

# Morgan Lewis

**Tamar E. Finn**  
**Patricia Cave**

tamar.finn@morganlewis.com  
patricia.cave@morganlewis.com

June 27, 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; RM-10593; & 05-25**  
**Notice of Ex Parte**

Dear Ms. Dortch:

On June 25, 2019, William P. Hunt III, General Counsel, Senior Vice President & Secretary, on behalf of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications (“TPx”) and the undersigned, held separate meetings with Nirali Patel, Wireline Legal Advisor to Chairman Ajit Pai; Arielle Roth, Wireline Legal Advisor to Commissioner Michael O’Rielly; Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Jessica Rosenworcel; and Jamie Susskind, Chief of Staff to Commissioner Brendan Carr.

TPx reiterated its opposition to USTelecom’s request for nationwide forbearance from unbundled network element (UNE) and resale obligations. The Commission is correct in rejecting the national standard for UNE transport forbearance.<sup>1</sup> The Commission similarly should reject USTelecom’s request for forbearance from UNE loop obligations on a nationwide basis. It would be unreasonable for the Commission to adopt a nationwide standard for forbearance from essential “*local market*” opening provisions of the Act.”<sup>2</sup>

TPx explained why the Commission cannot import its DS1/DS3 UNE transport forbearance analysis into the context of UNE loops, in particular for DS0 loops. First, no commercial alternative exists today for the bare copper loops TPx uses to provide Ethernet

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<sup>1</sup> *Business Data Services in an Internet Protocol Environment, et al.*, Report and Order on Remand (WC Docket No. 16-143 *et al.*) and Memorandum Opinion and Order (WC Docket No. 18-141), FCCCIRC 1907-05, n. 210 (June 19, 2019) (rejecting nationwide relief sought by USTelecom) (“Draft UNE Transport Forbearance Order”).

<sup>2</sup> Draft UNE Transport Forbearance Order, ¶ 4 (emphasis added).

over Copper (“EoC”) service. Second, transport UNEs are fundamentally a wholesale service provided by carriers to other carriers. Although it may not be true in all cases for all carriers, transport routes as a general matter are more flexible and traffic can re-routed in a variety of ways. Third, transport services typically connect points of traffic aggregation resulting in relatively greater revenue opportunity and lower barriers to entry than the revenue and barriers associated with end user channel terminations.<sup>3</sup> In TPx’s experience, the last 500 feet of construction to deploy new facilities to an end user location are often prohibitive for the end user customer. TPx agrees that its (or any carriers’) investment in transport facilities is less likely to be negatively impacted by the loss of a single customer, whereas investment in facilities to a customer premise would be stranded if the customer were to cancel service.

TPx discussed its principles for a transition in the event that the Commission determines that forbearance from UNE loop obligations is warranted. Any transition plan for UNE loops must be tailored to account for the differences between UNE loops and transport and must provide sufficient time to ensure that existing customers are not harmed through rate increases or loss of services or competition. Three years is insufficient. TPx’s customer contracts generally have terms of between 3 to 5 years, and TPx will be entering new customer contracts through the date that the Commission acts on USTelecom’s Petition. Moreover, transitioning customers from UNE loop-based services to alternative last-mile access solutions (if such options are even available) requires more than the “flip of a switch.” Apart from the cost of new deployments, small and medium-sized businesses are reluctant to make changes to their services if such changes are likely to impact continuity of their businesses. This leaves competitive carriers with smaller and less predictable windows of opportunity to transition its UNE loop-based customers to alternative solutions.

Any grant of forbearance must be conditioned on the ability for competitive LECs to obtain replacement loops during the transition period at the same rates and on the same terms as were in place for UNE loops used to serve existing customers on the effective date of forbearance. Allowing competitive LECs to order replacement loops (to the extent such replacement loops are available) throughout the transition is necessary to ensure that customers do not experience a degradation or loss of service simply because a UNE loop is no longer of sufficient quality to continue being used.

Finally, the Commission should not conflate the residential and business voice services markets when analyzing whether the voice services market is competitive. Although residential consumers have experienced an increase in competitive options for voice services as demonstrated through increased “cord cutting” and wireless-only consumers, small and medium-sized business and local government customers served by TPx are not cutting the cord. Rather, wireline voice services continue to be a critical service for TPx’s

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<sup>3</sup> Draft UNE Transport Forbearance Order, ¶ 32.

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customer base and wireless or other over-the-top options are simply not viable voice solutions for business customers.

Sincerely,

*/s/ Patricia Cave*

Patricia Cave

*Counsel to U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications*

cc: (Via E-Mail)  
Nirali Patel, Wireline Advisor to Chairman Ajit Pai  
Arielle Roth, Wireline Advisor to Commissioner Michael O’Rielly  
Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Jessica  
Rosenworcel  
Jamie Susskind, