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May 9, 2019

**REDACTED – FOR PUBLIC INSPECTION**

**Via ECFS**

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

Dear Ms. Dortch:

Pursuant to the procedures outlined in the Protective Orders<sup>1</sup> adopted in the above referenced proceeding, attached is the Redacted version of the Comments of AT&T in the above-captioned proceeding. AT&T is filing the Highly Confidential version of these Comments under separate cover.

Thank you for your assistance. Please contact me at 202-736-8417 or [mkorman@sidley.com](mailto:mkorman@sidley.com) if you have any questions or concerns.

Sincerely,

/s/ Marc A. Korman  
Associate

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<sup>1</sup> Data Collection Protective Order, *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, DA 19-294, ¶ 13 (rel. April 16, 2019); Protective Order, *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, DA 18-575, ¶ 13 (rel. June 1, 2018).

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**Before the  
Federal Communications Commission  
Washington D.C. 20554**

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In the Matter of	)	
	)	
Wireline Competition Bureau Seeks	)	
Focused Additional Comment In Business	)	
Data Services And USTelecom Forbearance	)	
Petition Proceedings And Reopens Secure	)	
Data Enclave	)	
	)	
Petition of USTelecom for Forbearance	)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to	)	
Accelerate Investment in Broadband and	)	
Next-Generation Networks	)	
	)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers	)	
	)	
Business Data Services in an Internet	)	WC Docket No. 16-143
Protocol Environment	)	
	)	
Special Access for Price Cap Local	)	WC Docket No. 05-25
Exchange Carriers	)	
	)	

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**COMMENTS OF AT&T**

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May 9, 2019

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Protocol Environment	)	
	)	
Special Access for Price Cap Local	)	WC Docket No. 05-25
Exchange Carriers	)	
	)	

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**COMMENTS OF AT&T**

Pursuant to the Public Notice released on April 15, 2019,<sup>1</sup> AT&T hereby submits these Comments in support of US Telecom’s Petition for Forbearance.<sup>2</sup>

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<sup>1</sup> Public Notice, *Wireline 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, DA 19-281 (rel. April 15, 2019) (“Public Notice”).

<sup>2</sup> Petition for Forbearance of USTelecom – The Broadband Association, *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 (May 4, 2018) (“Petition”).

## INTRODUCTION AND SUMMARY

Two important datasets became available after USTelecom submitted its Petition for Forbearance. These datasets, standing alone and in combination with the information already in the record, overwhelmingly support granting forbearance from all remaining Section 251 and 252 UNE and avoided-cost resale requirements.

The first new dataset is the latest Form 477 data, released in December 2018, which identifies, by census block, where competitors have deployed facilities-based broadband services. These data show that, as of December 2017, cable companies had deployed facilities-based broadband services offering at least 25 Mbps download speeds to almost 90 percent of the U.S. population and households. As explained below, the AT&T-specific numbers are even more favorable for (1) AT&T's wireline footprint; (2) the areas where AT&T offers UNEs (*i.e.*, "impaired" wire centers); and (3) the census blocks in AT&T's territory with Tier 3 wire centers. The second dataset (the "April Data Tables") contains information that identifies the distances between each ILEC wire center and CLEC fiber facilities. These data show that CLECs already connect, or could readily connect, to nearly 80 percent of ILEC wire centers.

These new data show even more clearly that competitors have deployed their own facilities-based networks that compete with ILEC facilities-based networks virtually everywhere. Because the purpose of UNE and avoided-cost resale requirements was to provide a "bridge" to precisely this type of facilities-based entry, these new data overwhelmingly confirm that such requirements are no longer necessary to serve that purpose and that Section 10 of the 1996 Act therefore mandates forbearance. This is true even when separately analyzing each type of UNE (Transport, DS1/DS3 Loops, DS0 Digital, DSO analog) and avoided cost resale.

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*Transport.* Cable companies, even as of 2017, had deployed service that completely bypass ILEC transport networks to almost 90 percent of the population and households. Moreover, as shown below, these figures are nearly identical for Tier 3 wire centers. These facts, by themselves, confirm that continuing to force ILECs to make unbundled transport facilities available to competitors is no longer necessary to promote facilities-based competition anywhere in the nation. In addition, the newly released “April Data Tables” show that CLECs have also deployed fiber networks that can connect to nearly 80 percent of ILEC wire centers, which means that CLECs can also bypass most ILEC interoffice transport routes using their own facilities. These data, therefore, further confirm that the continued application of UNE requirements to transport is no longer necessary to protect consumers or the public interest. On this record, Section 10 requires nationwide forbearance from the UNE transport requirements.

