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March 4, 2019

VIA ECFS

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

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

Dear Ms. Dortch,

On February 28, 2019, Daniel Friesen, Co-Founder of IdeaTek; Dan Bubb, CEO of Gorge Networks; Sana Sheikh, Senior Corporate Counsel of Granite Telecommunications; Brian Worthen, CEO of Mammoth Networks; Joe Morris, Board of Director for First Communications; Carson Coffman, President/COO of Socket Telecom and the undersigned from INCOMPAS met with Nirali Patel, Wireline Advisor to Chairman Pai and with Will Holloway of the Chairman's office regarding the above-referenced proceeding.

Bridging the digital divide and bringing broadband and 5G technology across America is a stated goal of the Commission. We applaud the Commission's efforts and strongly support its decisions in the *Accelerating Wireless Deployment by Removing Barriers to Infrastructure Investment* proceeding to promote the deployment of small cells. Small cells, however, will be futile without fiber deployment in all parts of the country—including rural, underserved urban, and suburban areas—to connect them. Vital to the endeavor of 5G deployment—especially when you get outside the major financial districts—is competitors' access to unbundled network elements as a stepping stone to building fiber networks. Competitors are also stimulating economic growth in the communities they serve through technological advancement, the offering of innovative services, and the deployment of broadband networks. They are serving residential consumers, government entities, anchor institutions and small businesses, including in rural, underserved urban and suburban areas that are often neglected by the larger carriers.

In the meeting, the CEOs and executives of competitors from across the country explained the reality on the ground of reaching and serving customers. They also emphasized the importance of continued access to unbundled network elements and resale under the provisions of the Communications Act of 1934, as amended ("Act"), to the expansion of their networks and provision of innovative services to their customers.

Mr. Friesen discussed how IdeaTek is bringing Gigabit service to small towns in Kansas through the use of unbundled dark fiber. He explained how transport as an unbundled network

element provides the economically viable means of reaching more remote areas of the state, enabling him to build fiber-to-the-home in small towns with low populations (*e.g.*, a town of 928 people). He also spoke about how competition spurs more investment and innovation in the market—and how without competition, the incumbent lacks incentive to build, innovate and improve services quality broadly.

Mr. Bubb, whose company provides voice and broadband services to residential, small business, and school and government customers in the Mid-Columbia area of Oregon and Washington, explained how Gorge Networks uses a variety of unbundled network elements¹ to acquire a customer base that can support the buildout of fiber. As a small competitor entering a market, Gorge Networks cannot build on speculation. It uses unbundled network elements to acquire a customer base, then deploy fiber, and then transfer its customer base onto its fiber network. He emphasized that he deploys substantially more fiber where unbundled network elements are obtainable than where they are not available at an economically feasible price. Specifically, he explained that in Washington State, where the state commission allowed CenturyLink to double and triple rates of unbundled network elements in their interconnection agreement, Gorge Networks' deployment of fiber came to a near halt. This provides a clear illustration of what would occur if USTelecom's forbearance request were granted—with a substantial and adverse impact on fiber deployment. In Oregon, where unbundled network elements have not seen a two- or three-fold increase in price, Gorge Networks has deployed the majority of their capital expansion. Building fiber in areas where they can roll UNE-based customers on to fiber is the stimulus that drives their expansion. Mr. Bubb also stressed that the loss of economically available unbundled network elements would lead to significant stranded investment where the company has initiated its expansion plans for Oregon.

Mr. Worthen's company, Mammoth Networks, offers voice and broadband to residential and small to medium sized businesses in towns with population of less than 50,000 in Wyoming, Colorado and Montana. In the geographic areas where Mammoth Networks provides service, it has deployed fiber in 46 times the number of census blocks compared to cable providers and 5 times the number census blocks compared to the incumbent LEC.² Mr. Worthen explained how Mammoth Networks, and the other "scrappy" companies like his, use—and need—every tool at their disposal to bring fiber to the more rural, underserved urban, and suburban areas of the country—and that unbundled network elements are an indispensable tool in their toolbox. He conveyed that in his service area he has experienced commercial wholesale telecom offerings, where available, that are more than twice the going retail rate. This makes those products, where available, untenable as a stepping stone to building fiber or for use as a wholesale input for services to his customer.

