

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of US Telecom for Forbearance Pursuant	)	WC Docket No. 18-141
To 47 U.S.C. §160(c) to Accelerate Investment	)	
In Broadband and Next-Generation	)	
Networks	)	
	)	
Business Data Services in an Internet Protocol	)	WC Docket No. 16-143
Environment	)	
	)	

**REPLY COMMENTS OF U.S. TELEPACIFIC CORP., MPOWER COMMUNICATIONS  
CORP., AND ARRIVAL COMMUNICATIONS, INC.**

U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all doing business as TPx Communications (“TPx”), submit this reply to correct unfounded assumptions, hyperbolic arguments, and inconsistencies in the initial comments filed in response to the Bureau’s Public Notice seeking additional comment in the Business Data Services (“BDS”) and USTelecom Forbearance Petition proceedings.<sup>1</sup>

**I. Granting Forbearance Absent Enforceable Commitments Regarding the Incumbent LECs’ Commercial Alternatives Would be Arbitrary and Capricious and Conflict with the *BDS Order*’s Reliance on the Continued Availability of UNEs to Constrain BDS Prices.**

The Commission cannot make a reasoned analysis of the impact of forbearance on competition or whether it is in the public interest without evaluating the long promised, but never delivered post-forbearance offerings planned by the incumbent local exchange carriers (“ILECs”).<sup>2</sup>

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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*, Public Notice, 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> See Reply Comments of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., WC Docket No. 18-141, p. 15-16 (filed Sept. 5, 2018) (“TPx Reply Comments”). See also TPx Summary Denial Support, p. 6 (stating that the Commission will be left to make an uninformed

USTelecom asserts that its “members have *committed* to offering alternative commercial arrangements” at locations where the Commission grants forbearance from DS0 unbundling obligations.<sup>3</sup> Yet USTelecom admits the practical impact of these “commitments” would be that “pricing for that facility will reflect market realities and not an artificial regulatory construct.”<sup>4</sup> As of today, no ILEC has made a meaningful, substantive proposal in this docket for their unbundled network element (“UNE”) replacement offerings.<sup>5</sup> The ILECs’ position is clear. After forbearance is granted, the ILECs will tell CLECs how much *more* they have to pay for the same facilities in use today that are priced pursuant to the cost methodology mandated by Congress.<sup>6</sup>

USTelecom’s initial request in this proceeding was for a flat 15 percent increase in what competitors pay for UNEs. The irony and illogic of that request cannot be ignored. The ILECs alternatively contend that the broadband and voice markets are or could become<sup>7</sup> competitive and

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judgment as to whether wholesale and retail rates will remain just and reasonable if it were to grant forbearance); Opposition of Access Point, Inc., BullsEyeTelecom, Inc., Matrix Telecom, LLC dba Impact Telecom, New Horizon Communications Corp., and Xchange Telecom LLC, WC Docket No. 18-141, pp. 5-6 (filed Aug. 6, 2018) (stating that absent information about replacement commercial services and prices “it is impossible for the Commission to conduct a meaningful cost-benefit analysis”).

<sup>3</sup> Letter from Patrick Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (May 10, 2019).

<sup>4</sup> Letter from Patrick Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (May 22, 2019) (“USTelecom May 22, 2019 Ex Parte”).

<sup>5</sup> AT&T vaguely proposed to “price the DS0 loops according to the same geographic wire center designations that currently exist ... add *a flat amount* (emphasis added) to any new DS0 loops ordered pursuant to the commercial agreement in urban and suburban wire centers ... [and that] AT&T does not intend to require any volume or term commitments.” Letter from James Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1-2 (filed Feb. 21, 2019) (emphasis added).

<sup>6</sup> See 47 U.S.C. § 252(d)(1) (providing that rates charged for UNEs shall be based on the cost of the network element and “may include a reasonable profit”).

