

August 5, 2020

**Via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

Re: *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308

Dear Ms. Dortch:

By this letter, in recognition of the current state of competition in the communications marketplace, the undersigned companies and associations (“Joint Parties”) propose a compromise resolution that the Federal Communications Commission (“Commission”) can and should adopt to bring to a close consideration of whether and to what extent incumbent local exchange carriers (“LECs”) must continue to provide access to unbundled DS0 loops, DS1 loops, DS3 loops, and Operation Support Systems (“OSS”) in the above-referenced docket (the “Compromise Proposal”).<sup>1</sup> The Joint Parties, which include nearly every interested competitive local exchange carrier and incumbent LEC in this docket, emphasize that the Compromise Proposal is just that—a bargained-for, negotiated outcome that reflects trade-offs and concessions between certain providers and purchasers of these unbundled network elements that have previously disputed the appropriate scope of the Commission’s unbundling rules at the Commission and in court. As such, the Compromise Proposal necessarily departs in at least some ways from the specific positions each individual signatory has advanced in this proceeding. Nevertheless, each of the positions described in the Compromise Proposal are in direct response to the record in this proceeding. As detailed below, the outcomes set out are lawful and are logical outgrowths of the *NPRM* proposals in this matter, within the reasonable range of conclusions supported by the record, and a reasonable resolution of these issues in the public interest.<sup>2</sup> The Commission should adopt the Compromise Proposal, and it is legally justified in doing so without further comment. By adopting the Compromise Proposal, the Commission will provide the certainty that all providers need to move forward with their business plans, allowing

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<sup>1</sup> Joint Parties agree that should the Commission adopt the Compromise Proposal, they will not challenge any final order for the elements expressly included in the Compromise Proposal. Joint Parties remain free to continue advocacy and litigation on these unbundled network elements not explicitly addressed herein: unbundled dark fiber and avoided cost resale. The following unbundled network elements were not considered in developing this Compromise Proposal: UNE Analog Loops in non-price cap areas, 64 kbps voice-grade channels over last-mile fiber loops, Multiunit Premises UNE Subloop, network interface devices (NIDs), and the TDM capabilities, features, and functionalities of hybrid loops.

<sup>2</sup> *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Notice of Proposed Rulemaking, 34 FCC Rcd 11290 (2019) (“*NPRM*”).

them to compete in the marketplace, rather than continuing to battle in regulatory and judicial fora, in the interest of all customers.

The Joint Parties propose that the Commission reach the following resolutions in an ultimate *Order* (hereinafter referred to as “*Order*”).

- DS0 Loops:
  - Requesting carriers are impaired without unbundled access to DS0 loops in non-urban census blocks and census blocks in Urban Clusters with no changes to the rules governing access to or pricing of those UNE DS0 loops.<sup>3</sup> In census blocks in Urbanized Areas, requesting carriers are not impaired without such access. Subject to the conditions set forth below, which are necessary to the proposed findings, the Commission would simultaneously (a) find non-impairment and (b) exercise its Section 10 authority to forbear from unbundling obligations in all census blocks in Urbanized Areas.
  - In census blocks in Urbanized Areas, to sustain the non-impairment and forbearance conclusions, requesting carriers will be allowed to continue to utilize unbundled DS0 loops that they were leasing as of the *Order*'s effective date for up to 48 months following that date.
  - Requesting carriers will be allowed to lease new unbundled DS0 loops in those Urbanized Area census blocks for 24 months following the *Order*'s effective date.
  - Incumbent LECs will not be entitled to raise rates on unbundled DS0 loops in Urbanized Areas—including for those unbundled DS0 loops ordered during the two-year new ordering period—for 36 months following the *Order*'s effective date. Incumbent LECs *will* be entitled to raise such rates by up to 25 percent in months 37-48, and to charge market-based rates after month 48, including for those unbundled DS0 loops ordered during the two-year new ordering period.
  - Where suitable facilities exist, incumbent LECs will make commercial alternatives available to requesting carriers in any area in which unbundled DS0 loops are no longer available.
  
- DS1 Loops:
  - Requesting carriers in both urban and rural areas are impaired without unbundled access to DS1 loops in (and only in) counties deemed non-competitive (except as previously determined under the *Triennial Review*

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<sup>3</sup> For the purposes of this Compromise Proposal, the terms “Urban Clusters” and “Urbanized Areas” have the meaning adopted by the Bureau of the Census in <https://www.federalregister.gov/documents/2011/08/24/2011-21647/urban-area-criteria-for-the-2010-census>.

