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June 26, 2019

Via Electronic Filing

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

Dear Ms. Dortch:

Pursuant to the Protective Order in the above-captioned proceeding,¹ AT&T hereby submits for filing a redacted, public version of the enclosed letter. The Highly Confidential version of the letter has been filed by hand with the Office of the Secretary and will be made available for review pursuant to the terms of the Protective Order.

Please contact me if you have any questions regarding this submission.

Sincerely,

Christopher T. Shenk

Christopher T. Shenk
Counsel for AT&T

¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Order, 33 FCC Rcd. 5290 (2018) (“Protective Order”).



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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

Dear Ms. Dortch:

This letter responds to arguments that certain CLEC commenters have made concerning USTelecom’s request for forbearance from Section 251(c) resale and UNE loops. Although these CLECs use very little resale or UNEs to provide their TDM-based services, Granite and others have tried to argue that there is a small subset of customers that can *only* use TDM-based services. They argue that if the Commission grants forbearance, CLECs will no longer be able to serve these “niche” customers that have unique needs, and that forbearance would therefore cause consumer harms in those limited circumstances. These arguments fail at every level.

First, forbearance would not eliminate access to any TDM-based inputs. If the Petition is granted, ILECs will continue to offer DS0, DS1, and DS3 services on a commercial basis, as they do today,¹ and these services will continue to be subject to the just, reasonable and non-discriminatory provisions of Section 201 and 202 of the Communications Act.² In addition, with respect to resale, ILECs will still be subject to the duty under Section 251(b) “not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.”³ The only change will be that ILECs will no longer be subject to

¹ ILECs currently offer commercial DS1 and DS3 loops and transport as standalone services. ILECs also offer DS0 services as part of their commercial UNE-P replacement services. And ILECs have committed to offering commercial DS0 loops as a standalone service. *See, e.g.*, Letter from Patrick Halley, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 18-141, at 3-4 & n.9 (June 5, 2019).

² 47 U.S.C. §§ 201(b), 202(a).

³ 47 U.S.C. § 251(b)(1).

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additional unnecessary pricing regulations that are not applicable to their competitors.⁴ Thus, the CLECs' premise is a *non sequitur*: forbearance would not prevent any carrier from continuing to offer TDM-based service to any customer that wants it.

Second, this TDM-or-die “niche” does not really exist, because IP-based alternatives can perform those functions just as well or better. AT&T has already demonstrated that, contrary to assertions by Granite and others, IP-based services are just as suitable as legacy TDM-based services for faxing, medical alerts, fire/sprinkler monitoring, gas pipeline monitoring, bank vault or burglar alarms, and elevators, including when purchased by government entities.⁵ The Commission itself made similar findings in its recent *Technology Transition Order*:

We recognize the reliance consumers place on the functioning of equipment that connect to incumbent LECs' legacy networks, such as fax machines, alarm systems, and health monitoring devices. And many enterprise customers, particularly utilities, continue to rely on TDM-based services today despite the existence and widespread availability of more innovative IP-based services. In both instances, however, commenters calling for continued direct notice of copper retirements wrongly focus on the underlying transmission medium, *i.e.*, the copper network facilities, rather than on the technology of the service being provided by the incumbent LEC, *i.e.*, whether it is TDM-based or IP-based. The record confirms that the equipment and devices about which commenters express concern generally continue to function over fiber facilities as long as that service remains TDM-based. This is the case in copper retirements absent other service changes, despite the confusion of many commenters who conflate copper retirement and service discontinuance. Indeed, incumbent LECs devote resources to ensure that the devices their residential customers use over their networks continue to work, including TTY devices. And while the lines serving a customer's home will no longer carry power, that is remedied by use of a back-up power unit, a matter the Commission has previously addressed.⁶

Indeed, Granite and its supporters exaggerate the difficulties of switching from legacy TDM services and equipment to IP-based alternatives. For example, when AT&T switches a small business customer to its IP-based broadband service, it installs a Wireless Gateway (RG) at the customer premises that gives the customer access to an internet connection and two voice lines. AT&T installs an additional device called the IAD if the customer wants more lines (up to four more). All of the lines supplied by the RG and IAD use G.7.11 codecs, which are designed

⁴ Specifically, ILECs will no longer be required to set wholesale rates using the statutory “avoided cost” standard applied by state public utility commissions. *See* 47 U.S.C. § 252(d)(3).

⁵ Letter from James P. Young (counsel for AT&T) to Marlene H. Dortch (FCC), WT Docket No. 18-141, at 7-8 (Dec. 28, 2018).

⁶ Report and Order, *Declaratory Ruling, And Further Notice of Proposed Rulemaking, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, FCC 17-154, ¶ 46 (2017) (“*Technology Transition Order*”).

