

June 3, 2019

Ex Parte

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; 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 No. 17-144; Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143; Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25

Dear Ms. Dortch,

On May 30, 2019, representatives from INCOMPAS and certain of its member companies, as well as counsel thereto, met with staff from the Wireline Competition Bureau and the Office of Economics and Analytics in connection with the above-referenced proceedings. A full listing of the participants is attached hereto as Attachment 1. As noted below, representatives from the attending companies explained how their companies are able to use various unbundled network elements to offer business and residential customers competitive alternatives, and as a foundation for investing in electronics and fiber facilities to be able to deliver faster services. The beneficiaries of these competitive offerings are business and residential *consumers*, who receive services that incumbents are not offering, or service-tailoring and specialization that the incumbents cannot or will not provide. These companies ask the Commission to reject USTelecom's forbearance petition because of the detrimental impact forbearance will have on their customers—residential and business consumers—by reducing service offerings, eliminating choice in providers, increasing prices, and reducing service quality and integration options. Consumers' choices are those available at specific locations—not the abstract and generalized averages across counties or census blocks that USTelecom hides behind (and that are based on flawed data). The docket is filled with thousands of testimonials from residential and business consumers who recognize the benefits of having a competitive option.

Mr. Bubb described how his company, Gorge Networks, has been able to use unbundled copper loops, DS1 and DS3 loops, and DS1 and DS3 interoffice transport as a bridge to building its own fiber-to-the-premise network to serve communities in Oregon and Washington State.¹

¹ See Declaration of Dan Bubb ¶¶ 2-4, attached as Attachment 9 to Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the

As a result, Gorge Networks has been able to transition approximately 30% of its customers to its own fiber networks in areas where it is able to build. Mr. Bubb explained, however, that Gorge Networks's deployment plan in Washington State has been drastically curtailed because of dramatically higher UNE rates approved by the state utilities commission in 2012.² The prospect of such rate increases limited Gorge's ability to invest in and grow its xDSL penetration in these communities. As a result, its fiber build in Washington is significantly less than it had originally planned. In contrast, Gorge Networks was able to deploy more fiber in Oregon, where there were no comparable UNE rate increases.³

Mr. Jasper discussed the categories of loops made available to Sonic pursuant to interconnection agreements, which also reflect the categories of DS0 loops in the Commission's rules. "Digital DS0 loops" generally refer to copper loops that come equipped with the ILEC's own electronics, typically for providing Integrated Services Digital Network. "Analog voice-grade DS0 loops" are copper loops that do not come equipped with ILEC electronics, but may have bridge taps and load coils included, which interfere with xDSL technology. These are typically ordered for the provision of traditional TDM services. "xDSL-capable DS0 loops" also do not come equipped with ILEC electronics, but they do not have impediments such as the bridge taps and load coils (because they did not have them, the ILEC removed them, or the ILEC removes them upon request) so that the loop can support xDSL services.⁴

Mr. Jasper explained that Sonic primarily purchases xDSL-capable DS0 loops so that it can provision its own electronics to enable voice services *and* high-speed broadband over the loop.⁵ For residential customers, Sonic deploys xDSL-capable DS0 loops to provide VDSL2 or ADSL2+ and POTS voice.⁶ For enterprise customers, Sonic deploys its own electronics to enable xDSL and POTS technologies.⁷ Furthermore, Mr. Jasper discussed how, regardless of the categories, it is not appropriate for the Commission to forbear from the unbundling requirements for xDSL-capable DS0 loops. As Sonic has explained, no substitutes for bare copper DS0 loops currently exist.⁸ Access to these xDSL-capable DS0 loops remains necessary to ensure robust

Northwest Telecommunications Association, WC Docket No. 18-141 (filed Aug. 6, 2018) ("Competitive Carriers Group Opposition") ("Gorge Networks Decl.").

² See Second Supplemental Declaration of Dan Bubb ¶¶ 5-8, attached hereto as Attachment 2.

³ See *id.* ¶ 10.

⁴ These categories track with the categories under the Commission's rules. See 47 C.F.R. § 51.319(a)(1). ILECs are required to condition copper loops upon request to make them capable of providing xDSL services. See 47 C.F.R. § 51.319(a)(1)(ii).

⁵ Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom at 5, WC Docket No. 18-141 (filed Aug. 6, 2018) ("Sonic Opposition").

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 9. While AT&T and perhaps other ILECs have suggested that they will offer a commercial alternative in the future if forbearance is granted, they have provided no

competition.⁹ In some cases, these are the only means of connectivity for consumers. And, as Mr. Jasper has previously explained in the record, Sonic's fiber deployment, enabled by initial use of UNEs, has also stimulated fiber deployment by the incumbent telco and cable companies.¹⁰ Without UNEs, this added stimulus to widespread fiber deployment would be lost, even in a location as dense as San Francisco.

Mr. Janjic spoke of Virginia Global's provision of service to both residential and business customers in rural Rockbridge County, Virginia.¹¹ He explained that in some wire centers the incumbents have not upgraded networks with the necessary equipment to provide broadband services. As a result, he explained that his company – using xDSL-capable copper loops – is the

information about this offering—price, terms, conditions—that would allow the Commission or the parties to analyze it.

⁹ As Sonic has also previously explained, access to DS1 UNE loops remains necessary for residential and enterprise customers beyond the reach of xDSL-capable loops (*i.e.*, anything greater than 14,500 feet from the central office), as these customers typically have no other option for service. For customers too far from a central office to be served by a DS0 loop, Sonic purchases DS1 loops as an alternative. Sonic Opposition at 3, 15. Sonic serves rural businesses as well as rural residential customers over the DS1 UNE loops it purchases. *Id.* at 3. AT&T suggests that Sonic does not use DS1 loops to serve residential customers in rural parts of California, in part because AT&T was unable to find any services on Sonic's website priced at levels that could support a rural DS1-based offering (a rural DS1 UNE is more than \$100), or that offer a 1.5 Mbps residential offering. *See* Comments of AT&T at 10 n.20, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed May 9, 2019) ("AT&T Comments"). In fact, Sonic does use DS1s to serve rural residential customers in instances where residential customers have no other option. Sonic sells these services on a custom basis through its enterprise account team directly to the customer, at a rate of \$149 per month for 1.5 Mbps service, so these options are not listed on its website. Because other service options—if available—would be faster and cheaper, residential customers' purchase of service over these DS1 loops indicates that they are, in fact, purchasing this because it is their only option for broadband. This is the same for rural businesses that purchase 12 Mbps delivered over UNE DS1s; while the price is high, they are doing so because they do not have a better or more cost-effective option. *See* Attachment A at ¶ 6. For rural residential and business customers, DS1s remain invaluable because they enable connectivity for customers beyond the reach of DS0s until a better option becomes available.

¹⁰ Sonic Opposition at 18 ("To the best of Sonic's knowledge, in most of the markets where it has deployed fiber, it has been the first in a market to broadly do so, often soon followed by AT&T's fiber deployment or by upgrades by Comcast or Wave, the other cable company that provides service in areas where Sonic has deployed fiber.").

¹¹ *See* Declaration of Dusan Janjic ¶ 2, attached as Attachment 16 to Competitive Carriers Group Opposition.

only broadband provider to some of Virginia Global's customers.¹² He also explained that they bond several UNE DS1 transport circuits to provide transmission from the central office to a remote location (cabinet with electronics) from which they deliver xDSL service to their customers including residential customers. USTelecom derides Virginia Global's testimony as mere anecdote, but it reflects on-the-ground truth: USTelecom's requested forbearance, the withdrawal of unbundled elements and/or significant price increases, will have a direct impact on these rural consumers' access to and affordability of broadband services. These rural Virginia consumers should not have to wait for CenturyLink to get around to upgrading electronics (using CAF Phase II support) that Virginia Global already has in place.¹³

