



May 9, 2019

**Via ECFS**

Ms. Marlene H. 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

Dear Ms. Dortch:

In accordance with the *Protective Orders*<sup>1</sup> for the above-referenced proceeding, Sonic Telecom, LLC (“Sonic”) herein submits a redacted version of the attached comments in the above-referenced proceeding.

Sonic has designated for confidential treatment the marked portions of the attached documents pursuant to the *Protective Orders*.

Pursuant to the *Protective Orders*, Sonic is filing a redacted version of the documents electronically via ECFS, one copy of the documents containing the confidential information with the Secretary’s Office, and sending two copies of the documents containing the confidential information to Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau.

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<sup>1</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Protective Order, 33 FCC Rcd. 5290 (2018); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next Generation Networks*, Data Collection Protective Order, DA 19-294, WC Docket No. 18-141 (Wireline Comp. Bur. rel. Apr. 16, 2019) (“*Protective Orders*”).

**REDACTED – FOR PUBLIC INSPECTION**

Please contact me if you have any questions.

Sincerely,



Julie A. Veach  
*Counsel to Sonic Telecom, LLC*

Attachment

cc: Michele Levy Berlove

**REDACTED – FOR PUBLIC INSPECTION**

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

In the Matter of	)	
	)	
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	)	

**COMMENTS OF SONIC TELECOM, LLC IN RESPONSE TO APRIL 15, 2019 PUBLIC  
NOTICE SEEKING ADDITIONAL COMMENT**

Sonic Telecom, LLC (“Sonic”) responds to the Commission’s Public Notice<sup>1</sup> requesting comment on the extent to which the *2015 Data Collection* in the Business Data Services (“BDS”) proceeding provides relevant information to evaluate USTelecom’s petition for forbearance from the requirements to provide transport as an unbundled network element (“UNE”).<sup>2</sup>

Use of the *2015 Data Collection*, including the *April Data Tables*, is wrong from a procedural standpoint and inconsistent with the Commission’s “complete-as-filed” rule. Further, the data do not address the deficiencies in the Petition, as—among other things—they say nothing about the availability of competitive dark fiber as a replacement for unbundled dark fiber

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<sup>1</sup> *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, 05-02; RM-10593, Public Notice, DA 19-281 (rel. Apr. 15, 2019) (“Public Notice”).

<sup>2</sup> *See* 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”).

transport. As relevant to the Petition and Sonic’s Opposition to the Petition,<sup>3</sup> the *April Data Tables* provide limited insight into the availability of competitive *lit* services within a half mile of ILEC wire centers. But competitive *lit* services are no substitute for dark fiber. Further, even if the providers within a half mile of ILEC wire centers were to offer dark fiber, Sonic would incur the expense of reaching those fiber facilities from the wire centers. Because the BDS data have no bearing on the availability of competitive dark fiber transport as a replacement for interoffice dark fiber transport UNEs, they provide no support whatsoever for relief from the current obligations to unbundle dark fiber.

**I. USE OF THE BDS DATA TO ANALYZE THE PETITION FOR FORBEARANCE IS HIGHLY PROBLEMATIC.**

Incorporating the extensive BDS data into the USTelecom Petition proceeding—over a year after the filing of the Petition and with only three months until the statutory deadline for decision—is highly problematic from a procedural standpoint and highlights the deficiencies of USTelecom’s Petition.

Incorporating the voluminous data into the USTelecom proceeding at this late date does not give parties a fair opportunity to analyze and address the data as it relates to the Petition. Indeed, outside counsel who did not participate in the BDS proceeding experienced a further delay in accessing the BDS data and *April Data Tables*, and counsel to Sonic did not receive

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<sup>3</sup> Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Sonic Opposition”).

access until three days before the comment deadline.<sup>4</sup> Sonic and other providers cannot reasonably evaluate such a vast amount of data in a matter of weeks, much less days.

These practical challenges illustrate the importance of the Commission’s “complete-as-filed” rule, and USTelecom’s complete disregard for those rules. Not only do the BDS data provide a completely new set of information for parties to analyze in relation to the USTelecom Petition, but USTelecom has also recently filed an extensive *ex parte* proposing alternative “partial forbearance.”<sup>5</sup> USTelecom’s failure to provide the necessary information to substantiate its Petition at the time of filing, or to request that the Commission include the BDS data at the time of filing, means that the parties in the proceeding have not had the opportunity to meaningfully address the new data. The Commission’s “complete-as-filed” rule is designed precisely to protect against this kind of unfairness to interested parties.<sup>6</sup> Accordingly, the Commission should grant INCOMPAS’s motion for summary denial of USTelecom’s Petition.

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<sup>4</sup> While counsel to Sonic filed acknowledgements the day after the Protective Order for the BDS data was released (filed on April 17), counsel did not obtain access to the data from NORC until May 6—three days before the filing deadline. This is in no way an “adequate opportunity” as required by the Administrative Procedure Act. *See N.C. Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 770 (4th Cir. 2012) (noting the short comment period as contributing to lack of a meaningful opportunity for public comment).

<sup>5</sup> *See* Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, at 2, WC Docket No. 18-141 (filed May 6, 2019).

<sup>6</sup> *See Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd. 9543, 9550 ¶ 12 (2009) (“less than complete petitions present interested parties with a moving target, which frustrates their efforts to respond fully and early in the process.”).

