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June 6, 2019

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket Nos. 18-141, 17-144, 16-143 & 05-25
Written Ex Parte Communication

Dear Ms. Dortch:

First Communications, LLC (“First Communications”) submits this written ex parte and attached Second Supplemental Declaration of Mark Sollenberger, President of First Communications, regarding USTelecom Petition for Forbearance (the “Petition”).¹

First Communications agrees with INCOMPAS that USTelecom has not met its burden to receive forbearance from *any* unbundled network element (“UNE”) obligations imposed on incumbent local exchange carriers (“LECs”) by Section 251(c) of the Communications Act. Enabled in large part by UNEs, First Communications provides innovative customer solutions and one-stop shopping to meet the needs of small and medium-sized business customers in a way the incumbent LECs have refused. Loss of access to DS1 UNE loops would have a devastating effect on First Communications’ small and medium-sized business customers. Similarly, loss of access to UNE DS1 and DS3 transport would have an adverse impact on First Communications’ residential and business customers.²

First Communications obtains UNE transport from 85 incumbent LEC central offices.³ In 16 of those central offices, First Communications uses that transport to provide service to

¹ *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) (“USTelecom Petition”).

² Second Supplemental Declaration of Mark Sollenberger, ¶ 5 (“Second Supplemental Declaration”).

³ *Id.*, ¶ 3.

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residential customers in addition to its small and medium-sized business customers.⁴ Because First Communications' residential and small business customers are served using DS0 and DS1 UNE loops that terminate to the incumbent LECs' central offices, First Communications cannot simply "bypass" those offices using third-party transport that may exist within one-half mile of the incumbent LEC office.

USTelecom recently proposed that the Commission could limit UNE transport forbearance to Tier 1 and Tier 2 wire centers.⁵ However, retaining incumbent LEC UNE transport obligations only in Tier 3 wire centers would be insufficient to avoid the adverse impact that partial forbearance would have on First Communications' residential and small business customers. First Communications purchases UNE transport in incumbent LEC Tier 1, Tier 2 and Tier 3 wire centers. Less than 20 percent of the 85 wire centers where First Communications purchases UNE transport have carriers other than the incumbent LEC providing transport.⁶ Transport being available from an alternative carrier does not mean that the alternative carrier (1) offers DS3 backhaul or (2) offers backhaul to First Communications' switch location where it aggregates its customers' traffic.⁷

Although First Communications does not agree that any forbearance from incumbent LECs' UNE transport obligation satisfies the statutory forbearance test, if it is considering partial forbearance, at a minimum, the Commission should adopt a longer transition period than that agreed to by USTelecom and Windstream.⁸ In reducing intercarrier compensation in incumbent LEC price cap territories, the Commission found that a nearly seven-year transition was appropriate to "moderate potential adverse effects on consumers", give "carriers sufficient time to adjust", and "further[] the overall goal of promoting a migration to modern IP networks."⁹

Consistent with this approach previously taken by the Commission, if the Commission adopts any UNE transport forbearance for Tier 1 and 2 Wire Centers, it should adopt, at a

⁴ *Id.*, ¶ 4.

⁵ See Letter from Patrick Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 11 (filed May 6, 2019).

⁶ Second Supplemental Declaration, ¶ 6.

⁷ *Id.*

⁸ See Letter from Jonathan Banks, USTelecom, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 21, 2018).

⁹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17934-36, ¶¶ 801-802 (2011); *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

minimum, a seven (7) year transition period to moderate the adverse impact on customers and give carriers sufficient time to adjust to the change while still furthering the goal of promoting IP networks. For five years from the effective date of partial forbearance, competitive LECs should have the ability to continue ordering new transport UNEs to serve customers. The ability to order new transport UNEs is necessary because existing customers' bandwidth needs may increase, and competitive LECs need to be able to respond to customer bandwidth and other demands in order to remain competitive. Alternatively, competitive LECs may need time to increase their customer base to justify alternative transport construction or purchases.¹⁰ Following the initial five years of the transition, competitive LECs should have an additional two (2) years to transition existing transport UNEs to alternative arrangements. Based on First Communications' experience, any transition from UNEs to special access takes a substantial amount of time and requires significant cooperation from the incumbent LEC.¹¹ If the Commission were to grant any forbearance as it pertains to loops, a longer transition would be needed because of the thousands of customers who would need to be move to alternative last mile access solutions.

