

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

In the Matter of:

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

**REPLY COMMENTS OF  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

AROCLES AGUILAR  
HELEN M. MICKIEWICZ  
KIMBERLY J. LIPPI  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: [kimberly.lippi@cpuc.ca.gov](mailto:kimberly.lippi@cpuc.ca.gov)  
Phone: (415) 703-5822  
Fax: (415) 703-4592

Attorneys for the California  
Public Utilities Commission

## I. INTRODUCTION

The California Public Utilities Commission (California or CPUC) submits these reply 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 sought comment on the extent to which the BDS Data Collection provides relevant information to evaluate USTelecom’s request for forbearance. In addition to the reasons stated in the CPUC’s opening comments filed in this docket on

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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). The Bureau extended the date for reply comments from May 16, 2019 to May 28, 2019. *Wireline Competition Bureau Extends Reply Comment Deadline and Access to Secure Data Enclave in Business Data Services and USTelecom Forbearance Petition Proceedings*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593, Public Notice (May 14, 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*”).

May 9, 2019, the CPUC urges the Federal Communications Commission (FCC or Commission) to *not* utilize the BDS Data Collection, and to *not* rely upon comments filed by the Incumbent Local Exchange Carriers, as bases to support USTelecom’s request for forbearance for the reasons stated below.

## II. DISCUSSION

The Incumbent Local Exchange Carriers’ (ILECs) comments raise issues and arguments well beyond the scope requested by the *Public Notice*, which was expressly limited to transport services. As the CPUC 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.<sup>5</sup>

The *Public Notice* sought “focused comments” on a specific set of questions relating to BDS *transport* and unbundled *transport*. Ignoring this clear request, the ILECs focus extensively on forbearance from the loop unbundling requirements requested for in USTelecom’s petition.<sup>6</sup> 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.<sup>7</sup>

Second, the ILECs also exceed the scope of the *Public Notice* in their comments by requesting alternative forbearance relief than what was originally submitted as part of

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<sup>5</sup> See CPUC Comments, at pp. 3-4.

<sup>6</sup> 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).

<sup>7</sup> See AT&T Comments at 5; Verizon Comments at 17-19 (referring to a framework that “USTelecom recently proposed” in a May 6, 2019 ex parte communication). AT&T’s comments also rely extensively on USTelecom’s May 6, 2019 ex parte communication.

USTelecom’s petition. CenturyLink argues 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.”<sup>8</sup> Verizon proposes a different alternative form of relief, requesting forbearance 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.<sup>9</sup> USTelecom further presents yet a third alternative proposal, including a request for forbearance from transport unbundling based on the vague standard of “where there is demonstrable evidence of competition.”<sup>10</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 (as well as these new arguments and requests for relief). The Commission’s “complete-as-filed” rule is designed precisely to protect against this kind of lack of due process and unfairness to interested parties.<sup>11</sup>

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<sup>8</sup> CenturyLink Comments at 10.

<sup>9</sup> Verizon Comments at 18.

<sup>10</sup> 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).

<sup>11</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.”).

### III. CONCLUSION

These new arguments, which cite new data, and request new relief, violate the Commission's complete-as-filed rule, as they fail to permit interested parties to file complete and thorough comments on a fully-articulated proposal. The fact that these arguments are raised for the first time more than a year after USTelecom's Petition was filed, further demonstrate the deficiencies in the Petition. Accordingly, the Commission should summarily deny USTelecom's Petition.

Respectfully submitted,

AROCLES AGUILAR  
HELEN M. MICKIEWICZ  
KIMBERLY J. LIPPI

By: /s/ KIMBERLY J. LIPPI

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Kimberly J. Lippi

Attorneys for the People of the  
State of California and the  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102  
Phone: (415) 703-5822  
Fax: (415) 703-4562  
Email: [kimberly.lippi@cpuc.ca.gov](mailto:kimberly.lippi@cpuc.ca.gov)

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