On behalf of Granite, Mr. Galvin explained that business and government customers continue to demand and need TDM-based telephone services provided via copper loops ("traditional TDM service") in large volumes because of the reliability, ubiquity, and affordability of that service. For example, Mr. Galvin stated that business and government customers demand traditional TDM service in the many cases where a line-powered telephone connection is necessary.¹⁴ In addition, Mr. Galvin explained that there are circumstances in which business and government customers are required by law to purchase traditional TDM service.¹⁵ Mr. Galvin further explained that Granite and other competitors that resell incumbent LEC traditional telephone service rely on the availability of avoided-cost resale under Section 251(c)(4) to purchase traditional TDM service from incumbent LECs at reasonable prices. In some cases competitors do so by directly purchasing the service at the avoided-cost resale rate under their interconnection agreements. In other cases, competitors do so by purchasing the service under their commercial wholesale agreements at prices significantly influenced by the availability of avoided-cost resale. Competitors use the availability of avoided-cost resale in

¹² See *id.* ("There are a number of areas in the county where the copper UNE based high speed data service we provide is the only option available.").

¹³ See Federal Communications Commission, Connect America Fund Phase II Funding by Carrier, State, and County, available at <https://www.fcc.gov/document/connect-america-fund-phase-ii-funding-carrier-state-and-county>.

¹⁴ See Declaration of Larry Antonellis ¶¶ 12-13, 15-19, attached as Attachment A to Opposition of Granite to USTelecom's Forbearance Petition, WC Docket No. 18-141 (Aug. 6, 2018) (explaining that VoIP and wireless telephone services do not provide the features that business and government customers value in traditional TDM service and describing circumstances in which line-powered services are necessary) ("Antonellis Decl."); Declaration of Sean J. Sullivan ¶ 9, 11-12, attached to Opposition of MetTel, WC Docket No. 18-141 (Aug. 6, 2018) ("Sullivan Decl.").

¹⁵ See Letter from Thomas Jones, Counsel to Granite Telecommunications LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 6-9 (filed March 14, 2019) (describing government regulations that require, as either a practical or legal matter, the purchase of traditional TDM service).

their negotiations with incumbent LECs to obtain reasonable wholesale discounts in their commercial agreements.¹⁶ In addition, there are efficiencies associated with entering into commercially negotiated wholesale agreements as long as the prices therein are disciplined by the availability of avoided-cost resale as a regulatory backstop.¹⁷ Accordingly, the fact that competitive LECs also purchase service under commercial wholesale agreements does not mean that forbearance will not have a significant impact on those services: to the contrary, forbearance is likely to increase the price for services purchased under commercial wholesale agreements, and thus the prices charged to end user business and governmental consumers. Finally, as Mr. Galvin explained, avoided-cost resale regulation has no adverse impact on incumbent LECs' ability to earn profits or to invest in new fiber networks because the rate is a discount to the incumbent LEC retail rates to reflect costs that the incumbent does not incur to serve these customers.¹⁸

Mr. Galvin explained that the continued availability of UNE voice grade DS0 copper loops is extremely important to its ability to serve business and government customers in the CenturyLink incumbent LEC territory. As with other large incumbent LECs, the price that Granite pays for traditional TDM service under its commercial wholesale agreement with CenturyLink is similar to the price it would pay if it were to purchase the services under the avoided-cost resale discount. However, the specific terms of the agreement make UNE voice grade DS0 copper loops important. The agreement sets the price for the loop component of traditional TDM service to be equal to the price that CenturyLink charges for the loop purchased as a UNE, and it sets the price for the other components of the service (e.g., switching) at a commercially-negotiated level. If the Commission were to eliminate UNE rate regulation for voice grade copper loops, CenturyLink would almost certainly increase the price for those loops, thereby automatically increasing the price that Granite pays for over 125,000 lines of traditional TDM service connections under its commercial wholesale agreement with CenturyLink. As a result, Granite would experience substantial increases in the price it pays CenturyLink under the parties' wholesale commercial agreement. Among other things, Granite would need to increase its retail prices wherever possible to pass through the higher wholesale prices. Given that Granite and other resale competitors are the only competitors that CenturyLink faces in the provision of traditional TDM services, these effects would mean that business and government

¹⁶ See Antonellis Decl. ¶ 34; Sullivan Decl. ¶ 25.