*Remand Order*) pursuant to the competitive market test (“CMT”) developed in the *BDS Order*, with no change in the rules governing access to or pricing of those UNE DS1 loops.<sup>4</sup> Subject to the conditions set forth below, which are necessary to the proposed findings, the Commission would simultaneously (a) find non-impairment and (b) exercise its Section 10 authority to forbear from unbundling obligations in all urban and rural census blocks in counties deemed competitive under the CMT.

- In counties deemed competitive under the CMT, to sustain the non-impairment and forbearance conclusions, requesting carriers will be allowed to continue to utilize unbundled DS1 loops that they were leasing as of the *Order*’s effective date for up to 42 months following that effective date. During that period, the incumbent LEC will not increase rates for access to the unbundled DS1 loop.
  - In those “competitive” counties, requesting carriers will be entitled to order new unbundled DS1 loops for the first 24 months following the *Order*’s effective date and retain those loops up to 42 months after that effective date. However, carriers will not be entitled to convert special access circuits to UNEs under any circumstances at any point following the date on which the *Order* is adopted.
- DS3 Loops:
    - Requesting carriers are impaired without unbundled access to DS3 loops in (and only in) counties deemed non-competitive pursuant to the CMT, with no change in the rules governing access to or pricing of those UNE DS3 loops. Subject to the conditions set forth below, which are necessary to the proposed findings, the Commission would simultaneously (a) find non-impairment and (b) exercise its Section 10 authority to forbear from unbundling obligations in counties deemed competitive under the CMT.
    - In counties deemed competitive under the CMT, requesting carriers will be allowed to continue to utilize unbundled DS3 loops that they were leasing as of the *Order*’s effective date for up to 36 months following that date. During that period, the incumbent LEC will not increase rates for access to the unbundled DS3 loop.
    - Requesting carriers will not be entitled to order new unbundled DS3 loops in those counties as of the effective date of the *Order*. Also, carriers will not be entitled to convert special access circuits to UNEs under any circumstances at any point following the date on which the *Order* is adopted.

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<sup>4</sup> *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143 *et al.*, Report and Order, 32 FCC Rcd 3459 (2017) (“*BDS Order*”). Within non-competitive counties, existing non-impairment restrictions for DS1 and DS3 loops under the *Triennial Review Remand Order* (i.e., non-impaired wire center designations and caps on the numbers of UNEs that a requesting carrier may obtain) continue to apply.

- OSS:
  - Requesting carriers are impaired without unbundled access to OSS for purposes of local interconnection and local number portability where the incumbent LEC maintains such databases.<sup>5</sup>
  - Requesting carriers are not impaired without access to unbundled OSS used in connection with a given network element where, and to the extent conditioned above, the Commission has found that requesting carriers are not impaired without unbundled access to that network element in the geographic market at issue (i.e., “standalone” OSS unbundling) and/or the Commission has exercised its Section 10 authority to forbear from unbundling obligations for that network element in that market.<sup>6</sup>
  - As a further condition of its findings of non-impairment and/or forbearance with respect to DS0, DS1 and DS3 loops, where commercial alternatives are available, an incumbent LEC will provide commercial access to its OSS systems to requesting carriers in any area in which unbundled OSS functionality is no longer available.

In the interest of facilitating the Compromise Proposal’s adoption, the Joint Parties make the following observations:

*First*, as noted above, the Commission can and should implement this Compromise Proposal by (1) finding that, subject to the conditions and limitations described above including the transitional periods and terms, competitors are not impaired without access to the network elements for which unbundling obligations are removed, while simultaneously (2) subject to those same conditions, limitations and transitions, forbearing from application of Section 251(c)(3)’s unbundling mandate to the extent it requires unbundling in circumstances in which the Joint Proposal calls for a finding of non-impairment. While the Compromise Proposal is lawful and should easily withstand judicial scrutiny, the Joint Parties understand that any proceeding could result in litigation, and that litigation always entails risk. The dual non-impairment/forbearance approach is warranted by the record and would increase the likelihood that the Commission’s ultimate *Order* would be affirmed if appealed. Specifically, a finding vacating the non-impairment finding but not the forbearance finding, or vice versa, would allow the framework itself to survive on the legal basis that the court had upheld.<sup>7</sup> Moreover, reaching the non-impairment and forbearance conclusions contingent on adherence to the conditions, limitations and transition plans recognizes that those provisions are, within the context of the Compromise Proposal, also essential elements of findings under the statutory standards.