<sup>7</sup> See Letter from Patrick Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (May 28, 2019) (arguing “Section 10(a)(3)’s public interest obligation may be satisfied by the Commission’s own predictive judgment”).

that UNEs should be deregulated. Yet, their immediate ask to the Commission was to increase the rates in a “competitive market” by a flat amount of 15 percent. That proposal so defies the basic economic laws of competitive markets that it was delivered without the support of an economist.

US Telecom criticizes competitive local exchange carriers (“CLECs”) because they cannot “identif[y] any specific markets they would be forced to exit following grant of forbearance.”<sup>8</sup> That’s true. CLECs cannot make any detailed prediction because CLECs and the Commission are being kept in the dark about whether, post-forbearance, ILECs will increase UNE rates by 15, 25, 50, 100 percent or more. Without knowing the impact of the flat rate price increase, CLECs and the Commission cannot evaluate whether customers of competitive carriers will be able to absorb any price increase a CLEC will have to pass through to avoid market exit. Granting forbearance on a nationwide (or even more limited) basis without evaluating the ILECs’ substantive commercial alternative would be arbitrary and capricious because without substantive details about commercial replacement products and pricing, the Commission cannot predict the impact forbearance would have on rates that consumer, business and government customers will be forced to pay for voice and broadband services after UNEs are no longer available at cost-based rates plus a reasonable profit.

Granting forbearance also conflicts with the *BDS Order*’s reliance on the availability of UNEs to constrain BDS prices. CenturyLink argues that forbearance is justified because “the Commission explicitly excluded circuits provided using UNEs from its analysis of competition in BDS markets.”<sup>9</sup> But the *BDS Order* relied on the “medium term” availability of UNEs for at least “several years” to ensure that BDS rates charged by the ILECs would remain just and reasonable after

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<sup>8</sup> USTelecom May 22, 2019 Ex Parte at 2.

<sup>9</sup> Comments of CenturyLink, WC Docket Nos. 18-141, 17-144, 16-143 & 05-25, at n.45 (filed May 9, 2019) (“CenturyLink Public Notice Comments”).

deregulation. As the Commission found, “the use of UNEs, where available, allow competitors to effectively compete in lower bandwidth services.”<sup>10</sup> Forbearance from continued loop unbundling obligations would be inconsistent with the BDS findings and would not be reasoned decisionmaking.

## **II. Neither The Commission’s Analysis in the *BDS Order* or Competition from Fiber-Based CLECs Is Sufficient to Justify Forbearance in the Voice or Combined Voice/Broadband Markets.**

If bundles of voice and broadband services have eviscerated the voice market as the ILECs claim,<sup>11</sup> then the Commission’s *BDS Order* analysis does not support forbearance because the *BDS Order* reviewed broadband data only. AT&T argues that CLECs use DS1 and DS3 UNE loops solely to provide BDS.<sup>12</sup> However, the record shows that CLECs often use DS1 and DS3 UNEs to provide voice and data services to their customers.<sup>13</sup> According to AT&T, the “*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>14</sup> However, the *BDS Order* only reviewed broadband *at 50 Mbps and below*, and the Commission did not analyze the

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<sup>10</sup> *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3476, ¶ 32 (2017) (“*BDS Order*”).

<sup>11</sup> See e.g., 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 18-19, 36 (noting that “providers typically offer service packages that combine voice with data services” and that “enterprise customers almost invariably purchase bundles of services”); Comments of Verizon, WC Docket No. 18-141, at 16 (filed Aug. 6, 2018) (stating that “[b]undled, multifunctional, broadband offerings have replaced the formerly separate markets for local and long-distance wireline voice services”); Reply Comments of USTelecom, WC Docket No. 18-141, at 21 (filed Sept. 5, 2018) (stating that “bundled offerings has largely eviscerated” the distinctions between voice and data service product markets).

<sup>12</sup> Comments of AT&T, WC Docket Nos. 18-141, 17-144, 16-143, & 05-25, at 4-5 (filed May 9, 2019) (“AT&T Public Notice Comments”).

