

**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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet)	
Protocol Environment; Special Access for)	
Price Cap Local Exchange Carriers)	
)	
Business Data Services in an Internet	)	WC Docket No. 16-143
Protocol Environment)	
)	
Special Access for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	

COMMENTS OF INCOMPAS

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May 9, 2019

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COMMENTS OF INCOMPAS

INCOMPAS, on behalf of itself and its respective members, submits these comments in response to the April 15, 2019, Public Notice¹ seeking additional comments on the Commission’s Second Further Notice of Proposed Rulemaking (“*Second FNPRM*”) relating to regulation of TDM interoffice transport services offered by price cap local exchange carriers,²

¹ See *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, WC Docket Nos. 18-141, 17-144, 16-143, 05-02, RM-10593, Public Notice, DA-19-281 (rel. Apr. 15, 2019) (“*Public Notice*”). In this comment, INCOMPAS limits its comments to the transport issues raised by the *Public Notice*. It will separately address other issues presented by USTelecom’s ex parte of May 6, 2019.

² *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second

and on the request for forbearance from unbundling interoffice transport obligations as originally set out in USTelecom’s petition dated May 4, 2018.³

I. INTRODUCTION AND SUMMARY

In the *Public Notice*, the Commission sought comments on how additional data—the *April Data Tables*—derived from the Commission’s 2015 BDS data collection may inform the analysis of competition in markets for TDM transport services between incumbent local exchange carrier (“ILEC”) wire centers or end offices.⁴ These data were generated using the Highly Confidential Data collected by the Commission and stored in an access-restricted data enclave. Because of the processes required to access the newly released data, interested parties were given, in effect, far less than two weeks in which to review, organize, combine with other datasets, analyze, and write comments addressing tens of thousands of rows of new information. Moreover, many of the INCOMPAS members that are parties to the USTelecom forbearance proceeding were not participants in the BDS proceeding, and thus have not previously been familiarized with that data or the processes and limitations on access to that data. Under these circumstances, parties without the resources to retain economists and consultants to work with the data have only begun the process of unpacking and understanding the data, and may not be able to do so fully.

Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd. 10403 (2018) (“*Second FNPRM*”).

³ 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”).

⁴ See *Public Notice* at 1–2.

Preliminary work shows that the *April Data Tables* largely confirm that markets for interoffice transport are far from competitive on a nationwide basis, and that in many areas served by ILEC wire centers there is little to no prospect of facilities-based competition entering the transport market. Among the verified ILEC wire centers in the data set, nearly a quarter—24.3%—are not located within a half-mile of *any* competitive fiber facility, and over half of the verified wire centers have no more than one competitive provider with fiber within a half-mile. That percentage increases to approximately 34% for wire centers located in areas that the Commission is proposing to deregulate. These numbers plainly contradict USTelecom’s assertion that there is nationwide competition for transport.

The *April Data Tables* otherwise provide virtually no insight on the barriers to entry for competitive transport providers, or their likelihood of overcoming these barriers. Among other reasons, they do not provide any way of estimating the level of potential demand for those providers that are within a half-mile of ILEC end offices. This is a glaring omission because the Commission has previously found that a provider generally cannot sustain network buildout to a location based on less than two DS3s (approximately 90 Mbps) of demand.⁵ Moreover, the record contradicts any assumption that cable will build out to ILEC end offices in order to provide interoffice transport,⁶ yet cable-provided data are included among the count of fiber

⁵ See *Unbundling Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd. 2533, 2631 ¶ 177 (2005) (“*TRRO*”) (“Based on the evidence in the record, we find that it is generally feasible for a carrier to self-deploy its own high-capacity loops when demand nears two DS3s of capacity to a particular location.”).

⁶ See Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association at 31, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Competitive Carriers Group Opposition”).

located within a half-mile of the wire centers. The *April Data Tables* thus do not support either nationwide forbearance, or a more granular competition test for interoffice transport.

Introducing the *April Data Tables*, not to mention the rest of the Highly Confidential Data, into the record of USTelecom's forbearance proceeding more than a year after the petition was filed also raises troubling procedural concerns. This avalanche of new information is the most dramatic example yet of how the petitioner has proceeded in a manner directly opposite to that which was intended and required by the Commission's forbearance procedures. USTelecom submitted an incomplete, overbroad petition backed by irrelevant data, and waited months before providing any sub-national data—and even now refuses to acknowledge that national markets are not appropriate. USTelecom could have requested the inclusion of the BDS record and Highly Confidential Data in this proceeding from the very beginning, but it has not done so. Its suggestion that opponents could have consulted the BDS data themselves is belied by the terms of the BDS Protective Order, which precludes use of the Confidential or Highly Confidential data in other proceedings. In any case, the data was collected to analyze price cap regulation for *business* data services only in the areas served by price cap LECs, and thus do not address the state of competition for other services or areas.

This entire backwards process was finally brought full circle a few days ago. On May 6, USTelecom submitted a 30-page filing with a request for “partial” forbearance that included three different competition triggers as different bases for relief for three specific elements.⁷ With

⁷ See Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 (filed May 6, 2019) (“USTelecom May 6 Ex Parte”) (requesting forbearance from, among other requirements, (1) unbundling DS1 and DS3 loops based on availability of cable broadband in

respect to unbundled transport, the May 6 2019, ex parte sought forbearance “where there is demonstrable evidence of competition, such as on routes between wire centers that qualify as Tier 1 or Tier 2 wire centers under the Commission’s unbundling rules.”⁸ The requested relief is not for forbearance, but for a rewrite of the transport unbundling rule into one that the Commission expressly rejected in the context of the UNE rulemaking.⁹ At best, this is exactly the kind of moving-target petition that the Commission’s forbearance rules were written to prohibit, and that the rules require to be summarily dismissed.¹⁰

USTelecom’s last-minute change in the requested relief and the confusion and burdens created by the late inclusion of the Highly Confidential Data both underscore the importance of the Commission’s forbearance procedures, including the complete-as-filed rule. These procedures not only help ensure that Commission resources are not wasted, but also safeguard the ability of the public’s and of other providers affected to meaningfully participate in a proceeding that will impact businesses and consumers across the country.

the census block or BDS competition determination, and (2) unbundling of DS0 digital loops based on availability of cable broadband in the census block).

⁸ *See id.*

⁹ *See TRRO* ¶ 84 (“We also reject the proposal by BellSouth and Verizon to use a single end-point trigger test because it fails to consider the economics of deployment on both ends of a transport route.”).

¹⁰ Although the Commission could permit USTelecom to narrow its petition, the Commission should not do so; that would encourage petitioners to treat the forbearance process as a negotiation, in which the petition amounts to an opening offer to be haggled down. This behavior is akin to the “Heads, I win; Tails, I withdraw” gamesmanship that the Commission designed to stop with its forbearance procedures. *See 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, 9561–62 ¶ 36 (2009) (“*Forbearance Procedures Order*”).

That impact will be especially strong in underserved and unserved parts of the country, including many rural areas. USTelecom and its supporters have consistently dismissed the notion that there are still markets that have been, and are being, ignored by carriers that are instead rushing to provide services in high-density, high-revenue business and financial centers. In these areas, the market-opening functions of Section 251(c) are far from obsolete, and continue to bring competitive choice and to spur investment by smaller, regional providers operating in their own communities. Access to unbundled ILEC transport and other elements enable competitive providers to build the customer bases needed to support their own fiber network deployment, which in turn also puts competitive pressure on the ILECs to make upgrades to their networks. These investments will create lasting benefits, including promoting 5G wireless deployment by providing much-needed backhaul in less fiber-rich parts of the country. Prematurely turning off the engine of competition and demolishing the bridge to broadband made possible by Section 251(c) will harm consumers and the public interest, and will set back the Commission's stated goals of encouraging competition, especially in underserved and unserved areas.

The same is true with respect to Section 251(c)(4) resale. As Granite and others have explained, Section 251(c)(4) resellers provide services that are integrated across LEC service areas. That integration cannot easily be replicated, and the public interest and competition would be harmed significantly if the Commission were to give incumbent LECs carte blanche to increase these rates.

II. THE RECORD CONTINUES TO SHOW A LACK OF NATIONWIDE COMPETITION IN MARKETS FOR DS1 AND DS3 BUSINESS DATA SERVICES TRANSPORT

Just as it did when the Commission released the *Second FNPRM* last October, the record today still shows that the markets for DS1 and DS3 interoffice transport are concentrated and

heavily dominated by incumbent local exchange carriers. Prices for BDS transport have already increased significantly in some areas since the *BDS Order* went into effect, indicating that whatever pressures imposed by competitors and potential entrants have not materialized enough to discipline ILEC prices. The *April Data Tables*, to the extent they offer any insight, confirm this uneven competitive landscape. More importantly, the *April Data Tables* are far from sufficient for the Commission to conduct any reliable competition analysis, as the record still does not show that competitive providers can overcome the barriers to entry in the transport markets.

There is clear evidence in the record of BDS price increases less than one year after the *BDS Order* became effective. AT&T just recently announced special access price increases across the board scheduled to take effect on May 15.¹¹ Sprint has also seen ILEC price increases for both channel terminations and interoffice transport.¹² Price increases for interstate transport are also going up in other ILEC tariffs. For example, CenturyLink's interstate channel mileage rates in one area has increased by 86% between May 2018 and May 2019.¹³ These price increases suggest that ILECs still do not face adequate competition for their transport services—and certainly do not fear competitive entry for those services from cable.

The *April Data Tables* suggest that in many areas of the country there is little to no prospect of competitive entry into the interoffice BDS transport markets in the foreseeable

¹¹ See AT&T Prime Access, 2019 Special Access Rate Changes (revised Apr. 12, 2019), available at <https://primeaccess.att.com/shell.cfm?section=98>

¹² See Comments of Sprint, at 1, 7, WC Docket Nos. 17-144, 16-143, 05-25 (filed Feb. 8, 2019) (“Sprint Comments”).