*DS1 and DS3 Loops.* The key to assessing these services is to recognize that DS1 and DS3 UNEs are used exclusively (or almost exclusively) for Business Data Services (“BDS”). Indeed, these UNEs are not typically a viable vehicle for building a residential product that would be competitive with other marketplace offerings. For example, typical cable broadband offerings include download speeds of 100 Mbps or faster for less than \$100. DS1 UNEs, by contrast, have maximum download speeds of only 1.5 Mbps and, even at below-cost TELRIC rates, cost at least \$50 (and much more in rural zones). Similarly, DS3 UNEs have maximum download speeds of 45 Mbps, with TERLIC rates of at least \$200. Once it is understood that DS1 and DS3 UNEs are used almost exclusively for BDS, it follows that the Commission’s findings in the recent *BDS Order*<sup>3</sup>—which analyzed competition for BDS—should be definitive as to competition for these

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<sup>3</sup> *BDS Order, Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition*

services and the rules adopted there are the best approach to regulating those services. There is obviously no need to retain UNE DS1 or DS3 loops in counties the *BDS Order* deemed competitive. Equally important, however, in counties the *BDS Order* deemed non-competitive, the Commission reset the price caps to the levels it believed would promote competition and investment—and retention of UNE requirements in those counties could only undermine this carefully calibrated price cap regime. In all events, even if DS1 and DS3 UNEs were used to provide non-BDS services, the recently released Form 477 data confirm that most of the population and households already have access to facilities-based competitive broadband alternatives, and thus the continued application of the ILEC-centric UNE requirements would still be unnecessary to protect consumers or the public interest.

*DS0 Digital Loops.* DS0 digital UNE loops are used to provide broadband services to small business and residential customers. As noted above, however, cable companies now offer service to almost 90 percent of the U.S. population and households with competitive facilities, including in AT&T's more rural Tier 3 wire centers. Cable also dominates ILEC broadband offerings, having won more than 60 percent of wireline broadband customers.<sup>4</sup> Moreover, in addition to cable, customers can typically also choose from services offered by CLECs, satellite, or mobile broadband providers. In this extremely competitive environment, UNE requirements are no longer necessary to protect consumers or the public interest, and forbearance is required.

*DS0 Analog Loops.* Forbearance from DS0 analog loop requirements used for voice services is even more clearly required. Wireless carriers now provide more than 60 percent of

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*for Rulemaking to Reform Regulation of ILEC Rates for Interstate Special Access Services*, WC Docket Nos., 05-25, 13-5, 16-143, RM-10593 (rel. April 28, 2017) (“BDS Order”).

<sup>4</sup> See, e.g., Press Release, “2.4 Million Added Broadband in 2018,” Leightman Research Grp., <https://www.leichtmanresearch.com/2-4-million-added-broadband-in-2018/> (March 7, 2019).

voice lines nationwide, and cable VoIP offerings account for more than half of the remaining wireline offerings. UNE loop offerings represent a miniscule portion of the marketplace and have become competitively irrelevant. Continued application of DS0 UNE requirements—especially only with respect to ILECs—is clearly not necessary to protect consumers or the public interest, and forbearance is thus required.

*Avoided Cost Resale.* Finally, the recently released data and the existing record confirm that the Commission should forbear from the Section 252(c)(4) avoided-cost resale requirements. As shown below, avoided-cost resale represents a very small and rapidly declining portion of the ILECs' overall wholesale services, which consist mostly of commercially negotiated UNE-P replacement services that are offered completely outside the Section 251 framework. Section 251(c)(4) resale is no longer necessary to promote competition.

**I. NEWLY AVAILABLE DATA SUPPORT NATIONWIDE FORBEARANCE OF UNE TRANSPORT REQUIREMENTS.**

Both the recently released Form 477 data and the Commission's new April Data Tables strongly confirm that the statute requires forbearance from UNE requirements for all interoffice transport services, including dark fiber transport services, on a nationwide basis.

The Commission's analysis of transport in the BDS proceeding provides the template for the broader forbearance analysis the Commission is undertaking here. In the *BDS Order*, the Commission eliminated *ex ante* price cap regulation for all TDM-based business data transport services nationwide.<sup>5</sup> The Commission found that "[t]ransport services are typically higher

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<sup>5</sup> *BDS Order* ¶¶ 90-93. The Eighth Circuit remanded the Commission's new transport rules on notice grounds, but did not question the Commission's substantive analysis. The Commission has proposed to re-adopt essentially the same rules that it adopted in the *BDS Order* and which have been in effect since June 2017. The Public Notice also seeks comment on the extent to which the newly available April Data Tables support the Commission's proposed approach. The April Data Tables strongly confirm AT&T's previous showings that CLECs either already have built or could



volume services between points of traffic aggregation which can more easily justify competitive investment and deployment.”<sup>6</sup> As a result, deployment of facilities-based transport alternatives has been extensive, and the Commission found that “competition for TDM transport services is sufficiently pervasive at the local level to justify relief from pricing regulation [for BDS services] nationwide.”<sup>7</sup> In particular, the Commission noted that “in all price cap territories, 92.1 percent of buildings served [with BDS demand] were within a half mile of competitive fiber transport facilities.”<sup>8</sup> Significantly, the Commission acknowledged that reliance on this figure might “leave a relatively small percentage of census blocks (with an even smaller percentage of overall demand) price deregulated and without the immediate prospect of competitive transport options,” but it found that continued regulation would cause greater harm in such areas, “primarily manifested in the discouragement of competitive entry over time.”<sup>9</sup>

The same analysis applies to UNE transport. There is no physical difference between the facilities used for BDS transport and UNE transport. Nor is there any difference in the economics for UNE and BDS transport. In both cases, interoffice transport facilities connect points of significant traffic aggregation, which makes such transport services susceptible to facilities-based entry. As a result, cable companies and CLECs have deployed their own competitive transport facilities to offer the full range of services supported by UNE transport, including residential and small business services on a near nationwide basis. Once facilities-based competition takes hold,

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readily build their transport networks to connect to the vast majority of ILEC central offices where there is demand for BDS services.

<sup>6</sup> *BDS Order* ¶ 77; *see also id.* ¶ 82 (“transport service represents the ‘low-hanging fruit’ of the business data services circuit, which makes it particularly attractive to new entrants”).

<sup>7</sup> *Id.* ¶ 91.

<sup>8</sup> *Id.* ¶ 92.

<sup>9</sup> *Id.*

retaining burdensome “market-opening” regulations like UNE requirements only harm competition and the public interest by establishing inefficient pricing signals and retarding investment. As explained by the D.C. Circuit, for example, “mandatory unbundling comes at a cost, including disincentives to research and development by both ILECs and CLECs and the tangled management inherent in shared use of a common resource”<sup>10</sup>

The Commission has already shown in the *BDS Order* that facilities-based competitive transport is nearly ubiquitous for locations with demand for BDS, confirming that UNE transport requirements are not necessary to protect BDS competition and consumers. The newly available data further confirm that UNE transport requirements are not needed to protect competition and consumers for non-BDS services (*e.g.*, residential services).

First, the Form 477 data show that ILECs face nearly ubiquitous facilities-based competition from cable companies. Those data show that cable companies offer wireline broadband services with download speeds of at least 25 Mbps in census blocks that cover almost 90 percent of the U.S. population, and almost 90 percent of U.S. households.<sup>11</sup> AT&T has further confirmed that these coverage metrics are somewhat higher in its territory. In AT&T’s wireline footprint, about 92 percent of the population and households are in census blocks where cable reports having deployed 25 Mbps or faster broadband service. Moreover, AT&T has confirmed

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<sup>10</sup> See, *e.g.*, *USTA v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) (“*USTA I*”) (citing *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 428 (Breyer, J., concurring in part and dissenting in part)); see also *USTA v. FCC*, 359 F.3d 554, 582 (D.C. Cir. 2004) (“*USTA II*”); Declaration of Glenn Woroch and Robert Calzaretta In Support of USTelecom Petition for Forbearance, *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, at 2-3 (May 6, 2019) (“Woroch-Calzaretta Decl.”), attached to Letter from Patrick Halley, USTelecom to Marlene H. Dortch, FCC, *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 (May 6, 2019) (“USTelecom 5/6 Letter”).