<sup>13</sup> See Declaration of Russell Shipley, ¶ 12 (“Shipley Decl.”). See also Declaration of Margi Shaw, ¶¶ 2, 14, attached to Opposition of First Communications, LLC, WC Docket No. 18-141 (filed Aug. 6, 2018) (stating that First Communications uses DS1 UNE loops to offer Internet, voice and cloud services).

<sup>14</sup> AT&T Public Notice Comments at 10.

voice or combined voice and broadband markets in the *BDS Order*. In contrast, the Commission’s analysis of competition in the USTelecom Forbearance proceeding requires evaluation of the voice and voice/broadband markets as product markets distinct from the BDS market. The Commission cannot rely on the analysis in the *BDS Order* to reach a conclusion on different questions, that is, the status of competition in the voice and voice/broadband markets.

ILECs also continue to urge the Commission to look to the presence of fiber-based competitive providers like Zayo to justify grant of nationwide forbearance.<sup>15</sup> Just as reliance on the *BDS Order* to make determinations about competition in the voice or voice/broadband markets would be arbitrary and capricious, relying on competition provided by Zayo and similar fiber-based competitors to justify forbearance from UNE obligations is misplaced. Providers like Zayo do not offer stand-alone voice or voice/broadband combinations and instead focus on providing high-capacity, fiber-based bandwidth services that were the subject of the *BDS Order*.<sup>16</sup> Zayo and similar providers should not be considered competitors in the voice and voice/broadband markets.

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<sup>15</sup> See, e.g., CenturyLink Public Notice Comments at 7 (stating that “[f]iber-based CLECs, such as Zayo, continue to increase their share of BDS revenues”); Reply Comments of USTelecom, WC Docket No. 18-141, at 15 (filed Sept. 5, 2018) (highlighting Zayo’s provision of 11.8 million dark fiber miles); Comments of Verizon, WC Docket No. 18-141, at 10-11 (filed Aug. 6, 2018) (noting Zayo’s investment in fiber).

<sup>16</sup> See *Joint Application of Zayo Group, LLC and Electric Lightwave Parent, Inc. for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 63.04 and 63.24 of the Commission’s Rules to Transfer Indirect Control of Domestic and International Section 214 Authorization Holders to Zayo Group, LLC*, WC Docket No. 16-401 (filed Dec. 9, 2016) (stating that “Zayo does not provide voice services”). See also Declaration of Douglas Denney, ¶ 7, attached to Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association at 31, WC Docket No. 18-141 (filed Aug. 6, 2018) (stating that Allstream serves only a small portion of its end user customers using fiber from its parent fiber company (*i.e.*, Zayo) and that “approximately 95% of our customers are served in whole or in part over UNEs”).

### **III. The Commission Must Evaluate the Impact of Forbearance in Retail and Wholesale Markets.**

AT&T argues that retention “of duplicative UNEs would only interfere with and undermine the Commission’s new regime” from the *BDS Order*.<sup>17</sup> That policy argument is wrong because the Commission’s *BDS Order* relied, at least in part, on continued UNE-based competition to constrain BDS prices. If, as AT&T alleges, the *BDS Order* “already represents the Commission’s considered and comprehensive approach to the regulation of wholesale DS1 and DS3 loops,”<sup>18</sup> the Commission could not rely on UNE-based competition to constrain BDS prices.

USTelecom cannot predict whether consumer, business and government customers will lose access to their preferred provider of voice or voice/broadband service.<sup>19</sup> Although TPx does not agree that the retail voice market is nationwide, Form 477 data show that ILECs provided more than 48% of the nation’s total switched access and interconnected VoIP (excluding OTT VoIP) subscriptions to business and government customers as of June 2017.

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<sup>17</sup> AT&T Public Notice Comments at 12.

<sup>18</sup> AT&T Public Notice Comments at 12.