¹³ See Letter from Karen Reidy, Vice President, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-144, 16-143, 05-25, at 2 & n.8 (filed Apr. 17, 2019).

future. Based on a very preliminary analysis—all that was practicable given the short amount of time parties had to access, digest, and analyze the data¹⁴—it appears that over 64% of the ILEC end offices that the *Second FNPRM* is proposing to deregulate have no more than one non-ILEC carrier with fiber facilities within a half-mile range.¹⁵ And it is not at all clear that that carrier can or, in the case of cable operators who have disclaimed an intent to provide these services, will collocate at the wire center to provide competitive wholesale transport service. In addition, over a third, 34%, of these end offices have *zero* competitive providers with fiber within a half-mile. On their own, these percentages show that there is far from ubiquitous competition for interoffice transport, and that nationwide deregulation is not warranted.

But even these percentages significantly overstate the potential for competitive entry, and they do so to such an extent that the *April Data Tables* are unfit for use in a robust competition analysis. First, the data on the distance between competitive fiber facilities and ILEC wire centers appear to represent the straight-line distance between the wire center and *any* fiber facility. The record in the BDS docket shows that, “although a fiber optic cable may run through many census blocks, the determining factor for serving a business customer location is how close

¹⁴ The amount of time afforded to the public to review the data before the comments deadline, exacerbated by the unwieldy format in which the *April Data Tables* presented the data, have made it exceedingly challenging for INCOMPAS to analyze the data thoroughly or to have a meaningful opportunity to comment on the full significance of the data in these proceedings.

¹⁵ For purposes of calculations, the total number of wire centers refers to the number of wire centers that have been verified against the LERG database, as reflected in the *April Data Tables*, and that are not located in areas that have been granted pricing flexibility under the Commission’s special access rules in effect prior to the *BDS Order*. It is appropriate to look at this set of wire centers rather than the larger universe because it targets those wire centers that will be impacted by deregulation.

is the nearest splice point (exit ramp)[.]”¹⁶ The same need for a splice point applies to extending the fiber optic cable to an ILEC’s end office.

The Commission agreed that, when examining proximity to fiber facilities, “[t]he distance to a fiber splice point, as opposed to fiber in general,” is the relevant “determining factor in build/buy decisions,”¹⁷ and that “[F]iber splice points are critical.”¹⁸ The *BDS Order* itself recognized that distance to fiber by itself is an inferior measure of potential entry.¹⁹ Thus, its competitive market test looked at the distances from a point of connection on a competitive provider’s fiber network to a given customer location.²⁰ However, there is no data on the

¹⁶ See Third Declaration of Matthew J. Loch ¶ 6, appended as Attachment A to Reply Comments of TDS Metrocom, LLC, WC Docket No. 05-25 (filed Feb. 19, 2016); See also, e.g., Comments of Birch, EarthLink, and Level 3 at 50, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed June 28, 2016) (“The fact that a competitor has deployed fiber that runs near to a building does not mean that the competitor has a splice point near enough to deploy a connection to a customer.”); Comments of INCOMPAS at 8, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed June 28, 2016) (quoting the Commission for the proposition that “[t]he distance to a fiber splice point, as opposed to fiber in general, is an important determining factor in build/buy decisions”); Letter from Tamar E. Finn, Counsel, TDS Metrocom, LLC, to Marlene H. Dortch, Secretary, FCC at 8, WC Docket No. 05-25 (filed Mar. 24, 2016) (“TDS Ex Parte”) (“TDS CLEC has established that the critical distance in determining whether it is economical to construct fiber to reach a prospective customer is the distance to the nearest splice point, not the distance to the nearest point on the fiber[.]”).

¹⁷ See *Business Data Services in an Internet Protocol Environment et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, 4815 ¶ 211, n.553 (2016).

¹⁸ *Id.* ¶ 212, n.558; see also Letter from Paul Margie, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, at 6–7 (filed Mar. 22, 2017).

¹⁹ See *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd. 3459 ¶ 132 n.404 (2017) (“*BDS Order*”) (“We believe that measuring from locations where business data services is actually being provided by a competitor is a better measure of potential competition . . .”).

²⁰ *Id.* ¶ 86.

distance between a wire center and a node or splice point on the competitive provider's network from which a connection can actually be made to the wire center. Without this information, the distances represented in the *April Data Table* understate a significant barrier to competitive entry, i.e., the feasibility of extending the existing fiber plant to reach the ILEC wire center.

Second, the *April Data Tables* do not appear to exclude cable providers among those competitive providers with fiber within half-mile. There is no basis in the record to infer that cable providers would collocate at an ILEC end office in order to offer an alternative transport option to competitive providers that use ILEC channel terminations or its own facilities to connect to the end user.²¹ Likewise, cable facilities do not offer a way to “bypass” ILEC transport because it is a closed system, and cable providers do not make available to competitive carriers the connection between their own headend and the customer location.²² On the contrary, cable providers themselves have indicated that they offer transport services for cell site backhaul and “point-to-point connectivity between or among multiple business locations and secure access to cloud and data center resources.”²³ Competitive providers thus cannot use cable facilities as a wholesale alternative to ILEC transport, regardless of how close those facilities lie to either ILEC wire centers or customer locations. Accordingly, the proximity of cable facilities to wire centers says nothing about the likelihood of competitive entry.

²¹ See Comments of AT&T Corporation at 9, WC Docket No. 05-25, RM-10593 (filed Jan. 28, 2016) (explaining that “cable companies generally do not rely on ILEC collocations at all”).

²² See First Supplemental Declaration of R. Matthew Kohly ¶ 15, attached hereto as Attachment 7; First Supplemental Declaration of Douglas Denney ¶ 6, attached hereto as Attachment 1 (“Allstream Supp. Decl.”); First Supplemental Declaration of Dan Bubb ¶ 4, attached hereto as Attachment 6 (“Gorge Networks Supp. Decl.”).

²³ Comments of Comcast Corporation at 10, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed June 28, 2016).

The *April Data Tables* also completely fail to address other critical gaps that commenters identified in the competition analysis in the *Second FNPRM*. As before, there is no support in the record for concluding that potential entrants—even those with nearby fiber—can overcome the entry barriers to offering an alternative to ILEC interoffice transport. This is especially true with respect to locations with small levels of demand, such as one or only a few DS1s or just a single DS3.²⁴ The *April Data Tables* do not contain any proxy for BDS demand near the end offices that have competitive fiber facilities within a half-mile.

End-user demand for more capacity also does not necessarily indicate greater potential revenue for a competitive transport entrant. As an initial matter, the existing demand for DS1 or DS3 interoffice transport implies end users are purchasing only lower bandwidth services, which do not generate enough revenue to support competitive deployment.²⁵ End users also typically do not purchase transport separately from channel terminations,²⁶ and the ILEC is very unlikely to purchase transport from a competitor rather than use its own transport facilities. Thus, the potential revenue sources for a transport entrant are likely to be limited to competitive providers

²⁴ See *TRRO* ¶ 86 (explaining that “a competing carrier is able to sell services at the DS1 level that only return a fraction of the revenues that are available from a service offered at DS3 or OCn capacity levels” and “a carrier that only requires a very low capacity of transmission at a particular location . . . cannot justify the costs of deployment based on the relatively low revenues available from serving customers at that capacity”).

²⁵ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 17171 ¶ 320 (2003) (“*TRO*”) (recognizing that “the inability [of competitive providers] to recover [construction] costs at a single DS3 level results in impairment”).

²⁶ Reply of AT&T to Petitions to Reject or Suspend and Investigate Ameritech TN 1847, Pacific Bell TN 539, and Southwestern Bell TN 3428, at 17 (filed July 14, 2016) (“Customers typically purchase channel terminations together with mileage or multiplexing.”).

that are leasing ILEC channel terminations, or who have built their own facilities between the end user and the serving end office. However, even before the price increases imposed since the *BDS Order* went into effect, these competitive providers needed to make substantial minimum commitments to offset high ILEC rates.²⁷ With available demand locked into these commitments, there is much less potential revenue to justify the costs of extending a competitive provider's network and of collocating at the ILEC end office. As a result, competitive transport providers tend to bypass end offices entirely, except those that are located in very dense areas.²⁸

Third, the *April Data Tables* do not show where the end offices are located relative to the counties that were deemed non-competitive for channel terminations. Nationwide deregulation of transport of end offices that have no prospect of competitive entry, including at a minimum those 34% that are not located near fiber facilities, would also mean effectively eliminating BDS price caps on channel terminations in non-competitive counties, since ILECs would be unconstrained from raising the rate on the whole circuit. This result would completely undercut the Commission's own conclusion in the *BDS Order* that price cap regulation is necessary to ensure just and reasonable in those counties.

²⁷ Letter from Paul Margie, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, RM-10593, at 4 (filed Nov. 9, 2016).

²⁸ Declaration of Michael Chambless ¶10, appended to Comments of XO Communications, LLC on the Further Notice of Proposed Rulemaking, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (noting that “when one or both endpoints” on an interoffice transport route fall outside of high-density, high-demand “[central business districts] and first ring of suburbs . . . the availability of competitive transport falls off dramatically”); *BDS Order* ¶ 80.

Lastly, USTelecom’s argument that the Commission should use the self-reported availability of cable facilities as evidence of nationwide transport competition also fails.²⁹ To start, this contradicts the *BDS Order*’s fundamental conclusion that asymmetric best-efforts services that can be provided using these facilities were not in the same product market as symmetric BDS services, including transport.³⁰ Moreover, USTelecom’s assumption of ubiquitous cable facilities is untenable. As USTelecom well knows, “there is general agreement that there is clear and significant evidence already in the record that [Form] 477 data is flawed.”³¹ These flaws hide the fact that cable providers are far from covering “virtually every person and household,”³² and that many underserved communities lack access to cable providers entirely.³³ Cable facilities are not well suited for providing some specialized TDM services that

²⁹ See USTelecom May 6 Ex Parte at 10 (arguing that because “cable companies have deployed networks that entirely circumvent ILEC transport . . . there is nearly ubiquitous competition for transport in all its forms on a nearly nationwide basis”).

³⁰ See *BDS Order* ¶ 31.

³¹ Reply Comments of USTelecom at 3, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92 (filed Apr. 8, 2019); see also Reply Comments of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc. at 9, WC Docket No. 18-141 (filed Sept. 5, 2018) (“[T]here are many areas outside of central business districts across the country that are unlikely to ever be served by a cable provider and who would not have a higher bandwidth alternative to the incumbent LEC without competitive LECs’ use of UNEs.”).