¹⁷ See Declaration of William P. Zarakas ¶ 25, attached as Attachment B to Opposition of Granite to USTelecom's Forbearance Petition, WC Docket No. 18-141 (Aug. 6, 2018) ("Zarakas Decl."); Antonellis Decl. ¶ 35.

¹⁸ See Zarakas Decl. ¶ 20 (explaining that the avoided-cost resale discount methodology "ensures that, in addition to other costs, a return on invested capital is included in the resale price," and that, the "ILECs therefore do not suffer a below market return on their investments when a line is leased to a CLEC (via resale obligations) instead of sold directly to an end-user. There is, therefore, no adverse impact on their ability to gain profits or to invest in the construction of new networks or the provision of new services.").

Ms. Marlene H. Dortch

June 3, 2019

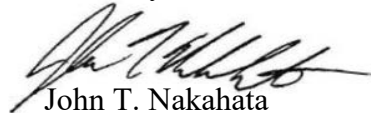
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customers in the CenturyLink territory would pay higher prices and experience fewer of the benefits of competition.

On behalf of First Communications, Mr. Wons spoke about the thousands of primarily small-business customers his company serves, principally in the Midwest, who have historically been underserved by the incumbent. He explained that most of their customers are without fiber or alternative access methods as they are in industrial parks or office complexes outside the financial districts. He further explained that their customers are generally receiving advanced services with high service level agreements in many cases not offered by the ILECs or, where present, cable companies. First Communications uses DS1 loops to build out a customer base and to provide advanced services such as PRI service and integrated T1s. Mr. Wons spoke about the fact that if First Communications loses access to UNE loops, its customers would face price increases in the range of three to five times, because the only alternative would be the much higher-cost incumbent special access. With respect to the importance of DS1 loops, Mr. Jasper of Sonic and Mr. Kohly of Socket Telecom also explained how their respective companies use DS1 loops to serve customers when the length of existing bare copper loops makes it unusable for providing data services.

Please feel free to contact me if you have any questions.

Sincerely,



John T. Nakahata

Henry Shi

Counsel to INCOMPAS

cc:

Kris Monteith

Terri Natoli

Pam Arluk

Edward Krachmer

Michele Berlove

Megan Capasso

Gregory Capobianco

Eric Ralph

Pam Megna

Attachment 1

Meeting Attendees

In-person:

Michael Galvin	Granite Communications
Dane Jasper	Sonic
Matt Kohly	Socket Telecom
Karen Reidy	INCOMPAS
Mark Wons	First Communications
Thomas Jones	Counsel to Granite and Access One
John Nakahata	Counsel to INCOMPAS
Julie Veach	Counsel to Sonic
Kris Monteith	Wireline Competition Bureau
Terri Natoli	Wireline Competition Bureau
Pam Arluk	Wireline Competition Bureau
Edward Krachmer	Wireline Competition Bureau
Michele Berlove	Wireline Competition Bureau
Megan Capasso	Wireline Competition Bureau
Gregory Capobianco	Wireline Competition Bureau
Eric Ralph	Office of Economics and Analytics
Pam Megna	Office of Economics and Analytics

Via teleconference:

Dan Bubb	Gorge Networks
Jeff Buckingham	Digital West
Douglas Denney	Allstream
Daniel Friesen	IdeaTek
Dusan Janjic	Virginia Global
Fletcher Kittredge	GW
Joe Morris	First Communications
Dell Purdy	Dialog
Carson Coffman	Socket Telecom
Brian Worthen	Mammoth Networks
John Hoehne	Access One
Joel Miller	Access One
Tamar Finn	Counsel to First Communications
Mia Hayes	Counsel to Granite and Access One
Henry Shi	Counsel to INCOMPAS