<sup>19</sup> *Cf.* USTelecom May 23, 2019 Ex Parte at 1.

**Voice Subscriptions - U.S.**  
**By Technology and Regulatory Status**  
**Business & Government -Grade Service**

(in thousands)

	Switched Access			All Other Interconnected VoIP			Total Switched Access and Interconnected VoIP (excluding OTT VoIP)		
	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total
<b>Jun - 2017</b>	21,313	10,939	32,252	3,285	15,550	18,836	24,599	26,486	51,084
<b>Dec - 2016</b>	22,596	11,401	33,997	3,026	15,125	18,150	25,622	26,528	52,150
<b>Jun - 2016</b>	24,323	11,658	35,981	2,757	14,456	17,213	27,080	26,115	53,193
<b>Dec - 2015</b>	25,265	11,730	36,995	2,510	13,328	15,839	27,776	25,058	52,834
<b>Jun - 2015</b>	26,724	11,598	38,323	2,256	12,703	14,959	28,980	23,301	53,282
<b>Dec - 2014</b>	28,108	12,497	40,605	1,839	11,898	13,737	29,947	24,395	54,342
<b>Jun - 2014</b>	29,351	13,156	42,506	1,432	10,452	11,882	30,779	23,610	54,388

(in percentages of Total)

	Switched Access			All Other Interconnected VoIP			Total Switched Access and Interconnected VoIP (excluding OTT VoIP)		
	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total
<b>Jun - 2017</b>	41.7	21.4	63.1	6.4	30.4	36.9	48.2	51.8	100.0
<b>Dec - 2016</b>	43.3	21.9	65.2	5.8	29.0	34.8	49.1	50.9	100.0
<b>Jun - 2016</b>	45.7	21.9	67.6	5.2	27.2	32.4	50.9	49.1	100.0
<b>Dec - 2015</b>	47.8	22.2	70.0	4.8	25.2	30.0	52.6	47.4	100.0
<b>Jun - 2015</b>	50.2	21.8	71.9	4.2	23.8	28.1	54.4	43.7	100.0
<b>Dec - 2014</b>	51.7	23.0	74.7	3.4	21.9	25.3	55.1	44.9	100.0
<b>Jun - 2014</b>	54.0	24.2	78.2	2.6	19.2	21.8	56.6	43.4	100.0

Source: This data was compiled from the publicly-available reports from the Voice Telephone Services Reports webpage at <https://www.fcc.gov/general/iatd-data-statistical-reports>. (Original Source - FCC Form 477)

Note: Figures may not sum to totals due to rounding

ILECs have an even greater share of voice service provided over copper local loops, a nearly 75% market share of the nation's total local exchange telephone and interconnected VoIP (excluding over-the-top VoIP) subscriptions provided to consumer, business and government customers over copper loops as of June 2017. *Yet, non-ILEC competitors still relied on copper to provide over 15 million local exchange telephone or interconnected VoIP subscriptions as of June 2017.*

## Voice Subscriptions - U.S.

### By Last-Mile Delivery Medium

#### Total Consumer and Business-Government Grade Service

(in thousands)

Copper local loop									
	Local Exchange Telephone Service			All Other Interconnected VoIP			Total		
	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total
Jun - 2017	38,486	9,398	47,885	7,660	6,094	13,753	46,146	15,492	61,638
Dec - 2016	40,882	9,740	50,622	7,556	6,054	13,610	48,438	15,794	58,142
Jun - 2016	44,421	9,529	53,950	7,465	5,665	13,131	51,886	15,194	61,922
Dec - 2015	47,043	10,412	57,454	7,255	5,381	12,635	54,298	15,793	64,572
Jun - 2015	50,650	10,091	60,741	7,027	5,008	12,036	57,677	15,099	68,088
Dec - 2014	53,988	11,416	65,404	6,362	4,877	11,239	60,350	16,293	72,605
Jun - 2014	57,659	12,076	69,735	5,131	4,111	9,242	62,790	16,187	76,966