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to replicate POTS central office lines and to interoperate with all devices compliant with Commission's Part 68 rules. Accordingly, this IP-based equipment can handle standard faxing capabilities using the customer's existing fax machines, as well as other POTS-based services.⁷

Installments like this, for both consumers and businesses, are occurring every day throughout the industry, as the IP transition is both irreversible and well underway. But it needs to be emphasized again: forbearance would not in itself eliminate access to any TDM lines, and therefore the forbearance requested here has no logical connection to any of these issues concerning the transition from TDM to IP. To the contrary, the CLECs' position here would undermine the *Technology Transition Order's* policy, which is to *encourage* the transition away from legacy TDM-based services to current-generation IP-based services.⁸ Granite and its supporters would have the Commission adopt policies here that would give end-users incentives to maintain the legacy TDM-based services they purchase from CLECs, even where competitive IP-based alternatives are available, because the TDM-based services can be offered at below-market prices as a result of the outdated avoided-cost resale and UNE TELRIC requirements.

Notably, carriers' transition from UNEs or resale to commercially available TDM alternatives will be even simpler than transitioning to an IP-based service. For example, the transition from a DS0 UNE loop to a commercially negotiated DS0 loop replacement product will be nothing more than a notation in AT&T's billing systems.⁹ With respect to the transition from UNE DS1 or DS3 loops to BDS alternatives, carriers would continue to use the existing process for such changes, which involves the coordination of disconnect and re-connect orders but which requires no physical work, because the facilities do not change.¹⁰ Carriers switching from Section 251(c)(4) resale should also experience no switching costs, whether they are switching to Local Wholesale Complete (as they do today) or to any other possible negotiated resale replacement.

In any case, granting the Petition will have little practical effect on CLECs or their customers. The record shows that the vast majority of end-users have already migrated away from TDM-based service to current-generation IP-based services.¹¹ For example, the submission

⁷ Similarly, switching residential customers from TDM to IP-based services requires only a service appointment and installation of the Wireless Gateway.

⁸ See, e.g., *id.* ¶¶ 1-3.

⁹ The customer will only have to sign a commercial agreement, and AT&T will make the change in its billing systems. AT&T will not require disconnect orders, nor will it require the CLEC to use any different systems or processes. Since the CLEC is still using the same DS0 loop, the CLEC's end user would not have to change any of its fax or other equipment.

¹⁰ Changing from a UNE DS1 or DS3 loop to an Ethernet service is only slightly more complicated: the carrier orders and installs the new Ethernet service, and once the Ethernet service is turned up and tested, the CLEC submits a disconnect order to disconnect the UNE. This is an existing process that CLEC customers have been using for years.

¹¹ See, e.g., Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141, at 7-11 (May 4, 2018) ("Petition").

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by Granite and MetTel, two of the most vocal parties arguing that the Commission deny the Petition, confirm that they purchase a relatively small number of such services.¹² Further, according to AT&T's records, [Begin Highly Confidential] [REDACTED]

[REDACTED] [End Highly Confidential] More generally, less than [Begin Highly Confidential] [REDACTED] [End Highly Confidential] of retail lines sold by AT&T are avoided cost resale lines.¹⁴

Sincerely,

Sincerely,

Christopher T. Shenk

Christopher T. Shenk
Counsel for AT&T

¹² See, e.g., Opposition of Granite to USTelecom's Forbearance Petition, *Petition of USTelecom for Forbearance Pursuant to 47 U.S. C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WT Docket No. 18-141, at 25 (Aug. 6, 2018) ("Avoided-cost resale accounts for roughly [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of TDM voice lines provided by Granite."); Opposition of MetTel, *Petition of USTelecom for Forbearance Pursuant to 47 U.S. C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WT Docket No. 18-141, at 11 (Aug. 6, 2018) (avoided cost resale accounts for "accounts for [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [BEGIN HIGHLY CONFIDENTIAL] of the TDM lines provided by MetTel.").

¹³ See AT&T May 9 Comments at 16-17.

¹⁴ *Id.* Given this embarrassing fact, opponents have also argued that maintaining Section 251(c)(4) resale or UNE requirements is important because it provides them with leverage when negotiating commercial arrangements. But, as the record shows, if that is true, it is a bad thing for consumers and competition. Any regulated rate in the marketplace has the potential to impact commercial negotiations for those services. But in a competitive marketplace, there is no need for such regulated rates, because the marketplace sets the rate that produces the greatest benefits for consumers and competition. Therefore, unless the regulated rate is set at exactly the competitive rate—which almost never occurs—the existence of the regulated rate could only harm consumers and competition by producing inefficient negotiated rates, thus harming consumers and competition. See, e.g., AT&T 12/28/18 Letter, at 8-11.