³² USTelecom May 6 Ex Parte at 10.

³³ See Declaration of Daniel Friesen ¶ 2 (“IdeaTek Decl.”), attached as Attachment 11 to Competitive Carriers Group Opposition (“[A] majority of our entire service territory has no cable operator.”); Declaration of R. Matthew Kohly ¶ 8 (“Socket Decl.”), attached as Attachment 15 to Competitive Carriers Group Opposition (“Even when a county may have a cable company serving a town in the county . . . that does not represent a competitive option for residential and small to medium-sized business consumers not located in the current footprint of a cable company”).

competitive providers offer their customers using ILEC facilities.³⁴ Given the geographic and technological limitations of cable networks, they are not a nationwide substitute for the types of services that competitive providers currently make available that require ILEC transport.

III. THE COMMISSION SHOULD NOT FORBEAR FROM SECTION 251(c)'S UNBUNDLING OBLIGATIONS FOR TRANSPORT

If the *April Data Tables* tell us anything, it is that there are many areas throughout the country that still lack the prospect of competitive entry into interoffice DS1 and DS3 transport markets, especially for those BDS customers served by the 24% of end offices that are not located within a half-mile of *any* competitive fiber. The Commission should not grant nationwide relief from price cap regulation for transport services based on this record. As a separate matter, USTelecom's request for forbearance from unbundling obligations for transport should also be denied.

A. The Record in the BDS Proceeding Has No Bearing on USTelecom's Petition

The *Public Notice* sought comment on the entire BDS record in the context of the USTelecom's petition, which was filed over a year ago, to forbear on a nationwide basis from transport unbundling requirements.³⁵ As discussed above, the record in the BDS proceeding does not show that sufficient competition in interoffice transport markets warrants eliminating existing price caps nationwide. If anything, the *April Data Tables* show that large parts of the country still lack even the prospect of competitive entry. The same gaps in the record also

³⁴ See Declaration of Douglas Denney ¶ 16, attached as Attachment 4 to Competitive Carriers Group Opposition (“These customers often require secure private networks and lack comparable offerings from ILECs or incumbent cable providers to meet their service quality and security needs.”); *id.* ¶ 18 (“Cable providers in Allstream's markets also do not provide comparable customized services, nor do they build private networks for SMBs.”).

³⁵ *Public Notice* at 2.

precludes any adequate analysis under the Commission’s relevant forbearance precedent.³⁶ But for simpler reasons, the record in the BDS proceeding on transport should not affect the Commission’s analysis of USTelecom’s proceeding at all.

First, introducing such a massive amount of data at effectively the eleventh hour before the statutory deadline for the Commission to act on the petition violates basic principles of fairness and deprives interested parties of any meaningful opportunity to comment.³⁷ The Highly Confidential Data, access to which was restricted to certain participants in the BDS proceeding, has been in the Commission’s possession since before USTelecom’s petition was filed. At any point, and especially at the start of the proceeding, USTelecom could have requested that this data be considered in support of its petition and that the protective orders be modified to permit such use, which would at least have given interested parties more than two weeks to access and analyze the data. USTelecom’s argument that all parties “[have] had notice” from the beginning of this proceeding that the BDS data “were pertinent” is misleading.³⁸

³⁶ See Motion for Summary Denial of INCOMPAS et al. at 12–13, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Motion for Summary Denial”).

³⁷ Although the USTelecom forbearance proceeding is not a “rulemaking,” the Administrative Procedure Act still applies to the Commission’s exercise of its authority under Section 10. As the D.C. Circuit observed, Congress limited the criteria that the Commission is permitted to consider in evaluating a forbearance petition, but in other respects, “it should be obvious that a section 10 forbearance petition is a request for a rulemaking, since it seeks a modification of a rule which has only future effect.” See *Verizon v. FCC*, 770 F.3d 961, 966–67 (D.C. Cir. 2014) (emphasis omitted). Accordingly, the procedural protections that apply to agency rulemaking—including parties having an “adequate opportunity” to comment—extend to forbearance proceedings. Cf. *N.C. Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 770 (4th Cir. 2012) (holding that the conclusion that the agency “did not provide a meaningful opportunity for comment further is supported by the exceedingly short duration of the comment period.”).

³⁸ See USTelecom May 6 Ex Parte at 15.

Although the *public* docket in the BDS proceeding, and the redacted version of *BDS Order* itself, were available, even those who participated or advised parties that participated in the BDS proceeding could not, without violating the protective orders in that proceeding, review or use the Highly Confidential Data in connection with the forbearance proceeding.

Many of the active participants in the forbearance proceeding did not participate in the BDS proceeding, and thus the Highly Confidential Data—not to mention the rest of the BDS record—was entirely new to them.³⁹ These also happen to be smaller carriers that lack the resources to retain outside consultants and economists to help them understand this data, especially in the timeframe available. As a result, interested parties are hamstrung from participating meaningfully in the proceeding, and the Commission in turn is deprived of robust analyses that could inform its decisionmaking.

Second, the fact that parties can only now *begin* to look at end office data on a geographically granular scale highlights the importance of the Commission’s “complete-as-filed” rule.⁴⁰ Throughout this proceeding, USTelecom and its supporters have consistently failed to provide the data necessary for the Commission to conduct its forbearance analysis.⁴¹ The Commission recognized that “less than complete petitions present interested parties with a

³⁹ The manner in which the *April Data Tables* were compiled made it impossible for interested parties even to understand what was being presented without first finding, reviewing, understanding, and combining other data sets in the Data Enclave together with the *April Data Tables*.

⁴⁰ *Second FNPRM* ¶¶ 147–62.

⁴¹ See Letter from John Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1–4 (filed Mar. 13, 2019) (“INCOMPAS Mar. 13 Ex Parte”); Motion for Summary Denial at 6–7; Letter from John T. Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593, at 2 (filed Apr. 15, 2019) (“INCOMPAS Apr. 15 Ex Parte”);

moving target, which frustrates their efforts to respond fully and early in the process.”⁴² Even if they were relevant to the analysis, introducing the BDS transport data more than a year after the petition was filed, and with less than three months until the statutory deadline, “unreasonably burdens the resources of stakeholders” and “is especially onerous for smaller companies, which may be affected severely by grants of forbearance to large companies.”⁴³ The Commission should strongly discourage such flagrant violations of its own forbearance procedures, and the only way to do so is to impose meaningful consequences on petitioners that fail to provide the data needed along with their petitions. Accordingly, the Commission should grant INCOMPAS’s motion of summary denial of the entire petition.

USTelecom is also incorrect in asserting that its original petition was complete as filed, and that all of the new data that it subsequently introduced were merely in response to arguments and questions from commenters and the Commission. As INCOMPAS previously explained, the complete-as-filed rule would be toothless if a petitioner could sidestep the consequences of its violation of that rule simply by “responding” to comments pointing out that very same violation.⁴⁴ Moreover, the geographically granular data to support its petition were required not by INCOMPAS, but are instead based on the Commission’s own framework for analyzing competition in the context of forbearance from its unbundling rules.⁴⁵

Third, aside from the manifest procedural problems, using the BDS transport data in the forbearance proceeding would not give the Commission anything close to an adequate snapshot

⁴² See *Forbearance Procedures Order* ¶ 12.

⁴³ *Id.*

⁴⁴ See INCOMPAS Mar. 13 Ex Parte at 4.

⁴⁵ See Motion for Summary Denial at 4–5.

of the relevant markets in which providers use unbundled transport. As explained in INCOMPAS's and others' Oppositions to USTelecom's petition, and in the attached declarations, competitive providers use unbundled transport as inputs in various telecommunications and data services to residential and well as business customers.⁴⁶ The data in the BDS proceeding do not contain information about the locations and potential levels of demand of non-BDS customers, which is essential for analyzing the barriers to entry for competitive transport providers to connect to the end offices that serve these customers. Quantity is not a substitute for quality. Without data for this part of the analysis, the Commission cannot assume that there will be sufficient total demand *nationwide* to support the investment necessary for competitive transport providers to collocate at ILEC end offices.⁴⁷

B. Enabling ILEC Transport Price Increases Will Reduce Fiber Investment and Competition in the Medium Term and Thwart the Commission's Predictions of Competitive Entry.

The record does not support nationwide forbearance from unbundling transport, and the Commission needs to deny the petition before the statutory deadline. Otherwise, ILECs will cease offering transport on an unbundled basis and shift competitive providers to much more

⁴⁶ See Competitive Carriers Group Opposition at 12–20; Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom at 18–22, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Sonic Comments”).

⁴⁷ Moreover, the *April Data Tables* do not provide any information on the availability or locations of carrier-neutral collocation facilities that would enable competitive providers to bypass ILEC end offices. See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 16318, 16360 Appx. A (2012) (“The definition of Collocation excludes Competitive Providers that collocate in carrier hotels.” (emphasis omitted)).

expensive BDS circuits.⁴⁸ In many of INCOMPAS members' service areas, there are no alternatives for facilities-based transport from the ILEC's end office, and the *April Data Tables* indicate that many ILEC wire centers do not have even the prospect of competitive entry. Higher transport costs, and even the uncertainty over transport costs, will prevent competitive providers from continuing to invest in their own fiber facilities, which take intensive investment not only in capital but also in time. The result is stagnation in the emergence of facilities-based competition, which goes against not only the policy underlying Section 251(c), but also against the Commission's policy goals of promoting fiber buildout, particularly in underserved areas.

Consistent with Congress's intent behind Section 251(c), competitive providers currently use unbundled transport (as well as loops) as a bridge to building out their own facilities over time.⁴⁹ Congress clearly envisioned multiple competitors to the ILEC, and provided UNEs for that purpose.⁵⁰ As previously noted in the record, providers like Socket, IdeaTek, and Sonic use

⁴⁸ In the case of dark fiber transport, there is not a comparable substitute, and wholesale lit transport is several orders of magnitude more expensive. *See* Declaration of Dane Jasper ¶ 16, attached to Sonic Comments ("Sonic Decl.") (estimating that purchasing commercial wholesale Ethernet transport would cost over 700 times more than its current unbundled dark fiber to provide the capacity that Sonic is able to achieve using its own electronics).

