

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:

WC Docket No. 18-141

Petition of USTelecom for Forbearance  
Pursuant to 47 U.S.C. §160(c) to  
Accelerate Investment in Broadband  
and Next-Generation Networks.

**COMMENTS OF  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

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## I. INTRODUCTION

The California Public Utilities Commission (California or CPUC) submits these comments in response to the Wireline Competition Bureau’s Public Notice dated April 15, 2019,<sup>1</sup> announcing the Bureau’s intent to incorporate confidential and highly confidential information and data filed in response to the Commission’s business data services (BDS) data collection (“BDS Data Collection”),<sup>2</sup> and data filed in the *Second FNPRM* in the BDS proceedings,<sup>3</sup> into the record of the USTelecom—The Broadband Association (USTelecom) Forbearance Petition proceeding, WC Docket No. 18-141.<sup>4</sup> The Bureau further seeks comment on the extent to which the BDS Data Collection provides relevant information to evaluate USTelecom’s request for forbearance. For the reasons stated below, the Federal Communications Commission (FCC or Commission) should not utilize the BDS Data Collection as a basis to support USTelecom’s request for

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<sup>1</sup> *Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593, Public Notice (Apr. 15, 2019).

<sup>2</sup> *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, Order on Reconsideration, 29 FCC Rcd. 10899 (WCB 2014); *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 16318, 16340, ¶ 51 (2012); see FCC, Instructions for Data Collection for Special Access Proceeding, WC Docket No. 05-25, RM-10593, OMB Control No. 3060-1197 (Dec. 5, 2014), <https://docs.fcc.gov/public/attachments/DOC-330865A2.pdf>.

<sup>3</sup> *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd. 10403, 10453-58, ¶¶ 147-62 (2018) (“*Second FNPRM*”).

<sup>4</sup> 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 (filed May 4, 2018) (“Petition”).

forbearance. Doing so would be inconsistent with the Commission’s forbearance rules, and would violate basic principles of procedural fairness.

## II. DISCUSSION

The Highly Confidential and Confidential BDS Data Collection should not be used as a basis of support for USTelecom’s Forbearance Petition.

Allowing this additional data to be used in support of the Petition would violate the “complete-as-filed” rule in 47 C.F.R. § 1.54(b). Under that rule, the party seeking forbearance bears the burden of production, and must identify the data it intends to utilize to meet the statutory requirement for forbearance. USTelecom could have proposed a modification of the BDS Protective Order at the time it filed its petition, but did not do so, even though it bore the burden of production.

Incorporation of this data at this point in the proceeding unreasonably burdens the resources of interested parties, including parties that were not a part of the original BDS proceedings, with what the Commission itself has described as a “massive” volume of data to analyze.<sup>5</sup> Moreover, given the mass of data and the need to analyze it, incorporation of this data at this point in the proceeding deprives interested parties of a meaningful opportunity to comment and inform the Commission’s decision.

Allowing this volume of BDS data to be used this late in the proceeding as support for the Petition would violate another cardinal tenet of the complete-as-filed rule: to “permit interested parties to file complete and thorough comments on a fully-

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<sup>5</sup> *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, FCC 17-43, 32 FCC Rcd. 3459, 3460 ¶ 1 (2017) (“BDS Order”).

articulated proposal” without unreasonably burdening their resources.<sup>6</sup> The Highly Confidential and Confidential BDS Data Collection consist of information from 604 filers, 10 658,485 census blocks, and 1,216,977 buildings with last-mile access demand.<sup>7</sup> The Commission allowed BDS stakeholders access to the data collection early on, and throughout the multiyear BDS proceeding, to “continue[] to provide updated analysis to [the Commission] in an effort to inform [its] judgment.”<sup>8</sup>

Accordingly, parties in the BDS proceeding had *years* from the opening of the data enclave to the issuance of the BDS Order to digest and analyze the data and to file comments. In contrast, interested parties in the USTelecom forbearance proceeding would have three months or less to analyze the BDS data, as well as the additional data filed this year in response to the *Second FNPRM*. This amount of time is particularly infeasible given the fact that the raw data is maintained by a vendor (NORC), not the FCC; parties would need to pay to view the data; and parties would need training to work with the vendor’s system. In the CPUC’s experience, technical support is offered only through email. Given the volume, costs, and time constraints associated with analyzing this data, parties would be unable to provide full and meaningful comments to the Commission on this data.

The Commission designed the complete-as-filed rule to avoid precisely this type of inequitable outcome.

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<sup>6</sup> *Forbearance Procedures Order* ¶ 12.

<sup>7</sup> *BDS Order* ¶ 115.

<sup>8</sup> *Id.* ¶ 10 n.36.

Accordingly, the Petition should be summarily denied for violating the complete-as-filed rule. At minimum, the Commission, or the Bureau on delegated authority, must prohibit the Highly Confidential and Confidential BDS Collection from being used in support of USTelecom's Petition.

Respectfully submitted,

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