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<sup>5</sup> The *NPRM* did not propose eliminating OSS for use with remaining elements, such as 911, so that is not addressed herein and remains for use for those remaining elements.

<sup>6</sup> The transition period for OSS coincides with the loop transitions previously laid out in the Compromise Proposal.

<sup>7</sup> See, e.g., USTelecom Reply Comments, WC Docket No. 19-308, at 10-13.

**Second**, while the Compromise Proposal departs from at least some of the outcomes previously advocated by at least some of the Joint Parties, it falls well within the Commission’s reasonable discretion and is supported by the current record. Longstanding and repeated Commission precedent supports the adoption of industry compromise proposals supported by adverse parties, even where the compromise proposal differs from elements of the prior advocacy of individual signatories to the proposal.<sup>8</sup> Moreover, the Compromise Proposal’s specific outcomes—even if not the “first preferences” of any one signatory—are supported by the record and stand on their own merits. In all the elements it addresses (*i.e.*, DS0, DS1, DS3 loops, and OSS), the Compromise Proposal (1) tracks the *NPRM*’s proposal closely (as detailed below) while proposing suggested modifications reflecting the interests of UNE providers, requesting carriers and, as the beneficiaries of competition and of facilities-based deployment, customers, and (2) is lawful for the reasons discussed in the *NPRM* and elsewhere.

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<sup>8</sup> See, *e.g.*, *Access Charge Reform*, CC Docket No. 96-262 *et al.*, Sixth Report and Order in CC Docket Nos. 960262 and 94-1, *et al.*, 15 FCC Rcd 12962, ¶ 48 (2000) (“We acknowledge that CALLS signatories have made compromises, both among themselves and to accommodate other interests. Having two groups representing historically opposing positions, *i.e.*, LECs (sellers of access services) and IXC (buyers), reach an agreement removes much of the rhetoric that has stood as an obstacle to comprehensive action. Thus, the CALLS Proposal allows us to move forward more quickly by removing certain issues from consideration that would have delayed reaching a comprehensive solution. The fact that the resolution of these issues was achieved through a joint proposal among a cross-section of LECs and IXCs provides us with some indication that the proposal is within a zone of reasonableness. We believe the parties have negotiated with each other in good faith and fashioned a reasonable compromise that both addresses their competing interests and serves the broader public interest. We also believe that the proposal, particularly after taking its modifications into account, fairly balances the interests of all parties, including those who are not part of the coalition.”), *on remand*, Order on Remand, 18 FCC Rcd 14976, 14996 (“As the Commission noted in the CALLS Order, the fact that both net payers and net recipients of universal service support agreed to the \$650 million amount as members of CALLS also indicates strongly that the CALLS plan appropriately balanced the various and divergent interests implicated in access charge reform.”); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Sixth Report and Order, 30 FCC Rcd 6653, 6655 ¶ 4 (2015) (“We conclude that it would serve the public interest to adopt the joint proposal put forth by ACA and NAB. Throughout the course of this proceeding, ACA and NAB have expressed differing views about the appropriate scope and duration of the HD carriage exemption, among other issues.”); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Fifth Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking, 24 FCC Rcd 12258, 12258 ¶ 2 (2009) (adopting a “compromise proposal” that “balance[d] the concerns of both educators and commercial lessees”); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 2374, 2385, ¶ 26 (2014) (“invit[ing] relevant stakeholders – including public safety and industry – to propose a consensus approach”); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fourth Report and Order, 30 FCC Rcd 1259, 1271 ¶ 36 (2015) (“We applaud the process that resulted in these commitments and the benefits that will flow to the American people as a result. To ensure that all parties make progress as promised, and to ensure that all stakeholders and the Commission have adequate assurances that parties are held accountable, we are codifying these commitments through the rules we adopt today.”).

*Third*, adoption of this Compromise Proposal would be a “logical outgrowth” of the questions posed by the *NPRM*, and fall squarely within the scope of outcomes contemplated by that document.

