

# Morgan Lewis

**Tamar E. Finn**

tamar.finn@morganlewis.com

April 15, 2019

**Via ECFS**

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

**Re: WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593  
TPx Objection**

Dear Ms. Dortch:

To the extent the Commission would rely in this docket on U.S. TelePacific Corp. (“TPx”) data from Table II.A.4 in its Highly Confidential BDS Collection responses (the “2015 II.A.4 Data”), TPx objects to any such reliance unless the Commission gives TPx sufficient opportunity to review and correct such data.<sup>1</sup>

Based on the 2015 II.A.4 Data, the Commission’s Further Notice of Proposed Rulemaking on BDS (“BDS FNPRM”) classified TPx as one of the “largest facilities-based providers ... based on the unique number of locations with connections... excluding reported locations with UNE connections”.<sup>2</sup> The Draft BDS Order arising out of the BDS FNPRM similarly declared that “[c]ompetitive LECs such as ... U.S. Telepacific [sic] continue to invest and expand their competitive fiber networks with very successful results.”<sup>3</sup>

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<sup>1</sup> *Wireline Competition Bureau to Incorporate Business Data Services Data and Second Further Notice and Further Notice Record into USTelecom Forbearance Proceeding*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593, Public Notice, DA 19-249 (WCB 2019).

<sup>2</sup> *In the Matter of Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; 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*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, para. 58 (2016).

<sup>3</sup> *In the Matter of Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; 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*, WC Docket Nos. 16-143,

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When TPx discovered that the Draft BDS Order relied on facilities-based competition by TPx – at least in part – TPx spoke with staff and filed the ex parte notice appended here as **Attachment A** to correct the record. Although the Commission struck the incorrect reference to TPx in the final BDS Order, it is not clear that the Commission’s assumptions regarding TPx’s 2015 II.A.4 Data – from which the Commission drew its erroneous conclusion in the first place – were ever corrected.

TPx believes the erroneous conclusion could have been based on TPx’s inadvertent over-reporting of some end user connections as on-net, but it is also possible that it was based on FCC analysis that incorrectly counted TPx unbundled network element (“UNE”) connections as on-net. Reliance on flawed data to make conclusions about competition in this vital, important proceeding would be arbitrary and capricious. Therefore, the Commission should not rely in this docket on TPx’s 2015 II.A.4 Data unless it provides sufficient opportunity for TPx to review and correct the underlying data.

Sincerely,

*/s/ Tamar E. Finn*

Tamar E. Finn

*Counsel to U.S. TelePacific Corp.*

cc: Terri Natoli  
Edward Krachmer  
Christopher Koves  
Michele Berlove

**ATTACHMENT A**

**U.S. TelePacific Corp. Ex Parte of April 7, 2017**

# Morgan Lewis

**Tamar E. Finn**

Partner  
+1.202.373.6117  
tamar.finn@morganlewis.com

April 7, 2017

**Via ECFS**

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

**Re: Notice of Ex Parte Communication  
WC Docket Nos. 16-143, 05-25, 16-132; GN Docket No. 13-5; RM-10593**

Dear Ms. Dortch:

On April 7, 2017, on behalf of U.S. TelePacific Corp. (“TelePacific”), the undersigned spoke by phone with Lisa Hone and Lynne Engledow of the Wireline Competition Bureau regarding the business data services draft Report and Order included on the Chairman’s tentative agenda for the April 20, 2017 open meeting. Specifically, I explained that the following statement in paragraph two of the draft order is not accurate with respect to TelePacific:

“Competitive LECs such as... U.S. Telepacific... continue to invest and expand their competitive fiber networks with very successful results.”

Although TelePacific connects a small percentage of its customers to its network using fixed wireless over the last mile, the company has not invested in last mile fiber for many years and relies primarily on ILEC last mile (fiber, copper, and UNEs) to connect customer locations to its network.



Sincerely,

*/s/ Tamar E. Finn*

Tamar E. Finn  
*Counsel to U.S. TelePacific Corp. d/b/a TelePacific Communications*

**Morgan, Lewis & Bockius LLP**

1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
United States

 +1.202.739.3000  
 +1.202.739.3001

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cc: (Via E-Mail)  
Lisa Hone  
Lynne Engledow  
Nicholas Degani  
Jay Schwarz  
Amy Bender  
Claude Aiken