Morgan Lewis

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February 13, 2019

Via ECFS

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

Re: WC Docket No. 18-141
Notice of Ex Parte Communication

Dear Ms. Dortch:

On February 11, 2018, Richard A. Jalkut, Chairman of the Board and Chief Executive Officer; Russell Shipley, Executive Vice President, Wholesale and Network Services; William P. Hunt III, General Counsel, Senior Vice President & Secretary, on behalf of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications ("TPx"), and the undersigned held separate meetings with (1) Chairman Ajit Pai and Nirali Patel, Wireline Legal Advisor and (2) Commissioner Michael O'Rielly and Arielle Roth, Wireline Legal Advisor.

TPx explained the continued importance of unbundled network elements ("UNEs") to competitive markets and the adverse impact complete forbearance from Section 251(c) obligations would have on its customers. TPx described its use of UNEs to serve primarily small and mid-sized businesses, schools, libraries and other community anchor institutions in urban and suburban areas. TPx has found this customer segment to be a niche market largely left unserved. In contrast, TPx receives very high customer satisfaction ratings serving these customers.

Grant of USTelecom's requested forbearance would result in significant disruptions for the majority of TPx customers. TPx would not be able to order UNEs to augment or repair customers' existing services. Prior to February 2021, TPx would have to work with its approximately 30,000 customers to find alternatives to their current broadband Ethernet over Copper ("EoC") and/or Plain Old Telephone Service ("POTS"). If TPx was unable to find alternative last mile access, its customers might have no option other than to return to the incumbent LEC who is likely to replace TPx's services with the incumbent LEC's POTS, EoC or asymmetric high speed Internet access service that is not preferred by TPx's customers who are enjoying symmetric broadband today.

Although TPx relies on Ethernet over Fiber ("EoF") for its last mile access to thousands of customers, it uses a significant number of incumbent LEC DS0 loops to provide EoC service, primarily in California, Nevada and Texas. TPx made substantial investments in collocation, equipment, data centers, switches, and methods and procedures to offer broadband service by attaching electronics to both ends of dry copper loops. TPx offered EoC to customers approximately three years before one incumbent LEC began offering EoC.

TPx explained that 75% of its existing customers do not have fiber available in their location. TPx's average customer requires only a 5-20 Mbps service and fiber providers often will not provision fiber for such low bandwidth services. Even where its existing customers have fiber within 500 feet of their premise, the costs for last mile deployment – which ultimately must be paid by TPx's customers – are prohibitive. TPx also explained that fixed wireless solutions are not always viable especially if line-of-sight issues are prevalent.

TPx obtains DS1 UNEs to provide service to customers with low bandwidth demands that cannot obtain EoC service due to loop length or low-quality copper. In addition, TPx uses UNE loops to provide POTS, which its customers use for telephone service, fax machines, key systems, and alarm services. TPx explained that its local government customers, among others, continue to rely on line-powered POTS for reliability and alarm systems, and VoIP or other over-the-top solutions are insufficient to meet their needs.

The Commission must have some idea of what a post-forbearance world would look like to determine if forbearance is in the public interest. TPx continues to request information from the incumbent LECs about their plans for commercial arrangements to replace UNEs. With only three months left until the initial deadline for Commission action on forbearance, only one incumbent LEC has provided some details about what it might offer post-forbearance. Others have told TPx that they will not offer any such details until *after* the Commission grants the USTelecom Petition.

TPx predicts that copper will continue to be used in incumbent LECs' networks for decades to come. Technologies like EoC and G.fast enable LECs to offer broadband speeds up to one Gig over copper plant. TPx does not oppose a natural decline in the availability of UNEs that results from incumbent LECs retiring their copper plant, which incentivizes the ***actual*** deployment of fiber, not the ***promise*** to build. Instead of the operational cliff that forbearance would create – where competitive providers will need to obtain replacements for UNEs used to serve millions of customers nearly overnight – natural forbearance allows for a measured transition from UNEs to alternative access methods. The Commission should not give incumbent LECs carte blanche to increase UNE rates or force millions of customers to find alternative service. Incumbent LECs should obtain relief from unbundling obligations only where they have deployed fiber or entered commercial arrangements for alternatives to UNEs. Because so little is known about what the ILECs will offer under commercial arrangements, the Commission should, at a minimum, extend by three months the statutory deadline for action on the USTelecom Petition.

Sincerely,

/s/ Tamar E. Finn

Tamar E. Finn

Counsel to U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications

cc: (Via E-Mail)
Chairman Ajit Pai
Commissioner Michael O'Rielly
Nirali Patel
Arielle Roth