- **DS0 Loops.** The *NPRM* “propose[d] to find that competitive LECs are no longer impaired without access to UNE DS0 Loops in urban census blocks.”<sup>9</sup> The Compromise Proposal contemplates that result for a subset of those blocks – census blocks in Urbanized Areas. The *NPRM* likewise recognized the need for a transition and sought comment as to an appropriate timeframe for the transition, including what would be the suitable transition period for new orders. Thus, the Compromise Proposal, although slightly less expansive in the scope of its geographic relief<sup>10</sup> and with a slightly longer transition period than proposed in the *NPRM*<sup>11</sup>—maps neatly onto the *NPRM*’s proposal as to DS0 loops.<sup>12</sup> Finally, the interim application of pricing flexibility in the final year of the transition falls squarely within the scope of the *NPRM*’s inquiry into “[w]hat conditions, if any, should apply to a transition period.”<sup>13</sup> Indeed, the Commission has previously adopted transition periods subject to similar pricing modification—in the same context and for the same reasons as it would be doing here.<sup>14</sup> As a result, parties

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<sup>9</sup> *NPRM*, 34 FCC Rcd at 11306 ¶ 38.

<sup>10</sup> See Reply Comments of INCOMPAS and the Northwest Telecommunications Association, at 7, WC Docket No. 19-308 (filed Mar. 20, 2020) (“INCOMPAS and NWTAA Reply Comments”) (stating that the Commission should adopt a more expansive definition of “rural” because “many ‘urban clusters’ that depend on and would lose CLECs’ UNE-based services are sparsely populated communities of as few as 2,500 people (and fewer households) that present similar barriers to entry as nearby ‘rural’ areas”). See also Comments of SnowCrest, WC Docket No. 19-308 (filed Feb. 5, 2020), at 4-5 (asking the Commission to exclude urban clusters from the item’s definition of “urban areas”); Declaration of R. Matthew Kohly, WC Docket No. 19-308 (filed Feb. 5, 2020), at 32 (indicating that under the Commission’s proposals, Socket Telecom, LLC will be unable to provision DS0s in urban clusters).

<sup>11</sup> See *NPRM*, 34 FCC Rcd at 11325-26 ¶ 97.

<sup>12</sup> The Compromise Proposal also extends to Copper UNE Subloops (“Subloops”). Subloops would remain available as a UNE where DS0 loops are available as UNEs. Subloops would not be available as a UNE where DS0s are unavailable as UNEs.

<sup>13</sup> *NPRM*, 34 FCC Rcd at 11326 ¶ 99.

<sup>14</sup> In the *TRRO*, the Commission eliminated unbundling obligations for certain DS1 and DS3 loops, DS1 and DS3 transport on certain routes, and local circuit switching. In each case, elimination of unbundling was subject to a transition, but in each case, the Commission expressly permitted rate increases during the transition period. In all three instances, the Commission explained that the rate increases would “help ensure an orderly transition by mitigating the rate shock that could be suffered by competitive LECs if TELRIC pricing were immediately eliminated for these network elements” while “provid[ing] some protection of the interests of incumbent LECs in those situations where unbundling is not required.” See *TRRO* ¶¶ 145, 198, 228.

have had ample opportunity to comment on the proposal—and have in fact done so, proposing both shorter and longer transitions.<sup>15</sup>

- **DS1/DS3 Loops.** Likewise, the *NPRM* “propose[d] to find no impairment with respect to UNE DS1 and DS3 Loops in (1) counties served by price cap incumbent LECs found to be competitive pursuant to the *BDS Order*; and (2) the study areas deemed competitive as a result of our decision to allow certain rate-of-return incumbent LECs to elect incentive regulation for their business data services,” and sought “comment on this proposal.”<sup>16</sup> This proposal also recognized the importance of a transition period, seeking comment on the appropriate timeframe. Here, then, the Compromise Proposal is virtually identical to the *NPRM*’s own proposal<sup>17</sup>—only extending slightly further in favor of requesting carriers with regard to (1) the length of the DS1 transition period,<sup>18</sup> and (2) the addition of a 24-month option for new DS1 orders while not providing an exemption for DS1 loops used to provide residential broadband service and telecommunications service in rural areas,<sup>19</sup> and (3) no new ordering period for

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<sup>15</sup> The Compromise Proposal also has a shorter transition period than some advocated elsewhere in the record. *See* Comments of INCOMPAS and NWTa at 18, WC Docket No. 19-308 (filed Feb. 5, 2020) (“Nor should the Commission set a shorter transition period than the seven years . . .”). However, other parties advocated that Commission precedent supports a shorter transition period. *See* Comments of USTelecom—The Broadband Association at 66, WC Docket No. 19-308 (filed Feb. 5, 2020) (“[T]he Commission should impose an 18-month transition period, which would match or exceed periods it has adopted in the past.”).