(in percentages)

Copper local loop									
	Local Exchange Telephone Service			All Other Interconnected VoIP			Total		
	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total
Jun - 2017	83.4	60.7	77.7	16.6	39.3	22.3	74.9	25.1	100.0
Dec - 2016	84.4	61.7	87.1	15.6	38.3	23.4	83.3	27.2	100.0
Jun - 2016	85.6	62.7	87.1	14.4	37.3	21.2	83.8	24.5	100.0
Dec - 2015	86.6	65.9	89.0	13.4	34.1	19.6	84.1	24.5	100.0
Jun - 2015	87.8	66.8	89.2	12.2	33.2	17.7	84.7	22.2	100.0
Dec - 2014	89.5	70.1	90.1	10.5	29.9	15.5	83.1	22.4	100.0
Jun - 2014	91.8	74.6	90.6	8.2	25.4	12.0	81.6	21.0	100.0

Source: This data was compiled from the publicly-available reports from the Voice Telephone Services Reports webpage at <https://www.fcc.gov/general/iatd-data-statistical-reports>. (Original Source - FCC Form 477)

Note: Figures may not sum to totals due to rounding

Because non-ILECs are unlikely to deploy copper loops, this means that UNEs (or resale) accounted for nearly 14% of total local exchange and interconnected VoIP subscriptions.<sup>20</sup>

<sup>20</sup> The 15,492,000 copper-loop based local exchange and interconnected VoIP subscriptions provided by non-ILECs are approximately 14% of total (111,469,000) copper-loop based local exchange and interconnected VoIP subscriptions reported as of June 2017.



**Voice Subscriptions - U.S.**  
**By Last-Mile Delivery Medium**  
**Total Consumer and Business-Government Grade Service**

(in thousands)

	Total Local Exchange Telephone Service and All Other Interconnected VoIP														
	Fiber-to-the-premises			Coaxial Cable			Terrestrial fixed wireless			Copper local loop			Total		
	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total	ILEC	Non-ILEC	Total
Jun - 2017	9,419	4,468	12,116	64	35,773	35,838	18	89	108	46,146	15,492	61,638	55,647	55,822	111,469
Dec - 2016	9,217	4,356	12,252	65	35,445	35,510	501	103	604	48,438	15,794	64,232	58,221	55,698	113,920
Jun - 2016	8,947	4,505	12,306	62	35,424	35,485	516	98	615	51,886	15,194	67,081	61,411	55,221	116,633
Dec - 2015	8,763	3,659	12,421	57	34,416	34,474	524	85	609	54,298	15,793	70,089	63,642	53,953	117,593
Jun - 2015	8,557	3,842	12,399	64	33,637	33,701	537	76	613	57,677	15,099	72,777	66,835	52,654	119,489
Dec - 2014	8,384	3,267	11,651	69	32,680	32,751	549	100	649	60,350	16,293	76,643	69,352	52,340	121,694
Jun - 2014	7,991	3,244	11,235	52	31,522	31,575	546	114	660	62,790	16,187	78,977	71,379	51,067	122,447

Source: This data was compiled from the publicly-available reports from the Voice Telephone Services Reports webpage at <https://www.fcc.gov/general/iatd-data-statistical-reports>. (Original Source - FCC Form 477)

Note: Figures may not sum to totals due to rounding

As TPx and others have argued, line-powered Plain Old Telephone Service or POTS is a separate market and competition is not “rampant” in that market. Because the Commission does not know how much the ILECs intend to increase DS0 UNE or resale prices post-forbearance, it cannot predict whether the 15 million subscribers who have chosen a competitive voice service provided over copper would be harmed by forbearance. Form 477 voice subscription data may be more accurate than Form 477 broadband availability data, but it still does not provide the Commission the data necessary to determine ILEC market power in a geographic market for voice services and how that ILEC market power might harm customers of competitive service providers.