**II. THE BDS DATA SAY NOTHING ABOUT THE AVAILABILITY OF COMPETITIVE DARK FIBER AS A REPLACEMENT FOR DARK FIBER UNES.**

The BDS data are mute on the question of the availability of competitive dark fiber. The data, and the *April Data Tables* specifically, reflect the presence of TDM interoffice transport.<sup>7</sup> As such, they provide no support for relief from the existing unbundling obligations for interoffice dark fiber. But even if the same providers who offer BDS over fiber within half a mile of a wire center also offered dark fiber (an “if” that is very tenuous), the data do not reflect that the market for that fiber is competitive.

Sonic’s analysis of the *April Data Tables* is limited, given the very short amount of time available to analyze them. But even a cursory analysis reveals that lit fiber within half a mile of an ILEC wire center is most commonly offered by \*\*\*BEGIN HIGHLY CONFIDENTIAL

[REDACTED]

[REDACTED] END HIGHLY CONFIDENTIAL\*\*\*. Sonic examined the *April Data Tables* specific to the AT&T wire centers where it collocates for purposes of access to unbundled loops and dark fiber today.<sup>8</sup> The *Data Tables* reflected that in \*\*\*BEGIN HIGHLY

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<sup>7</sup> See Public Notice at 1 (“These tables and accompanying information show the distances from competitive provider fiber to . . . wire centers . . . . The Bureau seeks focused public comment on the extent to which the *April Data Tables* inform the extent of competition and competitive pressure in the market for lower speed (DS3 and below) time division multiplexing (TDM) transport services in price cap areas.”)

<sup>8</sup> Throughout its analysis, Sonic considered affiliated entities to be a single provider. For example, it considered \*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED] [REDACTED] END HIGHLY CONFIDENTIAL\*\*\* and \*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED] [REDACTED] END HIGHLY CONFIDENTIAL\*\*\* to be a single provider as they are unlikely to compete with each other. These figures are approximate due to the inability to correlate all data precisely in the time available.

CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL\*\*\* of these wire centers, the tables reflect no provider of fiber other than \*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED] [REDACTED] END HIGHLY CONFIDENTIAL\*\*\*. Similarly, in \*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL\*\*\* of the wire centers where Sonic collocates, the tables reflect \*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED] [REDACTED] END HIGHLY CONFIDENTIAL\*\*\*. This is hardly the robust competitive situation that USTelecom portrays even for lit fiber.

In any event, the data are absolutely silent on the availability of competitive *dark* fiber in the vicinity of ILEC wire centers to replace interoffice dark fiber transport UNEs. As Sonic has previously explained, Sonic (and other CLECs) rely on unbundled interoffice dark fiber transport to connect their own last-mile facilities and to connect to the ILEC wire centers where Sonic is collocated.<sup>9</sup> Even if there is competitive lit fiber located at or near a wire center, in Sonic's experience, competitive providers rarely offer dark fiber. The availability of lit services nearby is of no use to Sonic's ability to deploy competitive services to its customers.

Loss of access to dark fiber interoffice transport UNEs would require Sonic to cut back its planned fiber deployments and limit its existing operations.<sup>10</sup> As Sonic has explained, leased lit fiber services are not a reasonable substitute for the unbundled dark fiber Sonic currently uses. Sonic deploys its own electronics to obtain up to 240 Gbps over a single pair of dark fiber interoffice transport UNEs and can more than double that capacity by deploying new

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<sup>9</sup> Sonic Opposition at 4.

<sup>10</sup> *Id.* at 23.

electronics.<sup>11</sup> Leased lit services, on the other hand, provide a fraction of that capacity at prices that are hundreds of times more expensive than dark fiber UNEs.<sup>12</sup> Nor is construction an affordable option; as Sonic explained earlier, deploying its own fiber transport would cost more than 100 times what it costs to lease sufficient dark fiber.<sup>13</sup>

Further, even assuming that the competitive providers offering fiber within a half mile of ILEC wire centers were willing to offer competitive dark fiber transport rather than lit transport, according to the *April Data Tables*, approximately \*\*\*BEGIN HIGHLY CONFIDENTIAL

END HIGHLY CONFIDENTIAL\*\*\*. The competitive fiber located outside of the wire centers does not present a reasonable replacement to dark fiber UNE transport. If the fiber is not already inside the wire centers where Sonic is collocated, Sonic would incur substantial additional cost to connect from the ILEC wire center to the CLECs' interconnection points for the dark fiber, whether that involved Sonic construction, CLEC construction, or additional leased circuits.<sup>14</sup>

In sum, the *April Data Tables* may provide limited insight into the availability of lit fiber services, but they say nothing about the available of competitive dark fiber. Even if the Commission assumed (which it should not) that competitive lit fiber providers would offer dark fiber, there would be additional costs to connect to dark fiber that is not located within the wire

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<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at Attach. A, ¶ 17.

<sup>14</sup> *Id.* at 16.



center. USTelecom has made no case for forbearance from dark fiber unbundling obligations and the BDS data provide it with no help.

### **III. CONCLUSION**

Use of the BDS data in this proceeding raises issues of fairness, as providers have not had a meaningful opportunity to analyze the data. In any event, the data have no bearing on the availability of competitive dark fiber to replace dark fiber UNEs. The Petitioner still has not met its burden to show that the statutory criteria for forbearance are met, and the BDS data do nothing to remedy the Petition's deficiencies. The Commission should therefore deny USTelecom's Petition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Veach", with a stylized flourish at the end.

Dane Jasper  
Chief Executive Officer and Founder  
SONIC TELECOM, LLC  
2260 Apollo Way  
Santa Rosa, CA 95407  
(707) 522-1000

Julie A. Veach  
Susannah Larson  
HARRIS, WILTSHIRE & GRANNIS LLP  
1919 M Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20036  
(202) 730-1300

*Counsel for Sonic Telecom, LLC*

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