



California Association of
Competitive Telecommunications Companies

Communications, Commerce, Community

April 8, 2019

Via ECFS

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

Re: *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*

Dear Ms. Dortch,

In our September 5, 2018 Reply Comments in this proceeding, CALTEL¹ discussed a settlement agreement approved by the California Public Utilities Commission (CPUC) that reduced AT&T rates for certain UNEs, including DS0 loops, in 2016 and froze those rates through December 31, 2020.² CALTEL noted that this settlement agreement was voluntarily negotiated by AT&T and CALTEL to replace one that had been in place since 2009. CALTEL also attached a copy of this settlement agreement to its reply comments.³

On February 21, 2019, AT&T filed an *Ex Parte* letter that in part discusses its plans to make new DS0 loops exclusively available pursuant to commercial agreements if the Commission grants the forbearance relief requested by US Telecom.⁴ AT&T stated that it intends to “add a flat amount to any *new* DS0 loops ordered pursuant to the

¹ CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice and broadband services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

CenturyLink is a member of CALTEL but is also a member of USTelecom. Century Link does not support CALTEL’s position on the USTelecom forbearance petition.

² Reply Comments of CALTEL, dated September 5, 2018, at pp. 21-25.

³ *Id.* at Attachment 1 (“California UNE Settlement Agreement”).

⁴ AT&T *Ex Parte* Letter, dated February 21, 2019, at pp. 1-2.

commercial agreement in urban and suburban wire centers” during the transition period proposed by USTelecom in the Petition, but would freeze rates for new DS0 loops in rural wire centers during the transition. Although not addressed in this *Ex Parte* letter, CALTEL assumes that AT&T also intends to increase rates for the embedded base of UNEs by up to 15 percent during the transition period as proposed by US Telecom.

While CALTEL continues to oppose USTelecom’s request for forbearance from Section 251 obligations, and to support the granting of INCOMPAS’ motion for summary denial, CALTEL wants to ensure that the Commission recognizes the need to factor in state-specific obligations like the California UNE Settlement Agreement before adopting any transition arrangements. As INCOMPAS recently stated, the Petition relied on “generalized descriptions...on a nationwide basis” and ignores the “competitive realities” that exist in different geographic markets.⁵ CALTEL explained at length in its comments how the status quo re: the availability and use of UNEs in California is very different from the nationwide generalizations found in the Petition, and AT&T’s pricing obligations are just one more example.

The California settlement, freely negotiated by AT&T, contains terms and conditions relating to changes that the Commission might make to TELRIC methodology,⁶ but *does not* explicitly deal with changes in the continued availability of the UNEs covered by the agreement. However, the California settlement agreement demonstrates that both AT&T and CALTEL recognized that the status quo might change during the term of the agreement, and that both parties intended and agreed that the agreement would remain in effect and unchanged, whatever other changes might occur. The agreement was quite clear on this point, devoting not one but two detailed clauses to the issue:

- n. Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the subject regarding the appropriate UNE re-examination process at issue in R.93-04-003, I.90-04-002. Nevertheless, it is the intention of the Parties to fully settle all issues related to the UNE re-examination process for the term described herein, which does not now exist, may exist, or heretofore have existed between them. In furtherance of such intention, for the term described herein, the releases given herein shall be and remain in effect as full and complete mutual releases of all such claims, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.
- o. With respect to this Settlement Agreement and the releases set forth herein, the Parties hereby expressly waive the Section 1542 of the California Civil Code, which provides that:
 - A general release does not extend to claims which the creditor does not know or suspect to exist in his

⁵ *Ex Parte* Letter of INCOMPAS, dated March 13, 2019.

⁶ California UNE Settlement Agreement at p. 4, Section 4, clause k.

favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Parties further acknowledge that this Settlement has been negotiated and agreed upon in light of this situation and expressly waive any and all rights which they any have under Section 1542 of the California Civil Code, or any other state or federal statute or common law principle of similar effect.⁷

CALTEL does not know if there are similar settlement agreements in other states, but for California, regardless of what transition mechanism the Commission may adopt, AT&T is bound by the terms of the UNE settlement agreement, and is not free to offer new DS0 UNEs exclusively through commercial agreements, nor to raise rates for embedded base DS0 UNEs, until January 1, 2021.

Respectfully submitted,

By: _____/S/_____
Sarah DeYoung

Sarah DeYoung
Executive Director – CALTEL

⁷ *Id.*, Section 4, clauses n and o.