Mr. Coffman's company, Socket Telecom, has also deployed more fiber than the incumbent LEC and cable companies where Socket operates, in Missouri outside of Kansas City

¹ Gorge Networks uses DS0 copper loops, DS1 and DS3 loops, and DS1 and DS3 interoffice transport. *See* Declaration of Dan Bubb ¶4 (appended as Attachment 9 to Opposition of INCOMPAS et al., WC Docket No. 18-141 (filed Aug. 6, 2018) ("INCOMPAS Opposition")).

² Declaration of William P. Zarakas ¶¶ 5 and Table 1 (appended as Attachment 2 to INCOMPAS Opposition).

and St. Louis.³ Mr. Coffman echoed the fact that as a new entrant to a market his company cannot build on speculation and needs to use unbundled network elements—including DS1 loops, DS1 dedicated interoffice transport, and DS1 Enhanced Extended Loops (“EEL”)—to acquire a customer base and then build the fiber onto which to transfer the customers. He explained how unbundled networks elements provide a stepping stone to fiber deployment, for which business data service products are not a substitute. First, his customer base—which includes residential customers who are not in the market for business data service products—could not absorb the substantial increase in rates that would necessarily result.⁴ Therefore, the company would lose the customer base needed to sustain the buildout of fiber. Second, business data service products and other commercially available circuits come with a term of typically one to three years and are subject to early termination charges; as such, use of business data service products would disrupt the company’s ability to transfer its customer base onto its network as it deploys fiber. Without the ability to transfer customers over to the new fiber builds as they become lit, the economic model would not be able to support the construction cost, nor would lenders be able to offer credit to build a network that does not have supporting revenue.

Mr. Coffman also explained how Socket offers essential services otherwise lacking in some of the areas where his company operates. For example, there are exchanges in Missouri where no other carrier besides Socket provides local ISDN-PRI service. In most of these exchanges, Socket is able to provide this service at this time only through the use of unbundled DS1 Loops and DS1 EELs until it can deploy its own facilities or find another option. This service is critical for customers, for example, in a campus environment needing to make emergency calls to law enforcement or emergency response agencies to let them know the specific location of the emergency.

Mr. Morris’s company, First Communications, offers voice and broadband services to small business and multi-location business customers, including school districts, hospitals, dental offices, health clinics, libraries, village and township governments, and non-profit organizations in Ohio, Michigan, and Illinois. Mr. Morris discussed the significant investment made in the company’s network that would be stranded with the loss of unbundled network elements. First Communications would face exorbitant price increases to switch from UNE DS1 loops and DS1 transport to business data service DS1 loop and DS1 transport, which are priced higher on average by over 300% in its service area. Such increases would make it infeasible for First Communications to continue to reach and serve underserved and less populated areas surrounding the big financial districts, including multi-location customers that have locations in those areas.

Ms. Sheikh’s company, Granite Telecommunications, provides voice and data services to multi-location government and business customers nationwide, including thousands where Granite still relies on the avoided-cost resale discounts to provide traditional TDM services. Ms. Sheikh explained that, while Granite strives to offer those services on commercially-negotiated wholesale contracts with ILECs, that is not always possible due to customer demands

³³ *Id.*

⁴ It is important to note, Socket’s operations include areas that the Commission deemed competitive in the *BDS Order*.

for certain features or functionality that are not available under wholesale contracts and/or the underlying location is outside of the wholesale footprint. Granite uses avoided-cost resale discounts far more often to service rural businesses and government agency customers, so those customers would be disproportionately impacted by elimination of this avoided-cost resale discount—locations where cable generally is not available at all or at an economical price. Furthermore, Ms. Sheikh discussed that the availability of avoided-cost resale provides a constraint on the ILECs' exercise of this market power because avoided-cost resale pricing mirrors the pricing that competitors obtain on commercially-negotiated wholesale contracts.

The Act's policies are working exactly as intended. Competitive carriers are growing and expanding their network reach, some are deploying fiber in areas where companies substantially greater in size will not venture or have ceased making any new investments. These carriers are bringing innovative, better quality of service in their wake. They are transforming communities that had no broadband and now have gigabit service in their home. They are creating jobs and economic growth. The Act's provisions also ensure the businesses, government entities and anchor institutions with multiple locations can have the same provider at every location, even the more remote locations. The Commission should deny the incumbents' premature forbearance request.

Respectfully submitted,

/s/ Karen Reidy

Karen Reidy
Vice President, Regulatory

cc: Nirali Patel
Will Holloway