Nor is competition “rampant” or “ubiquitous” in the wholesale market. Wholesale data presented by CenturyLink shows that ILECs dominate the wholesale market, with cable and CLECs holding a combined wholesale market share of less than 25 percent in 2017 and less than 35 percent projected in 2023.<sup>21</sup> The Commission must evaluate competition in distinct wholesale and retail markets before granting forbearance.<sup>22</sup> Because CenturyLink’s data shows the ILECs,

<sup>21</sup> CenturyLink Public Notice Comments at n.32 (“From 2017 to 2023, cable companies’ combined [wholesale wireline] market share will increase from 8.7 to 15.3% and CLECs’ combined share from 15.7 to 18.9%.”).

<sup>22</sup> See Opposition of TPx, at 11-20.

on a nationwide basis, are still dominant in the wholesale market, the Commission should not grant nationwide forbearance from ILECs' UNE obligations.

**IV. Form 477 Broadband Availability to Households Does Not Provide a Reasoned Basis to Evaluate the Markets for Voice and Voice/Broadband Service Provided to Business/Government Customers.**

USTelecom claims are false of “nearly ubiquitous deployment of cable broadband.”<sup>23</sup> The ability to deploy cable broadband to one household in a census block (no matter its size) does not make cable broadband “ubiquitous.” In other dockets, USTelecom agrees, arguing that its proposed broadband reporting mechanism would create “dramatically more accurate FCC Form 477 reporting” to replace the current census block reporting method that relies on a “one-served-all-served basis for deployment data that has become less reliable as a tool.”<sup>24</sup> USTelecom’s claim that Form 477 data show broadband speeds of 25 Mbps download are available to 90 percent of the population and households through cable providers cannot be reconciled with its argument that the current “one-served-all-served” Form 477 reporting methodology is insufficient to “understand the unserved areas of the country.”<sup>25</sup> TPx explained in its comments why reliance on Form 477 data that the ILECs and the Commission have acknowledged are flawed would be inappropriate to support determinations about the status of competition in this proceeding.<sup>26</sup> In short, because

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<sup>23</sup> USTelecom May 6, 2019 Ex Parte at 2, 7.

<sup>24</sup> Letter from B. Lynn Follansbee, Vice President – Law and Policy, USTelecom—The Broadband Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket Nos. 11-10 & 10-90, at 1 (filed March 21, 2019).

<sup>25</sup> AT&T Public Notice Comments at 4; Comments of Frontier Communications, WC Docket Nos. 18-141, 17-144, 16-143 & 05-25, at 2, 4 (filed May 9, 2019); Comments of Verizon, WC Docket No. 18-141, at 2 (filed May 9, 2019); Letter from Patrick Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 18-141, at 5 (filed May 6, 2019).

<sup>26</sup> Comments of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., WC Docket Nos. 18-141, 16-143, at 4-6 (filed May 9, 2019) (“TPx Public Notice Comments”).

“Form 477 broadband service availability data” is now acknowledged to be flawed, the Commission can no longer use such data to “necessarily imply the presence of broadband-capable cable network facilities.”<sup>27</sup>

In addition, the Form 477 data cited by USTelecom and the ILECs does not distinguish between residential and business markets that the Commission has long recognized are separate markets. For example, in the Qwest Phoenix Order, the Commission analyzed retail services for mass market (including residential) and enterprise/business customers as distinct product markets.<sup>28</sup> Even USTelecom’s filings in the Forbearance proceeding recognize the distinction between residential and business markets.<sup>29</sup> Therefore, reliance on data that provides an admittedly inaccurate view of the availability of broadband services for households would be arbitrary and capricious.