Attachment 2

**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)	
)	
Business Data Services in an Internet Protocol)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	

SECOND SUPPLEMENTAL DECLARATION OF DAN BUBB

1. My name is Dan Bubb. I am President at Gorge Networks, Inc., based out of Hood River,
OR. This statement supplements prior declarations I have filed in the above-referenced dockets.
2. Gorge Networks is a service provider in Oregon and Washington State that offers broadband services to business and residential customers using several technologies over fiber, we construct and own, and unbundled xDSL-capable copper loops.
3. Gorge Networks has been able to adopt and deploy enhanced xDSL technologies to residential and business customers at a much faster rate than available from CenturyLink, the ILEC in our service area. In most markets, we were the first to use bonded loops, and upgrade to VDSL technology resulting in the fastest speeds available in the area. Only after we put market pressure on CenturyLink for the higher speed offerings, does CenturyLink follow up with similar system upgrades. We believe our influence in the market forces CenturyLink's to upgrade their systems. Having pressure from a competing provider has been a benefit to the consumer.

4. Our growth strategy has been to utilize UNEs to provide xDSL service and grow our customer base. We then overlay with fiber when we obtain adequate customer density. Strong customer density is what makes the investment in a fiber build financially viable.
5. The impact of the availability, or lack thereof, of UNE DS0s—and the associated pricing—has a direct impact on our ability to ultimately deploy fiber. A case in point is in communities we serve in Washington State, where ILEC UNE rate increases have gone unchecked because it is too costly for a company of our size to contest the increase through arbitration, including the cost of commissioning a rate study.
6. In 2012, CenturyLink filed with the Washington Public Utilities Commission to increase its rates for DS0 and DS1 UNE, which was subsequently granted. Specifically, CenturyLink sought rate increases of 35% to 200% in its revised interconnection agreement. Faced with these increases, we did not renew our interconnection agreement and minimized our expansion efforts in Washington. As a result of our inability to grow our base of residential and business customers through xDSL over UNEs, we drastically curtailed our planned investment in fiber deployment in Washington.
7. The DS0 UNE prices in Washington are so high that they are above the retail rate for CenturyLink's own DSL internet product. A retail 20 Mbps DSL line from CenturyLink costs \$45 per month. In the same rate center (White Salmon and Stevenson, Washington), UNE DS0s cost \$46.35. If we renew our interconnection agreement, the rate for a UNE DS0 will go up to \$62.85. At these high rates, Gorge Networks is unable to continue serving existing customers on unbundled DS0s in these areas and therefore have significantly reduced our market presence and investment there.

8. UNE DS1 prices in Washington state are also high and have increased since the Washington Public Utilities Commission granted CenturyLink's UNE price increase. Gorge Networks utilizes UNE DS1s to provide customized voice and data solutions to businesses in rural Washington. If we renewed our interconnection agreement, we would have to abandon the market completely for any UNE DS1 based services. Specifically, DS1 UNEs in White Salmon and Stevenson would go from \$112.47 per month to \$240.73 per month. Goldendale Washington DS1 UNEs would go from \$171.60 per month to \$521.70 per month.
9. We realize that these UNE price increases are not what is at issue in the forbearance proceeding. Yet, these price increases are effectively the same as relieving the ILEC of the obligation to provide such UNEs. The result is we will no longer be able to afford to serve that customer base. Further, it erodes our ability and interest in investing in our own infrastructure in these communities.
10. In contrast, UNE pricing in Oregon is significantly lower than in Washington State. With lower loops costs in Oregon, we have been able to expand our customer base significantly. As a result, we have deployed 20+ miles of fiber—and are continuing to expand our fiber footprint—in our DSL footprint and have and continue to transition customers onto our own fiber.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Dan Bubb

6/3/2019

Date