<sup>11</sup> Woroch-Calzaretta Decl. at 3-5 (89.6% of population, 89.8% of households).

that these metrics apply individually to Tier 1, Tier 2, and Tier 3 wire centers. For example, within AT&T’s Tier 3 wire center footprint, about 90 percent of the population and households in census blocks where cable has deployed 25 Mbps or higher broadband service. The numbers are even higher in Tier 1 and Tier 2 wire centers, where 25 Mbps or higher cable broadband covers about 98% of the population and households.<sup>12</sup> Importantly, all of these percentages are conservatively low, because the data are as of December 2017. Cable companies have continued to expand their broadband footprints in the past year and a half, and thus cable would cover even higher percentages today.<sup>13</sup>

These data—showing nearly ubiquitous cable competition—are more than sufficient by themselves to support nationwide elimination of UNE transport requirements. The D.C. Circuit has repeatedly held that the existence of intermodal competition makes UNEs unnecessary.<sup>14</sup> Cable companies completely bypass ILEC interoffice transport, because they use their own end-to-end local networks to provide voice and data services.<sup>15</sup> Now that cable has ubiquitously overbuilt ILEC networks—and, in fact, are dominating ILECs in the marketplace<sup>16</sup>—Section 10 requires nationwide forbearance from UNE transport obligations.

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<sup>12</sup> These metrics are virtually identical for *impaired* Tier 1, Tier 2, and Tier 3 wire centers.

<sup>13</sup> See, e.g., USTelecom 5/6 Letter at 5-6 (documenting cable growth).

<sup>14</sup> See, e.g., *USTA II*, 359 F.3d at 582 (existence of “robust intermodal competition” renders wholesale access unnecessary, because “mass market consumers will still have the benefit of competition” even if all CLECs are driven from the market).

<sup>15</sup> *Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd. 10403, ¶ 154 (2018) (“cable operators self-provision all aspects of their BDS, including transport functionality”).

<sup>16</sup> Press Release, “2.4 Million Added Broadband in 2018,” Leightman Research Group, <https://www.leichtmanresearch.com/2-4-million-added-broadband-in-2018/> (March 7, 2019) (“At the end of 2018, cable had a 65% market share vs. 35% for Telcos,” which was the highest broadband market share for cable “since 3Q 2003”).

The April Data Tables, however, provide further evidence of competition, and in particular that CLECs have also deployed extensive facilities-based transport networks that already bypass or could readily bypass the ILECs' transport elements. "The April Data Tables show that 78 percent of ILEC central offices are within a half-mile" of at least one competitive fiber network and/or a building served by competitive fiber.<sup>17</sup> In the *BDS Order*, the Commission found that CLECs generally could profitably extend their networks to any location within a half-mile of their networks.<sup>18</sup> As explained above, the economics of transport are the same whether that transport is UNE or BDS because in both cases it is used to carry aggregated end user traffic. These data thus show that CLECs have already connected to, or could readily connect to, the vast majority of ILEC central offices. In other words, even apart from ubiquitous cable competition, CLECs either already have or could readily duplicate almost any ILEC interoffice transport route on which unbundled access is available.<sup>19</sup> The April Data Tables thus provide strong additional evidence supporting a nationwide grant of forbearance from UNE transport requirements.

## **II. THE *BDS ORDER* OBVIATES ANY NEED FOR UNBUNDLED ACCESS TO DS1 AND DS3 LOOPS.**

DS1 and DS3 loops, whether purchased at commercial rates, price cap rates, or UNE rates, are used exclusively (or almost exclusively) for BDS.<sup>20</sup> In other words, there are no separate

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<sup>17</sup> Woroch-Calzaretta Decl. at 10.

<sup>18</sup> *BDS Order* ¶¶ 101, 130. The Eighth Circuit upheld the Commission's use of the half-mile assumption. *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991, 1008-09 (8th Cir. 2018). The Eighth Circuit also upheld the Commission's finding that "the presence or reasonable proximity of a single competitor's facilities represents competition given the high sunk cost nature of the business data services market." See *BDS Order* ¶ 91; *Citizens*, 901 F.3d at 1010 (Commission "cited sufficient evidence to justify removing *ex ante* regulation in a market with two competitors").

<sup>19</sup> See also *USTelecom 5/6 Letter* at 8-12; Woroch-Calzaretta Decl. at 5-6.