#### **V. TPx Uses Analog DS0 Loops to Provide Competitive Voice and Broadband Service to Business and Government Customers**

USTelecom incorrectly claims that analog DS0 loops are used “virtually exclusively to provide residential voice service.”<sup>30</sup> TPx uses 122,000 analog DS0 loops to provide Ethernet over Copper (“EoC”) broadband service to customers and 148,000 analog DS0 loops and 12,000 resold lines to provide local exchange service using incumbent LEC copper loops.<sup>31</sup> The vast majority of

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<sup>27</sup> USTelecom May 22, 2019 Ex Parte at 2.

<sup>28</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8649-50, 8656-57, ¶¶ 51-53, 62-63 (2010) (describing the mass market and enterprise markets and noting that “the Commission has found it appropriate to define separate relevant product markets based on the class of customer”).

<sup>29</sup> Reply Comments of USTelecom, WC Docket No. 18-141, at 23 (filed Sept. 5, 2018) (asserting that competition “in residential and business markets alike” support granting forbearance).

<sup>30</sup> USTelecom May 6, 2019 Ex Parte at 8.

<sup>31</sup> Shipley Decl., ¶¶ 11, 34.

TPx’s customers are business and government, not consumers. Although the Commission’s Form 477 data for voice subscriptions provided over copper do not distinguish between consumer and business/government customers, TPx’s experience shows that analog DS0 loops are a significant input in service to business and government customers.

## **VI. Fiber Splice Points Are the Appropriate Location to Measure Distances from ILEC Wire Centers to Determine Potential Entry in the Transport Market.**

INCOMPAS’ comments describe why “the *April Data Tables* are unfit for use in a robust competition analysis.”<sup>32</sup> As INCOMPAS points out, “by failing to include any data about the distance between a wire center and a node or splice point on the competitive provider’s network from which a connection can actually be made to the wire center,”<sup>33</sup> the *April Data Tables* understate the significant barrier to entry for competitive providers in extending fiber to ILEC wire centers. Rather than focusing on the distance between competitive fiber facilities and ILEC wire centers via a straight-line distance test, the Commission has agreed that “fiber splice points are critical” in the context of assessing the proximity to fiber facilities.<sup>34</sup> It would be arbitrary and capricious for the Commission to rely on the *April Data Tables* to forbear from the ILECs’ UNE transport obligations after acknowledging the importance of evaluating fiber splice points in build/buy decisions.<sup>35</sup>

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<sup>32</sup> Comments of INCOMPAS, WC Docket Nos. 18-141, 17-144, 16-143, & 05-25, at 8 (filed May 9, 2019) (“INCOMPAS Public Notice Comments”).

<sup>33</sup> INCOMPAS Public Notice Comments at 9-10.

<sup>34</sup> See *Business Data Services in an Internet Protocol Environment et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, 4815 ¶ 212, n.558 (2016).

<sup>35</sup> *Id.* at ¶ 211, n.553.

## VII. Conclusion

The overwhelming evidence reiterates the ongoing importance of the availability of UNEs and that forbearance from the UNE and resale obligations is contrary to the public interest. Neither the *BDS Order* nor newly-raised arguments from the ILECs changes this conclusion. The Commission should deny USTelecom's Petition. Without details about ILECs' post-forbearance commercial offerings, and facts about the availability of competition in the voice and voice/broadband geographic markets necessary to incent more fiber deployment and constrain prices, the Commission cannot make an accurate assessment of the impact of forbearance on customers of voice and voice/broadband services.

Respectfully submitted,

/s/Tamar E. Finn

Tamar E. Finn  
Patricia Cave  
MORGAN LEWIS & BOCKIUS LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004-2541  
202.739.3000 (tel)  
202.739.3001 (fax)

*Counsel for U.S. TelePacific Corp., Mpower  
Communications Corp. and Arrival Communi-  
cations, Inc., all d/b/a TPx Communications*

/s/ William P. Hunt III

William P. Hunt III  
SVP, General Counsel and Secretary  
TPx Communications  
515 S. Flower Street, 45th Floor  
Los Angeles, CA 90071  
(303) 268-5420

May 28, 2019