

**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)	
)	
Regulation of Business Data Services for)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers;)	
Business Data Services in an Internet)	
Protocol Environment; Special Access for)	
Price Cap 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)	

MOTION FOR EXTENSION OF TIME TO FILE REPLY COMMENTS

INCOMPAS, on behalf of itself and its members, and pursuant to Section 1.46 of the Commission’s rules,¹ respectfully requests that the Commission extend the date from May 16, 2019 to May 28, 2019, for all interested parties to file reply comments to the comments filed in response to the April 15, 2019 Public Notice in the above-captioned proceedings.² Under the current schedule, parties have less than a week to respond to comments relating to the *April Data*

¹ 47 C.F.R. § 1.46.

² See *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*”).

Table sought by the *Public Notice*.³ Additionally, ILEC comments raised issues and arguments well beyond the scope requested by the *Public Notice*, which was expressly limited to transport services. As INCOMPAS has previously explained, introducing the significant new proposals, data, and arguments at this point in the forbearance proceeding violates the Commission’s “complete-as-filed” rule.⁴ In the very least the Commission should allow for the modest extension requested here to provide interested parties a chance to address these comments.⁵ This would benefit the public interest by aiding the Commission’s evaluation of the record in these complex and critically important proceeding that have nationwide implications.

I. AN EXTENSION IS WARRANTED TO ENABLE PARTIES TO RESPOND TO NEW ARGUMENTS, FACTS, AND REQUESTED RELIEF.

The Commission should grant the requested extension because the existing schedule does not provide a reasonable opportunity for interested parties to respond to the ILECs’ comments. The compressed comment schedule already placed smaller carriers and those that did not participate in the BDS proceeding at a vast disadvantage compared to much larger carriers that were not only able to retain economists to analyze the new data, but were already deeply familiar with the BDS record. A longer reply comment period is already warranted based on the complexity of the *April Data Tables* alone. However, the comments submitted by the ILECs have made the schedule even more untenable by raising new arguments, citing new data, and

³ See *Public Notice* at 1.

⁴ See Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 (filed May 6, 2019) (“USTelecom May 6 Ex Parte”).

⁵ Even with an extension, parties in this proceeding that did not participate in the BDS proceeding are still prejudiced by having only days to review the Highly Confidential Data in the Data Enclave, compared to the months that were afforded participants in the BDS proceeding.

requesting new relief, not just for transport but also for loop unbundling and Section 251(c)(4) resale obligations.

First, the comments raised issues and arguments well beyond the scope requested by the *Public Notice*, and if the Commission intends to consider these points, then it should adjust its comments schedule to allow for responses from interested parties. As it gave parties less than two weeks to review and analyze a large new data set, the *Public Notice* deliberately sought “focused comments” on a specific set of questions relating to BDS *transport* and unbundled *transport*. Notwithstanding the clear limitation in the *Public Notice*, the ILECs focused extensively on forbearance from the loop unbundling requirements requested for in USTelecom’s petition.⁶ AT&T and Verizon also expressly rely on “newly available data” wholly unrelated to the *April Data Tables* and the record in the BDS proceeding generally to support their argument for eliminating loop unbundling.⁷

Second, the ILECs also exceeded the scope of the *Public Notice* in their comments by requesting alternative forbearance relief than what had originally be submitted as part of USTelecom’s petition. CenturyLink argued that, if it does not grant nationwide forbearance, the Commission should forbear from transport and loop unbundling “anywhere it has eliminated ex ante pricing regulation of DS1 and DS3 interoffice transport and end user channel terminations.”⁸ Verizon proposed a *different* alternative form of relief, requesting forbearance

⁶ See Comments of AT&T at 3-5, 13-18, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed May 9, 2019); Comments of CenturyLink at 4-5, 10-16, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed May 9, 2019); Comments of Verizon, 2-3, 17-21, WC Docket No. 18-141 (filed May 9, 2019).

⁷ See AT&T Comments at 5; Verizon Comments at 18-19.

⁸ CenturyLink Comments at 10.

for DS1 and DS3 loops, “at minimum,” not only in counties deemed competitive under the *BDS Order*, but also in *census blocks* where cable operators have self-reported offering best-efforts broadband service.⁹ USTelecom itself presented yet a third alternative proposal, including a request for forbearance from transport unbundling based on the hopelessly vague standard of “where there is demonstrable evidence of competition.”¹⁰ Interested parties should be permitted a modest extension of time to respond to these arguments, which are being raised for the first time more than a year after USTelecom’s petition was filed.

II. AN EXTENSION OF TIME WILL NOT CAUSE UNDUE DELAY OR PREJUDICE

An additional 11 days to the briefing cycle will cause no appreciable delay in the Commission’s resolution of these proceedings. Any incremental delay is more than outweighed by the benefit to the record that a more thorough vetting of the arguments raised in the ILECs’ comments would provide. Moreover, the need for this extension was largely created by the ILECs’ decision to raise issues that were not called for in the *Public Notice*, and to use this comment cycle to recast the relief requested in USTelecom’s petition. An extension of the filing date for reply comments until May 28, 2019, is reasonable based on the novelty and importance of the issues raised in the comments.¹¹

⁹ Verizon Comments at 18.

¹⁰ See Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed May 10, 2019).


¹¹ The opening comments were not made available until approximately midday on May 10, 2019, and additional time was necessary for parties to exchange the highly confidential versions of the pleadings. As a result, interested parties were left with less than a week to file reply comments. Accordingly, the Commission should accept this motion for extension as timely filed notwithstanding Section 1.46(b)’s general requirement that such motions be filed 7 days prior to the applicable filing date in rulemaking proceedings. To the extent necessary,

III. CONCLUSION

For the reasons stated above, the Commission should grant the motion and extend the reply due date in the above-captioned proceedings from May 16, 2019, to no earlier than May 28, 2019.

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Respectfully submitted,



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May 13, 2019

INCOMPAS hereby respectfully requests a waiver under Section 1.3 of the Commission's rules of the 7-day requirement in Section 1.46(b). There is good cause for granting this waiver because it would enable interested parties to seek a modest extension of the reply comments deadline, which in turn would benefit the record by vetting the new arguments raised in the comments that went beyond the scope of the *Public Notice*.

Certificate of Service

I hereby certify that on this day, I electronically filed the foregoing document with the Federal Communications Commission via the ECFS filing system. I also certify that the foregoing document is being served this day on all parties identified in the attached Service List via e-mail.

/s/ Alexa Schneider

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