<sup>20</sup> See *USTelecom 5/6 Letter* at 4-6. AT&T does not offer any residential products that use DS1 or DS3 loops. Nor is AT&T aware of any competitor that routinely uses UNE DS1 or DS3 UNE

marketplaces for UNE DS1 and DS3 loops beyond BDS. Accordingly, the Commission's conclusions about competition and the appropriate level of regulation for DS1 and DS3 loops set forth in the *BDS Order* should provide the complete answer for how to regulate UNE DS1 and DS3 loops in the future.

Because CLECs use UNE DS1 and DS3 loops solely to provide BDS, the Commission's *BDS Order*—which analyzed competition in the BDS market—already provides the most comprehensive analysis, and the Commission's considered views, on competition for these services.<sup>21</sup> There, the Commission collected one of the largest datasets in the agency's history, and considered hundreds of comments as well as analyses by Commission Staff and a number of

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loops for residential services. AT&T is aware that Sonic claims to use DS1 loops to serve residential customers in rural parts of California. But that cannot be correct. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** Further, none of the residential offerings on Sonic's website are priced at levels that could support a rural DS1-based offering. Even at below-cost TELRIC rates, AT&T's zone 3 (rural) DS1 UNE is priced at more than \$100. Sonic's website contains no reference to a 1.5 Mbps residential offering (the speed that can be offered with a DS1 UNE) at all, let alone at a price above \$100. Indeed, more generally, because DS1s and DS3s rely on outdated technology with consistently falling demand, DS1 and DS3 UNE services are generally not a viable vehicle for an effective competitive alternative for today's residential broadband offerings, even at below-cost TELRIC rates. For example, cable today offers download speeds of more than 100 Mbps at prices well below \$80 per month. By contrast, UNE DS1s offer only 1.5 Mbps download speeds and, even at below-cost TELRIC rates, these UNEs cost at least \$50 (and that is in non-rural zones). Similarly, UNE DS3s offer only 45 Mbps download speeds and have below-cost TELRIC prices of more than \$200. As a result, UNE-based DS1 and DS3 services generally cannot be used to create a viable residential broadband service. For these reasons, DS1 and DS3 facilities are used by businesses who have particularized requirements for the additional services included with DS1 and DS3 loops (*e.g.*, service level guarantees).

<sup>21</sup> The analysis of DS1 and DS3 BDS included BDS offered to small, medium, and large businesses. Specifically, the commission collected from ILECs data for *all* DS1 and DS3 (and other) BDS connections. *See* 2012 Data Collection Order, Appendix A, § II.A. It did not exclude DS1 and DS3 connections provided to any business segment. *See id.* The Commission then used those data to analyze competition for BDS. Thus, the Commission competitive analysis included businesses of all sizes, including small businesses.

economists.<sup>22</sup> Based on unprecedented, building-level detail, the Commission fashioned a geographically granular, county-level price cap regime for DS1 and DS3 loop services. In counties where the data showed a lack of competition for these services, the *BDS Order* retained *ex ante* price cap regulation, with price cap levels revised to reflect current marketplace conditions.<sup>23</sup> In counties where the data showed sufficient competition, the *BDS Order* eliminated *ex ante* price cap regulation, although these services continue to be subject to Sections 201 and 202 of the Act.<sup>24</sup> The Eighth Circuit upheld these rules in full.<sup>25</sup>

In other words, the Commission *just* established an updated, carefully calibrated regulatory regime for DS1 and DS3 loop services. That new regime strikes a careful balance between “the benefits and costs of [*ex ante* price cap] regulation.”<sup>26</sup> The Commission was quite properly worried that “the absence of entry in specific areas may be due to regulated prices inadvertently being set below competitive levels,”<sup>27</sup> and noted that “[s]uch prices make entry unprofitable, are harmful to long run incentives to invest, can lead to inefficient short run levels of production and consumption, and can prevent entry indefinitely.”<sup>28</sup> The Commission therefore carefully weighed the effects of price cap regulation on investment, retained price caps only where they were clearly warranted, and set the price caps at the levels it wanted by adjusting the productivity offset (*i.e.*, the X-Factor). The Commission believed this balance would best “foster a market-driven

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<sup>22</sup> *BDS Order* ¶ 103.

<sup>23</sup> *Id.* ¶¶ 197-260.

<sup>24</sup> *Id.* ¶¶ 86-153.

<sup>25</sup> *Citizens*, 901 F.3d at 1006-11.

<sup>26</sup> *BDS Order* ¶ 99.

<sup>27</sup> *Id.* ¶ 101.