⁴⁹ *See* Declaration of Mark Sollenberger ¶ 11, attached here as Attachment 5 ("First Communications Decl.") (stating that First Communications was able to transition customers to its own fiber loops, and subsequently to its own fiber transport, after initially serving the customers using unbundled transport); Gorge Networks Supp. Decl. ¶ 7 ("In parts of Hood River (pop. 7,167) and The Dalles (pop. 13,620), OR and Goldendale and White Salmon, WA, we have been able to develop a critical mass of customers and have since deployed fiber to replace the existing UNE based services."); Socket Supp. Decl. ¶ 7 (providing example "where Socket was able to use UNE DS1 transport combined with DS1 loops to initially serve a market and then later construct a fiber network").

⁵⁰ *See TRRO* ¶ 193 (rejecting argument that intermodal competition from one other provider "warrants a nationwide finding that competitive LECs are not impaired"); *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd. 3696, 3727 ¶ 55 (1999) ("*UNE Remand Order*") ("We believe that Congress rejected

unbundled interoffice dark fiber transport as the critical middle-mile fiber to connect to their own last-mile facilities to reach consumers and to connect to the ILEC central offices where the providers' electronics are collocated.⁵¹ Unbundled dark fiber plays a critical role in bringing competition to those customers served by Tier 3, the most remote, wire centers by enabling providers to carry user traffic to ILEC wire centers in denser areas, where competitive providers can then use their own networks or commercial transport services.⁵² There is no evidence in the record, including in the BDS data, that competition or even potential competition for transport exists for Tier 3 wire centers. To the contrary, the *April Data Tables* indicate that more than half of verified ILEC wire centers have one or zero nearby fiber providers.⁵³

In addition to dark fiber transport, DS1 transport is necessary in many areas to connect isolated, remotely located customers or locations—often through enhanced extended loops—to denser areas in the ILEC's network before traffic can be handed off to the competitive provider's

implicitly the argument that the presence of a single competitor, alone, should be dispositive of whether a competitive LEC would be 'impaired' within the meaning of section 251(d)(2).").

⁵¹ See Socket Decl. ¶ 36; Sonic Decl. ¶ 7; see also IdeaTek Decl. ¶ 5; Declaration of Jeff Buckingham ¶ 10, attached as Attachment 6 to Competitive Carriers Group Opposition; Declaration of Brian Worthen ¶¶ 9, 11, attached as Attachment 13 to Competitive Carriers Group Opposition.

⁵² See Competitive Carriers Group Opposition at 40.

⁵³ The Commission has previously indicated that even the presence of one fiber-based provider actually being collocated at a wire center is not sufficient evidence of non-impairment. See TRRO ¶ 121 ("In the absence of other indicia that competitive entry is feasible, the presence of one fiber-based collocater constitutes insufficient evidence of competitors' non-impairment.").

own transport network or to another commercial transport provider.⁵⁴ As explained in a supplemental declaration from Socket Telecom, providers that serve multi-location customers may require unbundled DS1 transport in order to reach remote locations for a single satellite office, such as a campus of a community college.⁵⁵ In these situations, there is no case for building separate transport facilities since the purpose is not to transport higher bandwidth (and higher revenue) aggregated traffic. Rather, the unbundled transport element is used to reach a single location needed to serve a multi-location customer.⁵⁶ Similarly, First Communications uses unbundled DS1 transport to backhaul traffic from customers located in rural Ohio to an ILEC wire center located closer to a large city (Columbus) at which it is collocated.⁵⁷

In many underserved areas, there are no alternative interoffice transport options available to competitive providers that serve customers out of ILEC wire centers. For example, Allstream has stated that in counties across seven Western states, all of which were deemed “competitive” under the *BDS Order*, it has found that there are “no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers.”⁵⁸ Even when non-ILEC

⁵⁴ See First Supplemental Declaration of Jeffrey Buckingham ¶¶ 3–4, attached hereto as Attachment 4 (“Digital West Supp. Decl.”) (noting the communities in San Luis Obispo and Santa Barbara counties in which there is no alternative to ILEC transport).

⁵⁵ See Socket Supp. Decl. ¶¶ 4, 12.

⁵⁶ See *id.* ¶ 12 (stating that, in connection with serving a healthcare provider that has 90 locations, Socket “was only able to find competitive alternatives for two of them”).

⁵⁷ See First Communications Decl. ¶ 3.

⁵⁸ Allstream Supp. Decl. ¶ 5; see also Socket Supp. Decl. ¶ 8; First Communications Decl. ¶ 5 (“In Watseka (pop. 5,255), Momence (pop. 3,310), Grant Park (pop. 1,331) and LaSalle (pop. 1,609) (rural communities in Illinois) for example, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers.”); Digital West Supp. Decl. ¶ 4 (“In San Miguel, Parkfield, Cambria, Cayucos, Morro Bay, Paso Robles (pop. 29,793), Templeton (pop. 7,674), Atascadero (pop. 28,310), Santa Margarita (pop. 1,259), Nipomo, Guadalupe, Los Alamos (pop. 1,890), Santa Ynez, and Lompoc (pop. 42,434), no

providers own facilities nearby, for example, middle-mile fiber, these providers often have no interest in serving smaller business customers and do not provide voice services.⁵⁹ Dialog Telecom likewise explains that even in markets that have competitive facilities-based transport providers, “[c]overage from these providers is . . . far from ubiquitous,” and “the largest commercial buildings or the two- or three-block central business district is generally served with limited availability in other areas.”⁶⁰ Moreover, cable providers also do not offer competitive providers an alternative to ILEC transport, and in any event cable facilities would not be well suited for TDM applications like primary rate interface, alarm lines, and elevator lines.⁶¹

Building fiber networks is both expensive and time-consuming. The Commission has consistently recognized that even with committed federal funding support, providers need between six and ten years to complete their network buildout.⁶² Switching from unbundled transport to DS1 and DS3 special access services would vastly increase competitive providers’ costs.⁶³ Competitive providers need predictability as to their costs and revenues before incurring

competitive facilities-based providers are collocated at the serving ILEC wire centers.”); Gorge Networks Supp. Decl. ¶ 5 (“In the Oregon community of Odell, and the Washington communities of Lyle, Dallesport (pop. 1,202), Goldendale (pop. 3,407), White Salmon (pop. 2,244) and Stevenson (pop. 1,465), for example, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers.”).

⁵⁹ See Socket Supp. Decl. ¶ 15.

⁶⁰ First Supplemental Declaration of James Bellina ¶ 5, attached hereto as Attachment 3 (“Dialog Supp. Decl.”).

⁶¹ See First Communications Decl. ¶ 6.

⁶² See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 5949, 5964–65 ¶¶ 40–43 (2016) (providing “flexibility” for funding recipients to meet 95% buildout by the end of the support phase, i.e., ten years); *Connect America Fund*, 32 FCC Rcd. 2152, 2193 ¶ 96 (2017).

⁶³ See, e.g., Dialog Supp. Decl. ¶ 8 (stating that “the increased cost will prevent both serving the customer in the short-term and additional investment in our own network in the long-term”);

the risks of building out networks, and the prospect of significant cost increases due to transport prices will discourage further investment. As providers like First Communications and Digital West explain, absorbing the cost increases of switching to special access transport would prevent them from continuing to invest in their own fiber facilities.⁶⁴ Without unbundled transport, competitive providers face price increases and uncertainty.⁶⁵ Indeed, as demonstrated already by the ILECs, where they face no competition, they raise prices.

While forbearance would increase economic barriers to the deployment of fiber networks, forbearance is not necessary for competitive providers that use UNEs to have an incentive to build out their networks—which also pushes the incumbent LECs to do so. As INCOMPAS noted in the record, competitive providers that use unbundled transport currently have an economic incentive to invest in their own advanced fiber networks before the ILEC retires the

First Communications Decl. ¶ 8 (“In Illinois for example, EEL transport is currently priced at \$1.88 per mile on an unbundled basis whereas on special access, the pricing would range between \$15.25 to \$36.90 per mile depending on the geographical area and service term.”).

⁶⁴ See Digital West Supp. Decl. ¶ 7 (“In the last year, Digital West has built fiber to serve customers in Grover Beach (pop. 13,156), Pismo Beach (pop. 7,655), and Paso Robles but expanding services to additional communities, where we cannot retain customers due to high special access costs, would no longer be possible.”); First Communications Decl. ¶ 10 (“If First Communications can no longer purchase transport on an unbundled basis, in many markets it will have no other choice but to use commercial ILEC special access circuits for transport. The resulting cost increase would prevent us from continuing to invest in our own fiber facilities.”); Declaration of Kerem Durdag ¶ 7, attached hereto as Attachment 2 (“GWI Supp. Decl.”) (“Increased transport costs could very seriously jeopardize our ability to continue serving and deploying fiber to some communities.”); see also Dialog Supp. Decl. ¶ 8; Gorge Networks Supp. Decl. ¶ 7; Socket Supp. Decl. ¶ 20.

⁶⁵ Allstream has noted that all three ILECs in its service areas have sent notices of price increases for special access circuits since the *BDS Order* went into effect. See Allstream Supp. Decl. ¶ 9 (“For example, CenturyLink has increased the prices of DS1 channel terms and DS1 transport by more than 100 percent for many of our circuits across our service territory.”).

copper network.⁶⁶ The competition offered by these providers in turn prompts ILECs to replace their copper facilities with fiber, both to be able to offer new and better services and to try to reduce its regulatory obligations. Short circuiting this process of “natural forbearance” allows incumbent LECs to raise rivals’ costs and discourage entry, making it more difficult for competitive providers to invest in their own networks, and alleviating pressure on the ILEC to upgrade its facilities.

The stagnation in fiber investment by competitive providers will also impede the emergence of facilities-based BDS competition (which the Commission predicted would occur) and frustrate the Commission’s policy of promoting 5G deployment, which is highly reliant on fiber facilities. The Commission’s prediction of BDS competition depends on competitive providers being able to extend their existing networks to meet demand. As the record overwhelmingly demonstrates, competitive fiber builders use unbundled network elements to a large degree as a bridge to build out of their competitive broadband networks.

Slowing down fiber deployment also has a direct impact on the speed of 5G wireless deployment, especially in underserved and rural areas where there is less fiber infrastructure investment compared to denser urban areas. Without the necessary backhaul to carry much larger traffic loads, wireless providers cannot take full advantage of 5G’s potential speeds, thereby reducing their incentives to invest in deploying new wireless equipment. The Commission should not uproot the market-opening provisions of Section 251(c) at a time when competition and innovation is needed most.