<sup>16</sup> *TRRO* at 11302 ¶ 27.

<sup>17</sup> The Compromise Proposal also extends to Copper UNE Subloops (“Subloops”). Subloops would remain available as a UNE where DS0 loops are available as UNEs. Subloops would not be available as a UNE where DS0 loops are unavailable as UNEs.

<sup>18</sup> *See* Reply Comments of Comments of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc. at 30, WC Docket No. 19-308 (filed Mar. 20, 2020) (“A three-year or shorter transition for UNE loops is grossly insufficient for rational business planning and ensuring that existing customers maintain uninterrupted service.”). While Joint Parties agree that a slightly longer transition time is appropriate for DS1 loops than originally proposed in the *NPRM*, it is not necessary for the transition to match the transition timeline Joint Parties proposed for DS0s for several reasons. First, the record and *NPRM* make clear DS1 and DS3 loops almost exclusively serve enterprise, not residential customers. *See, e.g.*, Reply Comments of Verizon at 4, WC Docket No. 19-308 (filed Mar. 20, 2020) (“[T]he use of these high-capacity loops for residential customers is *de minimis*.”); Reply Comments of Frontier at 7, WC Docket No. 19-308 (filed Mar. 20, 2020) (“DS1s and DS3s are used exclusively to serve businesses.”). Second, as the *NRPM* notes, “DS1 and DS3 services will remain available for purchase on a commercial basis as business data services.” *NRPM* 34 FCC Rcd at 11303 ¶ 29. Thus, parties do not require additional time to negotiate the commercial replacement product terms as is the case for DS0s.

<sup>19</sup> *See, e.g.*, Comments of USTelecom—The Broadband Association at 22, WC Docket No. 19-308 (filed Feb. 5, 2020) (“The record shows there is no need to exempt residential broadband in rural areas from the relief proposed in the *NPRM*.”); Reply Comments of AT&T at 19-20, WC Docket No. 19-308 (filed Mar. 20, 2020) (“Such an exemption would thus have little payoff for actual residential customers, while at the

DS3 loops.<sup>20</sup> The *NPRM* has thus, once again, permitted extensive comment, including a wide range of transition proposals.

- **OSS.** Finally, the *NPRM* proposed to forbear altogether from “the standalone OSS unbundling obligation” (*i.e.*, OSS “when used for purposes other than managing other UNEs”), stating that “its very limited use in today’s marketplace is evidence that this standalone UNE is not necessary to ensure either just and reasonable rates or consumer protection and forbearance would be consistent with the public interest.”<sup>21</sup> The Compromise Proposal moves partway toward the proposal on which the Commission sought comment, but retains the *status quo* for OSS used to facilitate local interconnection, local number portability, and 911 and E-911 databases, where the incumbent LEC maintains such databases as the designated 911 provider in a given state.<sup>22</sup> A resolution that adopts most of a proposed outcome but retains the *status quo* as to certain matters is clearly the “logical outgrowth” of the *NPRM*. Here, too, then, parties have been afforded sufficient opportunity for comment.

Accordingly, all parties had both (1) ample basis for anticipating the Compromise Proposal’s outcomes, and (2) extensive opportunity to comment on all relevant issues.<sup>23</sup> Moreover, the signatories to this letter represent the vast majority of commenters in the record who addressed these issues and are directly impacted by the outcome.

***Fourth and finally***, the Commission may lawfully find non-impairment subject to conditions and forbear subject to a transition period. The Commission has broad authority to

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same time needlessly impose administrative costs on incumbent LECs that they would have little opportunity to recoup.”); Comments of CenturyLink at 4, WC Docket No. 19-308 (filed Feb. 5, 2020) (“Any marginal benefit from the proposed rural residential carve-out would be outweighed by administrative and other concerns.”).

