

**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)	

REPLY OF INCOMPAS IN SUPPORT OF MOTION TO DISMISS

INCOMPAS, on behalf of itself and its members, hereby replies to USTelecom’s Opposition to INCOMPAS’ motion to dismiss. INCOMPAS appreciates that USTelecom does not oppose its motion for an extension of the deadlines for initial and reply comments. In fact, such an extension is necessary because of USTelecom’s plan to file additional confidential data upon the issuance of a protective order. Consistent with the motions filed by INCOMPAS and other interested parties, INCOMPAS suggests that the Commission allow at least 60 days after the filing of the data and the expiration of the waiting period for qualified interested parties or their counsel to become eligible to obtain and review that data.¹

USTelecom, however, is wrong that it complied with the *Forbearance Procedures Order*, which clearly states that parties must “include in the petition the facts, information, *data*, and arguments on which the petition intends to rely to make the *prima facie* case for forbearance.”²

¹ INCOMPAS does not object to the California Public Utilities Commission’s request to extend the initial comment deadline to September 5, 2018.

² *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, ¶ 17 (2009) (“*Forbearance Procedures Order*”).

It simply did not provide the data. Nor was there any good reason not to do so. USTelecom could have filed the data with a request for confidential treatment pursuant to Section 0.459 of the Commission's rules, which would have informed staff of the need for a protective order prior to issuing the Public Notice.³ Insisting that parties actually comply with the complete-as-filed rule does not – as USTelecom erroneously suggests – create a conflict between confidentiality and forbearance. That is a false choice.

USTelecom also incorrectly asserts that INCOMPAS should have filed a motion for summary denial. While INCOMPAS may file a motion for summary denial at the appropriate time – as US Telecom has not provided any evidence of competitive effects of forbearance in local markets – a motion for summary denial is neither required nor an expeditious vehicle for addressing this type of filing deficiency. Under the forbearance procedural rules, an opposition to a motion for summary denial is not due until the due date for reply comments, which would have been June 22, 2018. That would have required all parties to respond to the petition on a deficient record, rather than seeking an immediate remedy. By filing its motion to dismiss under Section 1.45 of the Commission's rules, INCOMPAS pursued a timely remedy.

Accordingly, the Commission should dismiss US Telecom's Petition for Forbearance for violation of the "complete-as-filed" rule. In the alternative, it should grant an extension of at least 60 days after protective orders are in place, data is filed, and interested parties have been allowed a sufficient time to complete the protective order clearance process.

³ 47 C.F.R. § 0.459.

Respectfully submitted,



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May 22, 2018

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2018, 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/ Alexandra Green
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