services are available."<sup>49</sup>

Verizon offers no support for its claim of customer "stickiness." It merely asserts that customers behave in this irrational manner. A far more compelling explanation for why some consumers continue with legacy services becomes apparent when relevant geographic markets—factors that Verizon and the Petition wholly ignore—are considered. Consumers would indeed switch to higher-quality services if they were available at lower prices. However, in many relevant geographic markets, such services are not available at lower prices. Indeed, they are not available at *any* price.<sup>50</sup>

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<sup>47</sup> Verizon Comments at 31; Petition at 32 n.92 (citing Hal Singer and Kevin Caves, *Assessing the Impact of Forbearance from 251(c)(3) on Consumers, Capital Investment, and Jobs* at 23, attached as Appendix B to Petition).

<sup>48</sup> See INCOMPAS Opposition at 52-55.

<sup>49</sup> Lerner ¶ 53.

<sup>50</sup> See David E. M. Sappington, *Premature, Ubiquitous Forbearance Will Harm Consumers*, at 18-19 (2018), attached to INCOMPAS Opposition as Attachment 1 ("The obvious reason

Moreover, even if its customer “stickiness” claim were true, Verizon fails to explain why the regulations from which the Petition seeks forbearance, and not this consumer penchant, is the real roadblock to migration from legacy services. Its economist report only states, again without citing any evidence, that “[t]he subsidy provided to the legacy services of competitive providers [through mandated UNE rates] exacerbates this consumer inertia, and further slows the migration to next-generation services.”<sup>51</sup> In the first instance, this is a highly paternalistic argument that the Commission should forbear in order to force consumers to purchase services that they have decided they don’t want or need, and to incur the conversion costs to do so. In any event, the “natural forbearance” of network upgrades provides a market-based path to technology transition by enabling consumers voluntarily to switch from their existing services when and if a better alternative becomes available. Neither the Petition nor Verizon’s comments provides any evidence to support the assertion that eliminating existing competition would increase incentives to invest in upgraded networks. The Commission cannot grant forbearance on conjecture alone.

## V. CONCLUSION

The opening comments filed in the record overwhelmingly opposes the Petition, echoing the Competitive Carriers Group’s position that USTelecom’s requested forbearance is against the public interest and would harm competition and consumers. Verizon’s comments present the same flawed reasoning as the Petition and cannot cure the Petition of its failure to provide arguments and evidence sufficient to establish its *prima facie* case for forbearance. For the

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why consumers purchase legacy services at relatively high prices is that next-generation services are not available at the nationwide average prices cited in the [Petition’s] *Economists’ Report*.”).

<sup>51</sup> *Id.*

reasons set forth above and in our initial comments, the Commission should summarily deny the Petition or, in the alternative, deny the Petition on the merits.

Respectfully submitted,

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