

April 17, 2019

**Ex Parte Notice VIA ECFS**

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 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); Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers (WC Docket No. 17-144); Regulation of Business Data Services in an Internet Protocol Environment (WC Docket No. 16-143); Special Access for Price Cap Local Exchange Carriers (WC Docket No. 05-25); AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (RM-10593)*

Dear Ms. Dortch,

On April 15, 2019, Chip Pickering, CEO, and the undersigned from INCOMPAS met with Commissioner Carr and Jamie Susskind with regard to the above-referenced proceedings.

We commend the steps the Commission has taken to promote the deployment of small cells. As Commissioner Carr has stated, “we also need many, many miles of new fiber.”<sup>1</sup> Small cells need dense fiber deployment in all parts of the country—including rural, underserved urban, and suburban areas—to connect them. Access to UNEs, both for loops and transport, plays a critical role in facilitating fiber deployment, and in placing competitive pressure on incumbents. For 5G to reach its full potential, this fiber deployment needs to be ubiquitous, and not just concentrated in major financial districts.

In the meeting, using mapping illustrations from a previously filed Sonic ex parte,<sup>2</sup> we explained how the networks being built using unbundled network elements as a bridge to fiber will support 5G as well as gigabit-speed broadband service to small businesses and residential

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<sup>1</sup> The Future of 5G: A Fireside chat with FCC Commissioner Brendan Carr, The Brookings Institution, at 5 (June 26, 2018), *transcript available at* [https://www.brookings.edu/wpcontent/uploads/2018/07/gs\\_20180626\\_5g\\_carr\\_transcript.pdf](https://www.brookings.edu/wpcontent/uploads/2018/07/gs_20180626_5g_carr_transcript.pdf).

<sup>2</sup> Letter from Julie A. Veach, Counsel to Sonic Telecom, LLC, to Marlene H. Dortch, Nov. 29, 2018 (Sonic Nov. Ex Parte), mapping illustrations pp. 2 and 6.

users. We noted the economic study INCOMPAS submitted in the record showing carriers using unbundled network elements, both loops and transport, as a bridge or facilitator to deploying fiber loops; indeed, in some areas, the providers that utilize UNEs, in part, are building more fiber in the areas where they operate than either the incumbent telco or cable provider.<sup>3</sup> We discussed how increased pricing for loops and transport can halt this critical fiber build,<sup>4</sup> as requiring either loop or transport construction before acquiring customers erects substantial economic barriers to fiber deployment. We also noted that competitive fiber providers not using unbundled network elements focus on dense and revenue-rich financial districts or cell towers.<sup>5</sup>

We also discussed how, for similar reasons, the ability of carriers to use unbundled network elements as a bridge to fiber provides the means for the Commission's predictions for the emergence of competition for certain counties in the *Business Data Services Order* to become a reality at some point in the future. Carriers use unbundled loops and transport—including DS1 Enhanced Extended Loops (“EEL”)—to reach parts of counties, including counties deemed “competitive” by the *Business Data Services Order*, beyond big financial districts, acquire a customer base that includes business customers, deploys fiber, and then transfer its customer base onto its fiber network.<sup>6</sup> These carriers also invest in equipment to upgrade the services they can provide over the unbundled network elements.<sup>7</sup> Further, we noted

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<sup>3</sup> See Declaration of William P. Zarakas, ¶ 5 Table 1, Attachment 2 to the Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Competitive Carriers Group Opposition”).

<sup>4</sup> See, e.g., Letter from Karen Reidy, INCOMPAS, to Marlene H. Dortch, p. 2, Mar. 4, 2019 (“INCOMPAS Mar. Ex Parte”) (“[Dan Bubb, CEO of Gorge Networks,] ‘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.’”).

<sup>5</sup> See *Sonic Nov. Ex Parte*, p. 2, n. 5.

<sup>6</sup> See Declaration of Todd Way ¶¶ 1-3, attached as Attachment 7 to Competitive Carriers Group Opposition (stating the Douglas Fast Internet uses UNEs to support the deployment of its own fiber facilities in Douglas County and Coos County, Oregon, and is the only broadband provider in several communities in those counties); Declaration of Jeff Buckingham ¶¶ 2-7, attached as Attachment 6 to Competitive Carriers Group Opposition (stating that UNEs enable Digital West to build its own fiber network in San Luis Obispo County, California, certain areas of which Digital West is the only broadband provider).

<sup>7</sup> See e.g., INCOMPAS Mar. Ex Parte at 3 (“Mr. Coffman [] 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

substantial increases in pricing for BDS transport since the *Business Data Services Order* became effective.<sup>8</sup>

The Communications Act's resale and unbundling provisions also ensure the businesses, government entities and anchor institutions with multiple locations can have the same provider at every location, even the more rural locations. Competitive carriers are providing these entities essential services.

Denying the remaining requests in the USTelecom forbearance petition would be consistent with the Commission's, so far, strong broadband and small cell deployment agenda. Carriers using unbundled elements 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, transforming the communities they serve in their wake. Thanks to these carriers, end-users that lacked or had limited broadband now have gigabit service. The Commission should ensure the continuation of these vital tools until the vast majority—if not every—home and business across America has access to the latest technology.

Respectfully submitted,

/s/ Karen Reidy

Karen Reidy  
Vice President, Regulatory

cc: Commissioner Carr  
Jamie Susskind

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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.”).

<sup>8</sup> Compare CenturyLink Operating Companies Interstate Service Guide No. 11 Release 1, § 7.11.4.C.1.a (May 1, 2018) (Wyoming monthly per mile mileage rate of \$15.60), available at [http://www.centurylink.com/tariffs/fcc\\_cloc\\_acc\\_isg\\_no\\_11\\_part1.pdf](http://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_11_part1.pdf), with CenturyLink Operating Companies Interstate Service Guide No. 11 § Release 2, 7.11.4.C.1.a (May 1, 2019), available at [http://www.centurylink.com/tariffs/pending\\_changes.pdf](http://www.centurylink.com/tariffs/pending_changes.pdf) (Wyoming monthly per-mile mileage rate of \$29.01 [86% increase]); See also Comments of Sprint, at 8, WC Docket Nos. 17-144, 16-143, 05-25 (filed Feb. 8, 2019) (“In 2018, a large price cap ILEC explicitly informed Sprint that it is marking up TDM BDS rates, for channel terminations and transport alike, across portions of its service territory newly deregulated by the 2017 BDS Order.”).

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