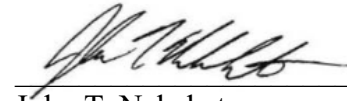
⁶⁶ See Competitive Carriers Group Opposition at 62.

IV. CONCLUSION

For the foregoing reasons, the Commission should not eliminate price cap regulations for BDS transport on a nationwide basis, and should not grant forbearance from the unbundling requirements under Section 251(c)(3) or resale under Section 251(c)(4), or eliminate protections against ILEC market power, with respect to interoffice transport services.

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Respectfully submitted,



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May 9, 2019

ATTACHMENT 1

**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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

FIRST SUPPLEMENTAL DECLARATION OF DOUGLAS DENNEY

1. My name is Douglas Denney. I serve as Vice President, Costs & Policy at Allstream Business US, LLC (“Allstream”). I filed a declaration dated August 3, 2018 appended as Attachment 4 to the Opposition filed by INCOMPAS to the USTelecom Forbearance Petition in the above-referenced proceeding. This declaration supplements those statements.
2. Allstream provides telecommunications and data service to approximately 60,000 small- and medium-sized business customers in locations in primarily 11 western states.¹ These areas consist mostly of urban and suburban communities for which, in many cases, there is little to no competition to the ILEC.

¹ Allstream serves primarily in the CenturyLink territory in Arizona, Colorado, Idaho, Minnesota, Montana, North Dakota, Oregon, Utah, and Washington; the AT&T territory in California and Nevada; and the Frontier territory in Oregon and Washington.

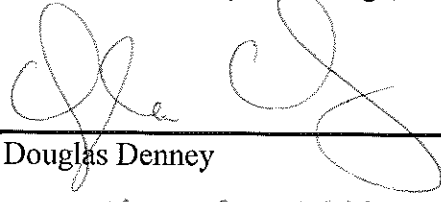
3. In many of the communities served by Allstream, we use ILEC transport in the form of unbundled DS1 and DS3 circuits to carry our customers' traffic from the closest end office to an interconnection point located elsewhere in the ILEC network. For example, in Arizona Allstream leases unbundled transport from CenturyLink out of Flagstaff, Sedona, Prescott, Cottonwood, Douglas and Sierra Vista among other cities. In nearly 200 suburban and rural central offices across our 11-state territory, where Allstream is not collocated in the local ILEC central office, Allstream uses ILEC unbundled transport together with unbundled DS1 loops to serve those customers.
4. Access to unbundled transport is necessary in our service areas because there often is no alternative provider that can provide the level of service necessary for our customers, and in many cases there is no alternative provider at all. Because of the low total bandwidth demand in many of these communities, it is not economically feasible to overbuild loop or even transport facilities without first acquiring a customer base that could support and justify this investment. Building a large enough customer base can often take years, during which time the ILEC's transport facilities are the only available option.
5. The following counties are examples of counties where Allstream serves customers out of wire centers for which Allstream is not aware of competitive alternatives to the ILEC for transport: Crow Wing County, MN; Yavapai County, AZ; Canyon County, ID; Grand Forks County, ND; Josephine County, OR; Chache County, UT; and Pierce County, WA. To the best of Allstream's knowledge, despite the counties being deemed competitive by the FCC, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers. As a result, the only way we can transport our customers' traffic from that end office is to use the ILEC's transport facilities.

6. Incumbent cable providers do not offer a viable alternative to unbundled ILEC transport in many of our service areas. The cable providers in these communities do not offer transport on a wholesale basis to providers such as Allstream. Moreover, the cable providers are not collocated at the ILEC end offices, so we would not be able to get our customers' traffic from the loops to the cable providers' transport networks. Incumbent cable providers in our service areas also do not offer competitive providers access to their facilities between their headends and the customer's location.
7. ILECs require that unbundled loop facilities connect an end user customer location with a CLEC's own collocation space in an ILEC central office. In more remote areas where a CLEC is not collocated, the CLEC can lease enhanced extended loops ("EELs"). These facilities combine ILEC unbundled loops with ILEC unbundled transport and in some cases multiplexing equipment. Commingled loop-transport combinations may combine ILEC unbundled loops with ILEC special access transport. For both commingled circuits and EELs, the CLEC has no option but to use ILEC transport in order to get the unbundled loop back to the CLEC collocation. When the CLEC is not collocated in the office where the unbundled loop terminates, the ILEC does not allow the option for the CLEC to buy an unbundled loop and combine it with third-party transport. As a result, for all EELs and commingled loop-transport combinations, the ILEC has a de facto monopoly on the provision of the transport component of the combination.
8. Losing access to unbundled DS1 and DS3 transport threatens the continued availability of competitive alternatives for our customers.
9. Replacing unbundled transport with DS1 or DS3 special access circuits is not economically feasible in light of recent ILEC price increases. All of our incumbent providers (CenturyLink, AT&T and Frontier) have sent recent notices increasing price of special access circuits since the

BDS order. For example, CenturyLink has increased the prices of DS1 channel terms and DS1 transport by more than 100 percent for many of our circuits across our service territory.

10. Increased transport costs will jeopardize our ability to continue serving customers in many communities across our territory.
11. Allstream has been able to grow a customer base and to invest in bringing advanced services to many underserved communities. Throughout its history, Allstream has used its customer base, most of which was initially acquired through the use of UNEs, to justify the build of its backbone/transport network. Broad access to UNEs has allowed Allstream to enter new markets without having a prior customer base. UNE loops provide access to customers and UNE transport allows Allstream to connect our customers to the Allstream network. As we obtain customers and the demand for bandwidth increases, our need for capacity on transport networks increases. This increase in the need for transport services adds to Allstream's incentives to extend, invest in and build our own network and facilities.
12. If unbundled transport were no longer available, the only alternative, in much of our service territory, would be ILEC special access. ILEC special access rates are in many cases more than 6 times higher than the corresponding UNE rates. Increased costs will have to be passed on to end users, making it harder for Allstream to obtain and retain customers and decreasing Allstream's incentives to invest in its own network and facilities.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Douglas Denney

MAY 8, 2019

Date

ATTACHMENT 2

**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)	
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Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

DECLARATION OF KEREM DURDAG

1. My name is Kerem Durdag. I am Chief Operating Officer at Biddeford Internet Corporation d/b/a GWI (“GWI”).
2. GWI provides telecommunications and data service to residential, small business, medium-sized business, and enterprise customers in in all sixteen counties of the State of Maine. These areas consist mostly of underserved urban and suburban communities and rural communities in which there is little to no competition to the ILEC.
3. In many of the communities served by GWI, we use ILEC unbundled dark fiber to carry our customers’ traffic from the ILEC’s serving wire center to a point of interconnection on that network where GWI is collocated. Where we have not built facilities to the customer’s location, such as in parts of Cumberland County (Maine), we use ILEC unbundled transport together with unbundled DS1 loops to serve those customers.

4. In the rural communities we serve in all of Maine, there are very often no alternative providers that provide the service necessary for our customers, as shown in mapping tools used for the USDA's ReConnect program. In Norway, Maine (pop. 2,748), for example, no competitive facilities-based providers are collocated at the ILEC end office that are closest to our customers. Hence, access to unbundled transport is necessary, especially in a state like Maine where we are ranked in the absolute bottom percentile of broadband connectivity and access.
5. It is important to note that the mechanics of building a customer base, delivering service at affordable prices and allowing communities to participate in the 21st century economy are significantly different in rural areas (such as the majority of Maine) as compared to urban metro areas; the timescales are significant longer, and current infrastructure that needs to be leveraged is an absolute necessity.
6. We also have not seen competitive fiber-based providers emerge as an alternative source for transport service, even in counties that the FCC has deemed competitive. For example, GWI provides service in parts of Cumberland County (Maine), which has been deemed competitive. However, in South Portland (pop. 25,002) for example, GWI is unable to source competitive fiber-based providers originating from the ILEC Central Office.
7. GWI is deeply engaged in deploying universal fiber gigabit infrastructure in Maine. Whether it is for mobile 5G connectivity or home- and business-based access to bandwidth and speeds required for 21st century engagement (remote working, telehealth, *et al.* that are foundationally important for rural economic development), it is our absolute responsibility to get these services to all of Maine. Increased transport costs could very seriously jeopardize our ability to continue serving and deploying fiber to some communities; such an event would be devastating for the rural communities we serve.

8. Affordability of services offered is of paramount importance in rural states such as Maine. In particular, for example, Augusta (the capital of Maine) is entirely dependent on services that GWI is able to provide in part by using unbundled transport. Cost increases would make it difficult to maintain a competitive service offering where GWI is currently offering higher-speed data service than the ILEC.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Kerem Durdag

May 9, 2019

Date

ATTACHMENT 3

**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)	
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)	
Regulation of Business Data Services for)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

FIRST SUPPLEMENTAL DECLARATION OF JAMES BELLINA

1. My name is James Bellina. I am President and CEO at Dialog Telecom LLC (“Dialog”). I am submitting the following to supplement the declaration I filed dated August 3, 2018 in the above-referenced proceeding.
2. Dialog provides voice and data services to residential and business customers in Kentucky and Texas. Dialog’s service territory is comprised predominantly of small cities and rural communities. There is little transport competition to the ILEC in these communities.
3. Dialog utilizes ILEC transport in the form of unbundled DS1 circuits to carry customer traffic from the serving end office to our interconnection point with the ILEC. For example, in Lubbock County, Texas the company purchases DS1 transport to carry customer traffic from the more rural serving office in Hale County. In Potter County and Randall County, unbundled DS1 transport is also critical to serving customers in more rural Gray County, Texas. Where we have

not yet built facilities to the customer's serving end office, we use ILEC unbundled transport together with unbundled DS1 loops to serve those customers.