<sup>28</sup> *Id.*

transition from legacy circuit-based services to newer packet-based services and other technologies.”<sup>29</sup>

The continued application of Section 251(c) unbundling requirements would clearly be duplicative of the pricing regulation adopted in the *BDS Order*, and would frustrate the careful balance the Commission sought to achieve in the *BDS Order*, to the detriment of consumers and the public interest.

In counties where the Commission found competition for DS1 and DS3 services and therefore eliminated *ex ante* price cap regulation, continued application of Section 251(c) UNE requirements, which are effectively *ex ante* price caps, would obviously cause harm to consumers and the public interest by undermining the investment incentives the Commission sought to foster by eliminating such pricing regulation.<sup>30</sup>

Similarly, in counties where the Commission maintained and updated price caps, continued application of the Section 251(c) UNE requirements would harm consumers and the public interest by establishing an additional set of *ex ante* price caps that are different from the carefully calibrated ones adopted in the *BDS Order*. Because the *BDS Order* already represents the Commission’s considered and comprehensive approach to the regulation of wholesale DS1 and DS3 loops, retention of duplicative UNEs would only interfere with and undermine the Commission’s new regime, thus harming consumers and the public interest.<sup>31</sup>

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<sup>29</sup> *Id.* ¶ 99.

<sup>30</sup> See also Petition at 28; AT&T Reply Comments, *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. 18-14, at 16-17 (September 5, 2018) (“AT&T Reply Comments”).

<sup>31</sup> See also Petition at 28-29; AT&T Reply Comments at 17-18.

It is also important to note that, although DS1 and DS3 UNE loops are used exclusively (or almost exclusively) for BDS, even if one were to assume that they were also used for other types of services (*e.g.*, residential services), the data confirm that forbearance is still required. As noted, the most recent Form 477 data show that cable companies already offer services with speeds at or above those obtainable using DS1 and DS3 UNEs to almost 90 percent of the population and households—including in Tier 3 wire centers—thus confirming competition already exists for DS1 and DS3 services everywhere.

**III. NEWLY AVAILABLE DATA CONFIRM THAT THE COMMISSION SHOULD FORBEAR FROM UNE REQUIREMENTS FOR DS0 LOOPS AND AVOIDED-COST RESALE ON A NATIONWIDE BASIS.**

The latest Form 477 data, as well as other newly available data, confirm that the Commission should forbear from UNE requirements for (1) digital DS0 loops used for data services, (2) analog DS0 loops used for voice services, and (3) avoided-costs resale under Section 251(c)(4).

*Digital DS0 Loops.* As discussed above, the Form 477 data show that cable companies offer wireline broadband services with download speeds of at least 25 Mbps to almost 90 percent of the U.S. population and 90 percent of U.S. households. Further, as also noted above, AT&T has confirmed that these percentages are about the same within its wireline footprint, including in Tier 3 Wire centers. As with UNE transport discussed above, the existence of ubiquitous, intermodal cable broadband competition—particularly when those cable services dominate in the broadband marketplace over ILEC alternatives—requires forbearance from digital UNE DS0 loops nationwide.<sup>32</sup>

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<sup>32</sup> See, *e.g.*, *USTA II*, 359 F.3d at 582.



Moreover, cable broadband services are not the only facilities-based broadband alternative to ILEC services. As USTelecom notes, satellite providers offer nationwide service.<sup>33</sup> CLECs have also deployed their own end-to-end networks in many areas. And, importantly, there are four mobile broadband providers that have deployed nationwide facilities-based mobile broadband networks that offer services and speeds equal to or much higher than can be provided over legacy DS0 UNEs. As recently explained by the Commission, “[g]iven that the record in this proceeding shows that some consumers choose to subscribe to either fixed or mobile broadband Internet access service to the exclusion of the other, we find that any analysis that did not include both [wireline and mobile broadband] services would be incomplete and flawed.”<sup>34</sup> Indeed, as the Commission noted, “[a]ccording to preliminary data from CDC, from December 2013 to December 2016, the percentage of U.S. households that were identified as wireless-only increased from approximately 41 percent to approximately 51 percent, making 2016 the first year in which a majority of U.S. households were wireless-only households.”<sup>35</sup> And, with the imminent emergence of 5G networks, mobile broadband services will increasingly be viewed as substitutes for fixed wireline offerings.