<sup>20</sup> See, e.g., Reply Comments of AT&T at 18 (“UNE DS3 loops have fallen into such severe decline that that there is no basis for retaining unbundling requirements”). Additionally, the companies that signed this letter as USTelecom members only indicate that in the past 16 months, they have, combined, received less than 10 new orders of DS3 UNE loops.

<sup>21</sup> *NPRM*, at 11322 ¶ 84.

<sup>22</sup> See, e.g., Reply Comments of Sonic Telecom, LLC, WC Docket No. 19-308 (filed Mar. 20, 2020), at 17 (expressing the need for ILECs to “maintain OSS systems that serve purposes other than unbundling such as number porting”); Reply Comments of National Association of State Utility Consumer Advocates, WC Docket No. 19-308 (filed Mar. 20, 2020), at 7 (indicating that elimination of the OSS UNE would impair CLEC customers’ ability to receive directory information, delay number porting, and increase the difficulty in changing providers); Reply Comments of USTelecom—The Broadband Association at 34, WC Docket No. 19-308 (filed Mar. 20, 2020)(“[D]eregulation of OSS should not disrupt legitimate public safety interests.”).

<sup>23</sup> See, e.g., *Covad Commc’ns Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006) (internal citation omitted) (“Whether the ‘logical outgrowth’ test is satisfied depends on whether the affected party ‘should have anticipated’ the agency’s final course in light of the initial notice.”).

craft the scope of non-impairment, forbearance and transitional regimes.<sup>24</sup> The agency has routinely imposed transitions in the unbundling context. In the *Triennial Review Order*, the Commission found that requesting carriers were no longer impaired without unbundled access to the high-frequency portion of the loop (also known as “line sharing”), but established a three-year transition period for phasing out such arrangements.<sup>25</sup> In the *Triennial Review Remand Order*, the Commission imposed a 12-month transition for DS1 and DS3 loops and transport and circuit switching, and an 18-month transition for dark fiber loops and transport between wire centers where both are classified as tier 1 or tier 2—in each case notwithstanding non-impairment findings.<sup>26</sup> And, in both the *UNE Transport Forbearance Order* and *UNE Analog Loop and Avoided-Cost Resale Order*, the Commission provided three-year transition periods.<sup>27</sup> Longer transitions have also been adopted by the Commission in other contexts.<sup>28</sup>

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The Compromise Proposal would bring finality and certainty to issues that have long bedeviled parties and policymakers alike. It would do so in a manner that accounts for the interests of parties that have been adverse to one another over many years. It would be lawful, and amenable to implementation without further comment. In presenting this proposal, we urge the Commission to adopt this proposal without modification. The parties to the negotiations all have made concessions to bring this overall effort to fruition, and the overall proposal represents a delicate balancing of interests that we urge the Commission not to disturb. The Joint Parties therefore respectfully ask that the Commission adopt the proposed outcomes, ending long-simmering disputes and allowing network providers of all types to focus on what they do best: Providing cutting-edge services to the American people.

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<sup>24</sup> See, e.g., *Direct Commc’ns Cedar Valley, LLC v. FCC*, 853 F.3d 1015, 1143 (10th Cir. 2014) (“[T]he FCC has broad discretion to balance competing policy goals, including the control of transition costs.”).

<sup>25</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16992 ¶ 6 and 17138 ¶ 265 (2003) (providing transition periods designed to minimize disruption to providers resulting from reform to the Commission’s complex intercarrier compensation rules).

<sup>26</sup> *Unbundled Access to Network Elements et al.*, Order on Remand, 20 FCC Rcd 2533, 2536 ¶ 5, 2612 ¶ 142 (transport) (2005); *id.* at 2639 ¶ 195 (loops); *id.* at 2659 ¶ 226 (switching).

<sup>27</sup> *Business Data Services in an Internet Protocol Environment et al.*, Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767, 5795 ¶ 61 (2019) (“*UNE Transport Forbearance Order*”); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, 34 FCC Rcd 6503, 6516 ¶ 23 (2019) (“*UNE Analog Loop and Avoided-Cost Resale Order*”); see also *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Notice of Proposed Rulemaking, 34 FCC Rcd 11290, 11326 ¶ 98 (2019) (quoting and summarizing the same).

<sup>28</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17676-77 ¶ 35 (2011) (“*USF/ICC Transformation Order*”).

Sincerely,

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