First Communications looks forward to working with the Commission and other stakeholders to ensure that residential and business customers do not lose access to their existing innovative voice and broadband services while the market transitions to IP-based networks.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Tamar E. Finn

Tamar E. Finn
Patricia Cave

Counsel to First Communications, LLC

Attachment:

Second Supplemental Declaration of Mark Sollenberger

¹⁰ Second Supplemental Declaration, ¶ 7.

¹¹ *Id.*, ¶ 8. See also, Letter from Tony Thomas, President and Chief Executive Officer, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed May 23, 2019) (if the Commission grants forbearance, it should "specify that UNE providers must work expeditiously to assist wholesale customers with the transition away from UNEs, and declare that a failure to process grooming requests in a timely manner, or the introduction of undue delays in the grooming process, constitutes an unjust or unreasonable practice" and provide a "reasonable transition period" away from UNEs).

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cc (via e-mail):

Terri Natoli

Eric Ralph

Pam Arluk

Michele Berlove

Edward Krachmer

Megan Capasso

Claudia Pabo

Gregory Capobianco

**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 Rate-)	WC Docket No. 17-144
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 Protocol)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	
)	

SECOND SUPPLEMENTAL DECLARATION OF MARK SOLLENBERGER

1. My name is Mark Sollenberger and I am the President at First Communications, LLC (“First Communications”).
2. This Second Supplemental Declaration provides additional information about the unbundled network elements (“UNEs”) First Communications uses to provide innovative solutions and one-stop shopping to its residential and small business customers.
3. In addition to using DS1 and DS0 loops to serve its customers, First Communications currently purchases UNE transport in the form of DS1 and DS3 circuits from 85 incumbent local

exchange carrier (“LEC”) wire centers. First Communications purchases UNE transport in Tier 1, Tier 2, and Tier 3 incumbent LEC wire centers.

4. First Communications uses UNE transport from 16 of those incumbent LEC wire centers to provide service to residential customers (in addition to small and medium-sized business customers). These residential customers receive voice and broadband service from First Communications.

5. Because First Communications’ residential and business customers are served using DS0 and DS1 UNE loops that terminate to the incumbent LECs’ central offices, First Communications cannot “bypass” those offices by using third-party transport that may exist within one-half mile of the incumbent LEC end office.

6. As explained in my Supplemental Declaration, First Communications has not seen competitive fiber-based providers emerge yet as an alternative source for transport service, even in areas deemed competitive in the *Business Data Services* proceeding. Fewer than 20 percent of the 85 wire centers from which First Communications purchases UNE transport have carriers other than the incumbent LEC providing transport to the wire center. The fact that an alternative carrier may provide transport to the wire center does not mean that the alternative carrier (1) offers DS3 backhaul or (2) offers backhaul to First Communications’ switch location where it aggregates its customers’ traffic.

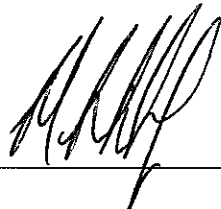
7. As I explained in my Supplemental Declaration, First Communications has been able to grow a customer base and invest in bringing advanced services and fiber to many underserved communities. First Communications needs the ability to order new transport UNEs because existing customers’ bandwidth needs may increase and First Communications needs to be able to respond to customer bandwidth and other demands in order to remain competitive. The

continued ability to order UNEs also gives First Communications the ability to add a new service location for an existing customer and time to build its customer base to justify the construction or purchase of alternatives to transport UNEs.

8. As Margi Shaw's declaration stated, when First Communications transitioned from UNEs to special access because of the *Triennial Review Order* caps on DS1s, the transition to accomplish just that billing system conversion took nearly one year. If forbearance forced the Company to transition away from ILEC UNE transport, to reduce the substantial price impact on its customers, First Communications would look for alternative access solutions that likely would include fiber builds and hot cuts. That transition would take well in excess of the transition period proposed by USTelecom and require significant cooperation from the ILEC.

9. The increased cost imposed by the *Triennial Review Order* transition from DS1 UNEs to special access also resulted in the Company reducing our workforce through layoffs, as Ms. Shaw noted. If partial forbearance forces First Communications to transition UNE transport to special access transport, the Company would attempt to absorb those higher costs through some combination of layoffs, cutting back on network and product development, and customer price increases. However, First Communications expects that it would not be able to absorb the cost increases in all markets currently served. Therefore some of its customers may lose access to the competitive and innovative services First Communications provides.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my information and belief.



Mark Sollenberger

June 6, 2019