4. Dialog uses collocation-based UNE loops to deliver services to customers across much of its network. Options for connectivity between the ILEC central offices where Dialog is collocated is limited to the ILEC. In addition, in many smaller rural central offices where Dialog has not yet been able to invest in collocation, Dialog uses ILEC transport to deliver service to end users via UNE loop/UNE transport combination circuits. Access to UNE transport is essential to developing the customer base necessary to support an investment in new transport and loop facilities. Dialog is only able to deploy its own network infrastructure in areas with sufficient proven customer demand to support that investment.
5. In the largest markets that Dialog serves, Amarillo, Texas, Lubbock, Texas, and Owensboro, Kentucky, there are facilities-based competitive providers from which the company can purchase wholesale access, including transport between points of interconnection within Dialog's own network. Coverage from these providers, however, is far from ubiquitous; the largest commercial buildings of the two- or three-block central business district are generally served, with limited availability in other areas. Wholesale providers do not offer access services in more rural areas, and do not offer a service comparable to interoffice transport.
6. Should the ILECs be relieved of their obligation to provide unbundled DS1 and DS3 transport, Dialog would be forced to discontinue sales efforts in large portions of its current footprint, ensuring reduced network investment to those areas. It is all well and good to say that the company should invest today in the hopes of attracting sufficient customer demand to support the investment, but the financial community has not shared that view since the dot-com bubble burst.


We expect that eliminating unbundled transport would have a similar chilling effect on competitors nationwide.

7. ILEC Special Access is not a reasonable alternative to unbundled DS1 and DS3 transport.

Because there is not a robust competitive market for transport in the markets that Dialog serves, pricing is not effectively constrained by the market. The company has limited experience with transitioning a circuit from UNE transport to special access, but in one situation where this was done, the cost of the special access circuit, including channel termination and mileage, was ten times the rate for the UNE DS1.

8. Dialog has been able to grow a customer base and to invest in transport and loop network infrastructure to bring advanced services to more than 50 underserved communities in the past decade. Continued access to unbundled transport services in areas that lack alternative facilities will be critical to our ability to continue offering competitive services and building out facilities. If the company's only option is to serve customers in a rural area using ILEC special access circuits for transport, the increased cost will prevent both serving the customer in the short-term and additional investment in our own network in the long-term.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



James Bellina
5/7/19

Date

ATTACHMENT 4

**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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

FIRST SUPPLEMENTAL DECLARATION OF JEFFREY BUCKINGHAM

1. My name is Jeffrey Buckingham, and I am President at Digital West, Inc. (“Digital West”). The following declaration supplements the statement I filed in August 2018 in WC Docket 18-141.
2. Digital West provides telecommunications and data service to businesses, residents, government, schools, and non-profit organizations in the Central Coast of California, including San Luis Obispo and Santa Barbara counties (LATA 740). These areas consist mostly of rural and semi-rural small towns where there is little to no competition to the ILEC and, in some cases, the cable company.
3. In many of the communities served by Digital West, we use ILEC transport in the form of unbundled DS1 and DS3 circuits to carry our customers’ traffic from the closest end office to an interconnection point located elsewhere in the ILEC network. For example, in communities such as San Miguel (pop. 2,336), Cambria (pop. 6,032), Cayucos (pop. 2,592), Morro Bay (pop.

10,234), Nipomo (pop. 16,714), Orcutt (pop. 28,905), Guadalupe (pop. 7,080), and Santa Ynez (pop. 4,418) where we have not built facilities to the customer's location, we use ILEC unbundled transport together with unbundled DS1 loops to serve those customers.

4. Access to unbundled transport is necessary in our service areas because there often is no alternative provider that can provide the level of service necessary for our customers, or there is no alternative provider at all, and in many cases the ILEC does not offer modern services such as PRI or SIP. Even though San Luis Obispo County is deemed "competitive," CenturyLink's affiliated CLEC provides competitive service only to the city of San Luis Obispo. However, in all other areas, including communities we serve in San Miguel, Parkfield, Cambria, Cayucos, Morro Bay, Paso Robles (pop. 29,793), Templeton (pop. 7,674), Atascadero (pop. 28,310), Santa Margarita (pop. 1,259), Nipomo, Guadalupe, Los Alamos (pop. 1,890), Santa Ynez, and Lompoc (pop. 42,434), no competitive facilities-based providers are collocated at relevant serving ILEC wire centers. As a result, the only way we can transport our customers' traffic from that end office is to use the ILEC's DS1/DS3 facilities.
5. We are not aware of cable providers in these communities offering transport on a wholesale basis to providers such as Digital West..
7. Losing access to unbundled DS1 and DS3 transport threatens the availability of services such as PRI or SIP or continued availability of competitive alternatives for our customers.
6. Replacing unbundled transport with DS1 or DS3 special access circuits is not economically feasible given the large price differences. In one case, for example, the difference between the UNE and special access pricing to reach a customer added \$500-600 per month to the cost of the service. This cost increase ultimately resulted in the customer dropping the service.

7. Because there are no competitive transport alternatives available at the ILEC wire centers where we are collocated, if Digital West loses access to unbundled transport, the only available option is to switch to ILEC special access transport. In that case, the increased cost would prevent us from continuing to invest in our own fiber facilities. In the last year, Digital West has built fiber to serve customers in Grover Beach (pop. 13,156), Pismo Beach (pop. 7,655), and Paso Robles but expanding services to additional communities, where we cannot retain customers due to high special access costs, would no longer be possible.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Jeffrey Buckingham

May 9, 2019

Date

ATTACHMENT 5

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

DECLARATION OF MARK SOLLENBERGER

1. My name is Mark Sollenberger. I am the President at First Communications, LLC (“First Communications”). I am filing this declaration to provide additional information to the prior declaration filed by First Communications in the above-referenced proceeding.
2. First Communications offers voice and broadband services to small business and medium-sized business customers in Ohio, Michigan and Illinois, including government and healthcare facilities. We also offer voice and broadband services to residential customers. These areas include suburban and rural communities for which there is little to no competition to the ILEC.
3. In many of the communities served by First Communications, we use ILEC transport in the form of unbundled DS1 and DS3 circuits to carry our customers’ traffic from the closest end office to an interconnection point located elsewhere in the ILEC network. For example, in Columbus

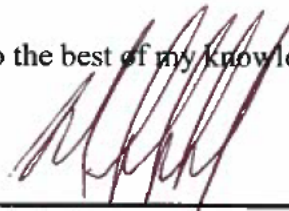
(LATA 324) we utilize DS1 interoffice transport to backhaul customers in rural Ohio areas such as St. Clairsville (pop. 5,184), Zanesville (pop. 25,487) and Coshocton (pop. 11,216) to our aggregation node in Worthington at the AT&T WOTNOH88 Central Office. We use ILEC unbundled transport together with unbundled DS1 loops to serve those customers.

4. As First Communications continues to build a customer base in its service territory, access to unbundled transport is important as it allows us to extend our network to often underserved areas. These communities are served by Tier 2 and Tier 3 wire centers and have a smaller addressable market where the distances between the customers are often greater than in denser areas. As a result, there is often no overbuild loop or even transport facilities that go to the community or customer, and we need to have access to the unbundled transport to provide economical bandwidth services.
5. In Watseka (pop. 5,255), Momence (pop. 3,310), Grant Park (pop. 1,331) and La Salle (pop. 1,609) (rural communities in Illinois) for example, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers. As a result, the only way we can transport our customers' traffic from that end office is to use the ILEC's DS1/DS3 facilities.
6. Incumbent cable providers do not offer a viable alternative to unbundled ILEC transport in many of our service areas. The cable providers in these communities do not offer transport on a wholesale basis to providers such as First Communications. Cable providers are not collocated at the ILEC end offices, so First Communications would not be able to get our customers' traffic from the loops to the cable providers' transport networks. TDM applications such as PRI, alarm lines and elevator lines also do not work well with the cable technology because they require digital technology only available on TDM.

7. Losing access to unbundled DS1 and DS3 transport threatens the continued availability of competitive alternatives for our customers. It will also result in loss of innovative service offerings we provide that the ILEC often does not to the size and location of our customers; these include MPLS, Cloud IP PBX, SD WAN and other enhanced managed services.
8. Replacing unbundled transport with DS1 or DS3 special access circuits is not economically feasible in light of recent ILEC price increases. Since the BDS order, AT&T has eliminated PriceFlex contracts, which included significant wholesale discounts, longer service terms, and volume discounts. The net result of these changes created higher loop and transport costs purchased as special access circuits. In addition, there is a significant difference in mileage-related costs between EEL transport and special access transport. In Illinois for example, EEL transport is currently priced at \$1.88 per mile on an unbundled basis, whereas on special access, the pricing would range between \$15.25 to \$36.90 per mile depending on the geographical area and service term.
9. We also have not seen competitive fiber-based providers emerge yet as an alternative source for transport service, even in areas deemed competitive by the Commission in the *Business Data Services* proceeding. For example, Comcast provides service in parts of Cook, DuPage, Lake and Will counties in Illinois, all of which have been deemed competitive. However, there are communities located in these counties outside of downtown business districts where there is no competitive alternative to the ILEC for transport services. The Village of Berkley (pop. 5,209), located within Cook County in Illinois has mainly small businesses and industrial park locations where the cable company does not extend their fiber facilities due to a lack of multi-tenant buildings.

10. If First Communications can no longer purchase transport on an unbundled basis, in many markets it will have no other choice but to use commercial ILEC special access circuits for transport. The resulting cost increase would prevent us from continuing to invest in our own fiber facilities. We currently have several EEL circuits that we utilize in order to reach customers in remote rural areas within our footprint, as explained above.
11. First Communications has been able to grow a customer base and to invest in bringing advanced services and fiber to many underserved communities. For example, we have built fiber loops to the customer locations in the Chicago, Illinois area and use unbundled ILEC transport to carry that traffic back to First Communications' network interconnection point. If access to unbundled transport or loops is changed, we will have significant stranded investment in the fiber built to the customer's location. In other instances, such as in Independence, Ohio (pop. 7,133), First Communications was able to transition its customers first to its own fiber loops while using unbundled DS1 transport, and then subsequently complete the transport portion of the fiber buildout. Continued access to unbundled transport services in these areas that lack alternative facilities will be critical to our ability to continue offering competitive services and building out fiber facilities.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Mark Sollenberger

5/7/19

Date

ATTACHMENT 6

**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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
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Business Data Services in an Internet Protocol)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

FIRST SUPPLEMENTAL DECLARATION OF DAN BUBB

1. My name is Dan Bubb. I am President at Gorge Networks, Inc., based out of Hood River, OR. I filed a declaration dated August 3, 2018 appended as Attachment 9 to the INCOMPAS Opposition to the USTelecom Forbearance Petition in the above-referenced proceeding, which this declaration supplements.
2. Gorge Networks provides telecommunications and data service to businesses, government, and residential customers throughout the Mid-Columbia region of Oregon and Washington. These areas consist mostly of rural communities that have many areas that are underserved and neglected by the ILEC (CenturyLink) due to the low population density. In many areas the ILEC has very little competition and will only improve infrastructure when competitive carriers enter the market.