*Analog DS0 Loops.* The data even more clearly require forbearance for analog UNE DS0 loops used for voice services. First, cable companies use their ubiquitous cable networks to offer voice services, and thus the new Form 477 data confirm that nationwide forbearance is appropriate. As the Petition demonstrated, however, wireless services account for the majority of voice services

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<sup>33</sup> USTelecom 5/6 Letter at 7.

<sup>34</sup> 2018 Broadband Deployment Report, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, WT Docket No. 17-199, ¶ 17 (2018).

<sup>35</sup> *Id.* ¶ 21.

today, rather than wireline networks like those of the ILECs and cable companies.<sup>36</sup> Indeed, only about 11 percent of American households subscribe to ILEC switched voice services today, and as the Petition showed, CLECs make very little use of analog unbundled loops.<sup>37</sup> Given that the ILECs' legacy wireline voice services represent a small and dying portion of today's marketplace, there is no conceivable basis for retaining unbundling requirements for analog DS0 loops.

*Resale.* All of the data discussed above also confirm that the Commission should grant nationwide relief from Section 251(c)(4) resale obligations. Section 251(c)(4) resale is used almost exclusively to provide voice service, but as the record here abundantly shows, there is extensive competition in the provision of such offerings.<sup>38</sup> Indeed, as noted above, wireless carriers provide most voice lines today, and cable companies provide the majority of the remaining wireline voice lines.

Moreover, within the ILEC's small and declining space, wholesale lines represent a small fraction of ILECs' overall lines, and the vast majority of those resold lines are commercially negotiated UNE-P. Section 251(c)(4) resale represents an exceedingly small and rapidly declining portion of the ILECs' already small wholesale business. As USTelecom has pointed out, Section 251(c)(4) resale lines for the four largest ILECs declined rapidly from the end of 2016 to the end of 2018, falling from 560,000 at the end of 2016 to 419,000 at the end of 2018, or a 26 percent drop.<sup>39</sup> Section 251(c)(4) resale also constituted only 15.9 percent of total resold ILEC lines at the end of 2016 for these four carriers and 13.1 percent of total resold ILEC lines at the end of 2018.<sup>40</sup>

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<sup>36</sup> Petition at 8-9.

<sup>37</sup> *Id.*

<sup>38</sup> *See, e.g.*, Petition at 8-11, 15-18, 26-27.

<sup>39</sup> USTelecom 5/6 Letter at 13.

<sup>40</sup> *Id.*

AT&T's internal figures are similar. AT&T's total retail switched lines in service have dropped substantially over the past two years, from [Begin Highly Confidential] [Redacted] [End Highly Confidential] at the end of 2016 to [Begin Highly Confidential] [Redacted] [End Highly Confidential] at the end of 2018. AT&T's total wholesale lines<sup>41</sup> are far smaller and have declined substantially as well, from [Begin Highly Confidential] [Redacted] [End Highly Confidential] at the end of 2016 to [Begin Highly Confidential] [Redacted] [End Highly Confidential] at the end of 2018. But AT&T's Section 251(c)(4) resale lines have dropped much faster, from [Begin Highly Confidential] [Redacted] [End Highly Confidential] at the end of 2016 to [Begin Highly Confidential] [Redacted] [End Highly Confidential] at the end of 2018—a [Begin Highly Confidential] [Redacted] [End Highly Confidential] decrease. Overall, AT&T's 251(c)(4) resale lines comprise less than [Begin Highly Confidential] [Redacted] [End Highly Confidential] of all retail switched lines, and only about [Begin Highly Confidential] [Redacted] [End Highly Confidential] of wholesale lines. Thus, by any reasonable measure, Section 251(c)(4) resale is competitively irrelevant and avoided-cost resale is not necessary to protect competition or consumers or to promote the public interest.

Finally, Granite Communications has been the most vigorous advocate for keeping the Section 251(c)(4) resale requirements, and has focused many of their arguments on AT&T in particular. As the record shows, however, [Begin Highly Confidential] [Redacted]

[Redacted]

[Redacted]

[Redacted]

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<sup>41</sup> These lines include commercial UNE-P, Section 251(c)(4) resale, Section 251(b) resale, and all other commercial arrangements.

REDACTED – FOR PUBLIC INSPECTION

[REDACTED]

[REDACTED]

[REDACTED] **[End Highly Confidential]**

**CONCLUSION**

For the foregoing reasons, the Commission should grant the Petition.

Respectfully submitted,

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