3. In many of the communities served by Gorge Networks, we use ILEC transport in the form of unbundled DS1 and DS3 circuits to carry customer traffic between the ILEC's serving wire center and Gorge Networks' interconnection point. For example, in Odell, OR (pop. 2,255), we use ILEC DS1 transport and end user DS1 loop to provide telecommunications services to a major employer in that community. We use DS1 loop and transport to offer similar services to a school in the rural community of Lyle, WA (pop. 499). That service was not offered by any other provider including the ILEC. Where we have not built facilities to the customer's location, we use ILEC unbundled transport together with unbundled DS1 loops to serve those customers.
4. Gorge Networks requires access to unbundled transport in our service areas because there often is no alternative provider that can provide the level of service necessary for our customers, and in many cases, there is no alternative provider at all. In the Oregon community of Odell, and the Washington communities of Lyle, Dallesport (pop. 1,202), Goldendale (pop. 3,407), White Salmon (pop. 2,244) and Stevenson (pop. 1,465), for example, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers. Cable providers in these communities do not offer transport out of an ILEC end office. As a result, the only way we can transport our customers' traffic from an end office is to use the ILEC's DS1 and DS3 facilities.
5. Losing access to unbundled DS1 and DS3 transport threatens the continued availability of competitive alternatives for our customers. The services offered by Gorge Networks that utilize DS1 loop and transport are not competitively offered by any other carrier in these remote service areas. Gorge Networks' customers utilizing unbundled loop and transport include schools, hospitals, local government offices, public utilities, and local professional/business offices. Without access to the ILEC DS1 loops and transport, these services would dramatically increase

in price or not be available at all. For example, the cost to replace the DS1 loop and transport with special access, to our customer in Odell, OR, would increase by over four times.

6. We also have not seen competitive fiber-based providers emerge yet as an alternative source for transport service, including in areas of counties that the FCC has deemed competitive. For example, Gorge Networks provides service in parts of Hood River County and Wasco County, OR, both of which have been deemed competitive. However, these are very rural counties, and there are communities located in these counties where there is no competitive alternative to the ILEC for DS1 and DS3 transport services.
7. In parts of Hood River (pop. 7,167) and The Dalles (pop. 13,620), OR and Goldendale and White Salmon, WA, we have been able to develop a critical mass of customers and have since deployed fiber to replace the existing UNE based services. If we have no choice but to use commercial ILEC special access circuits for transport back to our fiber headend, the increased cost would delay or prevent us from continuing to invest in our own fiber facilities. Price increases for UNEs in Washington have already hindered our ability to build in that state.
8. Increased transport costs could jeopardize our ability to continue serving some customers in some communities including Odell, OR and Goldendale, Lyle, and Stevenson, WA where Gorge Networks currently offers specific telecommunications services not offered by the ILEC or offered at significantly higher prices.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Dan Bubb

5/9/2019

Date

ATTACHMENT 7

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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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)	
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Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
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Local Exchange Carriers)	
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Business Data Services in an Internet Protocol)	WC Docket No. 16-143
Environment)	
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Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	

FIRST SUPPLEMENTAL DECLARATION OF R. MATTHEW KOHLY

1. My name is R. Matthew Kohly. I am the Director of Carrier Relations and Government Affairs at Socket Telecom, LLC (“Socket”). I filed a declaration dated August 3, 2018 appended as Attachment 15 to the Opposition to the USTelecom Forbearance Petition with the Federal Communications Commission (“FCC”) filed by INCOMPAS and others in the above-referenced proceeding. I am supplementing that declaration with the following statement.

2. Socket provides telecommunications and data service to residential, business and critical community institutions such as hospitals and other medical facilities, law enforcement agencies, state agencies, community institutions, and educational facilities ranging from elementary schools to universities. These customers are located throughout much of Missouri, primarily outside the of St. Louis and Kansas City metropolitan areas. These areas consist

mostly of underserved suburban and rural communities and unincorporated areas of counties for which there is little to no competition to the ILEC. Where there might be a competitor in a town, it may only consist of a cable company serving a town within part of the county or a fiber carrier that is only providing middle-mile services to carriers or large, enterprise-level customers but provides no voice services and is not collocated in the incumbent local exchange company (“ILEC”) central office. The presence of this type of carrier does not mean there are competitive choices for smaller customers that can be served by DS1 transport combined with DS1 loops, nor do these competitors provide a competitive option for DS1 transport for Socket.

3. The FCC must realize that a competitor such as Socket uses unbundled DS1 transport and DS3 transport circuits differently. DS1 transport is used to serve individual customers, reach ILEC 911 selective routers, and in a few limited instances, it is used to reach a Point of Interconnection (“POI”) for the purpose of exchange voice traffic with ILECs under Section 251(c)(2). DS3 Transport is generally used as an aggregation circuit and is combined with multiplexing where DS1 Transport circuits are terminated. DS3s are also used to reach POIs for the purpose of exchanging voice traffic with ILECs.

4. With respect to DS1 transport, Socket primarily purchases unbundled ILEC DS1 Transport combined with DS1 Loops to carry our customers’ voice and data traffic from the customer premise to the ILEC end office serving that wire center and then on to DS3 facilities collocated in another ILEC central office. For example, Socket serves a community college where Socket serves the main campus with its own fiber but serves satellite campuses in other exchanges using UNEs consisting of unbundled dedicated transport combined with unbundled dedicated loops. The only way Socket could serve this multi-location community college and provide it with a competitive choice for all of its locations is through the availability of DS1

dedicated transport and DS1 loops. Over time, Socket will convert as many of these satellite locations as possible to its own network.

5. Access to unbundled transport is necessary in our service areas because there often is no alternative provider that can provide the initial level of transport service necessary for our customers, and in many cases there is no alternative provider at all. In many of these rural communities, it is not economically feasible to overbuild loop or transport facilities without first acquiring a customer base that could support and justify this investment. As noted above, in many areas where Socket is serving customers with remote locations, there *is no* potential for a large customer base.

6. As one example, Socket overbuilt the small town of Fayette, MO with fiber to the residences, businesses, and critical community institutions. This small town with less than 3,000 people has three middle-mile fiber transport carriers, two of which also offer only data service to enterprise customers. AT&T is the incumbent providing voice and data services in the town. There is not a CLEC collocated in AT&T's central office, so Socket does not have the option of combining unbundled UNE loops with competitive transport. Additionally, the cable company has recently withdrawn services from the town. For small and medium-size businesses, the only choice of landline broadband and voice services was the ILEC and Socket via UNE DS1 transport combined with UNE DS1 loops. Residential customers had no choice for landline broadband and voice service until Socket deployed fiber facilities in the town.

7. Initially, Socket was able to build a customer base to serve small and medium-size businesses through the use of DS1 transport combined with DS1 loops. With that customer base, Socket was able to deploy a fiber network and serve those customers and gain additional customers as it built the broadband network. Through its fiber broadband network, Socket

initially served business customers and critical community institutions but later expanded to serve residential customers as well. This is just one example of a community where Socket was able to use UNE DS1 transport combined with DS1 loops to initially serve a market and then later construct a fiber network. Examples such as this would not be possible without access to unbundled DS1 transport. This example also demonstrates that Socket remains the only competitive telecommunications and broadband choice for residential customers and small and medium-size business customers in part of a county, despite the fact that there are four other companies with fiber-optic telecommunications facilities in the town. For the rest of the county, there is no competitive option without the use of UNEs. It is not reasonable simply to assume that the presence of a fiber carrier in one town in a county means there are competitive options for all businesses and consumers.

8. We also have not seen competitive fiber-based providers emerge yet as an alternative source for transport service, even in areas deemed competitive by the Commission in the *Business Data Services* proceeding. There are communities or businesses located in these counties outside of downtown business districts where there is no competitive alternative to the ILEC for transport services. For example, Boone County, Missouri was deemed competitive in the *Business Data Services* proceeding. Boone County is also where Socket has its main office, has deployed fiber throughout three communities, two of which have populations of 4,000 or less, and is collocated in numerous ILEC central offices. Through the combination of its own fiber facilities, unbundled DS0 and DS1 loops and combinations of DS1 transport and DS1 loops, Socket is providing voice and data services to residential and business customers. Socket relies upon unbundled dedicated transport because there is no alternative transport provider offering transport services between the offices where Socket is collocated and the offices where

Socket is not collocated. Despite being deemed competitive, Boone County still has communities and business locations outside of city limits where Socket is the only competitive option and only capable of serving those customers with combinations of unbundled dedicated transport and unbundled dedicated loops. This same story occurs in numerous counties in Missouri.

9. A significant percentage of Socket's business customers have multiple locations. These customers range from customers with one large main location and several smaller satellite locations to customers with numerous locations where each would be considered a small to medium-size business. In either scenario, the sites can be spread across broad geographic areas, with locations often in rural areas, and where Socket is frequently the only competitive option they may have. In these remote locations, there is most often not a CLEC collocated in the ILEC's central office offering alternate transport services, without which Socket has no option for gaining access to the ILEC's loops facilities other than dedicated transport facilities leased from the ILEC.

10. In order to seriously compete in this market segment, a carrier must be able to provide a full range of telecommunications and data services with end-to-end connectivity between all these customers' various locations, while ensuring high quality and reliable service, and do so at competitive prices. Even small gaps in coverage results in a significant competitive disadvantage. The services these customers need ranges from basic local and long distance voice service, ISDN-PRI services in addition to private lines, and dedicated Ethernet services to more advanced and sophisticated services such as MPLS and WAN services and related services such as data backup, storage, and retrieval.

11. This is why access to UNE DS1 transport is so critical. No new entrant of Socket's size can compete with incumbents and their nationwide competitive affiliates without access to transport facilities on competitive terms. In many instances, Socket has deployed its own last mile fiber facilities to reach some of these customer locations. Socket will then supplement its own facilities with access to dedicated transport facilities combined with unbundled loops until it can deploy its own facilities. In other instances, a remote customer location is in a community that is just too small and distant for Socket to overbuild and is unlikely to ever have a competitive option. In these instances, access to unbundled DS1 transport at reasonable prices is extremely critical to providing a competitive option for that location.

12. As an example, Socket has one customer with over 90 locations. This customer is a healthcare provider that provides skilled nursing, assisted living, and senior services, with facilities spread throughout Missouri. Most locations are in rural areas and considered to be small to medium-size businesses. Socket serves their locations by purchasing UNE DS0 and DS1 loops, UNE DS1 transport combined with UNE DS1 loops, resold ILEC services, and where possible, using Socket's own fiber facilities. Socket continues to expand its fiber network to reach this customer's locations and convert them over to its own network. While Socket sought competitive options besides UNEs and resale for all of these locations, Socket was only able to find competitive alternatives for two of them. Without access to UNE DS1 transport, Socket would not be able to serve this customer, meet this customer's needs, and provide a competitive alternative. In most of the exchanges where this customer is located, including ones located in counties the FCC has classified as competitive in the *Business Data Services*

proceeding, Socket is the only competitive alternative to customers of this size needing voice and data services.

13. Accessing DS1 transport and allowing the CLEC to have a broad, ubiquitous network also enables CLECs such as Socket to turn-up customers quickly while expanding its own network facilities. This is necessary when competing with an incumbent provider that already possesses a ubiquitous network with facilities into a customer location and that is able to turn-up customers in a matter of days as compared to a new entrant, which may take weeks to place a drop or months to expand its existing network to reach a customer location. In today's on-demand society, potential customers simply will not wait for a new entrant such as Socket to construct network facilities to reach their locations. Access to unbundled DS1 transport combined with DS1 loop facilities provides an important stop-gap for meeting this demand.

14. The need for DS1 transport to provide for a ubiquitous network is not limited to broad geographic areas. The same needs also exist within the same exchange or same county with multiple wire centers. Socket may be collocated and relying upon UNE DS0 and DS1 loops, and dedicated transport combined with DS1 loops while also having fiber facilities in that same exchange. In this scenario, Socket may be able to reach one or some of the customer's locations with its own facilities but not the customer's other locations in different wire centers within the same exchange because of the cost of construction to reach all locations. Over time, Socket may be able to expand its broadband network to reach the other locations and convert them to its own network.

15. The presence of a cable company, or even fiber company, does not mean there are competitive options for DS1 or even DS3 Transport. It is our experience that fiber middle-mile transport and enterprise-level providers do not move down-market to serve small to medium-size

businesses and residential consumers even in areas where they have fiber facilities. Also, many of these larger middle-mile and enterprise-level providers only provide data services and do not provide any voice services. Without Socket's access to UNEs to help construct networks to build customer bases and expand its network, consumers and businesses in these situations will lose their competitive choice because the only other provider is the incumbent.

16. Special access DS1s and DS3s are not feasible options for several reasons. First, is the just the sheer cost. Combinations of special access DS1 channel termination and DS1 transport range from 368% to 390% higher than Socket's cost of the combination of UNE dedicated transport and DS1 loops. These are costs that a new entrant simply cannot absorb and that Socket's customers cannot pay. Deregulating these facilities will certainly lead to additional price increases.

17. As another example of the price difference between unbundled DS1 Transport and special access DS1 transport, CenturyLink recently restructured its 911 selective router facilities and trunking in Missouri and began billing Socket special access rates for DS1 transport rather the UNE rates set forth in the ICA between Socket and legacy Embarq that it had been billing. For a DS1 facility consisting of dedicated transport and multiplexing, CenturyTel had been billing Socket a UNE rate of \$335.82 per month for DS1 transport on a transport route between its Warrensburg Central Office and its Maryville Central Office. CenturyLink is now billing Socket \$1,207 per month for a DS1 Special Access facility on the exact same route; resulting in a 259% price increase for the same DS1 facility. The dedicated transport mileage rate element alone increased 421%. This rate element would apply to Socket DS1 transport facilities used to serve customer locations if Socket were forced to purchase special access services as opposed to UNE facilities. It is worth noting this circuit is between Johnson and

Nodaway counties, which are two counties the FCC declared competitive for loops in the *Business Data Services* proceeding. Based on Socket's experience, declaring these special access transport services as competitive nationwide will likely result in additional rate increases as there are clearly no competitive DS1 options for reaching an ILEC selective router or for DS1 facilities in general. For example, not long after the *BDS Order* went into effect, Socket was notified by CenturyLink of rate increases in what it referred to as "newly competitive territories."

18. In addition to being priced substantially higher, special access circuits typically come with a term; generally one to three years. Socket relies upon UNEs to build a customer base and then convert that base to its own network once it completes the construction of that network. Purchasing circuits under a term delays that process as Socket would have to wait for that term to expire or pay the ILEC early termination fees. Clearly, abandoning UNEs in favor of special access creates a barrier to entry in this situation.

19. Without access to unbundled transport, Socket's collocations in ILEC central offices will also lose significant functionality and value as Socket would lose the ability to have a ubiquitous network on commercially reasonable terms. The only UNEs those collocations could obtain would be loops serving the wire center where Socket is collocated. In addition, Socket would have stranded investment due to equipment no longer being needed to serve customers it had been serving via dedicated DS1 transport combined with DS1 loops.

20. If Socket were to lose access to unbundled transport, the higher costs of switching to special access DS1 circuits would force Socket to cease providing voice and broadband services in several distant rural markets, and it would divert resources away from building Socket's own fiber facilities. As a result, the pace of Socket's network buildout would definitely be slowed, and areas would possibly not be constructed due to budget constraints.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

R. Matthew Kohly
R. Matthew Kohly

5/9/19
Date

ATTACHMENT 8

**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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

DECLARATION OF MARK IANNUZZI

1. My name is Mark Iannuzzi. I am president at TelNet Worldwide, Inc. (“TelNet”).
2. TelNet provides telecommunications and data service to small, mid and large businesses, K-12 schools, colleges, universities, government agencies, health care organization, utilities, and financial institutions in underserved urban, suburban, and rural communities in the Midwest United States.
3. In many of the communities served by TelNet, we use ILEC transport in the form of unbundled DS1 and DS3 circuits to carry our customers’ traffic from the closest end office to an interconnection point located elsewhere in the ILEC network.
4. Access to unbundled transport is necessary in our service areas because there often is no competitor to the ILEC that can provide the level of service necessary for our customers, or no competitive provider at all. In suburban Detroit, Ann Arbor, Grand Rapids, Lansing, and

Kalamazoo, for example, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers. As a result, the only way we can transport our customers' traffic from that end office is to use the ILEC's DS1 and DS3 facilities.

5. Replacing unbundled transport with DS1 or DS3 special access circuits is not economically feasible. In TelNet's experience, a typical special access DS1 or DS3 transport service is four times more expensive than a UNE.
6. TelNet provides service in parts of Wayne, Oakland, Macomb, Washtenaw, Kent, and Ingham counties, all of which have been deemed competitive by the FCC's BDS Order. However, there are communities located in these counties where there is no competitive alternative to the ILEC for transport services. These are the most populous counties in the state of Michigan, but they remain underserved.
7. If we have no choice but to use commercial ILEC special access circuits for transport, the increased cost would prevent us from continuing to invest in our own fiber facilities. We deploy fiber to the customer locations in Detroit, Grand Rapids, and Lansing, Michigan once the necessary customer base has been reached and it becomes economically feasible to construct our own loops. We also have deployed fiber transport where feasible.
8. Increased transport costs could jeopardize our ability to continue serving some communities, including in all locations where TelNet's bonding equipment is currently offering higher-speed data service than the ILEC.
9. TelNet has been able to grow a customer base and to invest in bringing advanced services and fiber to many underserved communities. Continued access to unbundled transport services in these areas that lack alternative facilities will be critical to our ability to continue offering competitive services and building out fiber facilities.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

/s/ Mark Iannuzzi

Mark Iannuzzi

5/9/19

Date

ATTACHMENT 9

**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)	
)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet Protocol)	
Environment; Special Access for Price Cap)	
Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers)	

FIRST SUPPLEMENTAL DECLARATION OF DUSAN JANJIC

1. My name is Dusan Janjic. I am the President of Virginia Global Communications Systems (“VGCS”). I filed a declaration dated August 4, 2018 as Attachment 16 to the INCOMPAS Opposition to the USTelecom Forbearance Petition.
2. VGCS provides telecommunications and data service to residential, business, government, and community institutions customers in Rockbridge County, Virginia. Most of the communities in this county are underserved or unserved rural areas in which there is little to no competition to the ILEC.
3. In many of the communities served by VGCS, we use ILEC transport in the form of unbundled DS1 and DS3 circuits to carry our customers’ traffic from the closest end office to an interconnection point located elsewhere in the ILEC network. For example, in Buena Vista (pop. 6,650) and Lexington (pop. 7,042), Virginia, where we have not built facilities to the customer’s

location, we use ILEC unbundled transport together with unbundled DS1 loops to serve those customers.

4. Access to unbundled transport is necessary in our service areas because there often is no alternative provider that can provide the level of service necessary for our customers, and in many cases there is no alternative provider at all.
5. In remote areas of the Rockbridge County, where customers are served out of remote cabinets, there are no collocated competitive facilities-based providers. As a result, the only way we can transport our customers' traffic from that end office is to use the ILEC's DS1 facilities. Losing access to unbundled DS1 transport threatens the continued availability of competitive alternatives for our customers.
6. Replacing unbundled transport with DS1 special access circuits is not economically feasible in light of recent ILEC price increases. In our area of service, special access circuits are three times more expensive compared to unbundled network elements.
7. VGCS has been able to grow a customer base and to invest in bringing advanced services and fiber to many underserved communities. Continued access to unbundled transport services in these areas that lack alternative facilities will be critical to our ability to continue offering competitive services and investing in facilities.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

/s/ Dusan Janjic

Dusan Janjic

May 9, 2019

Date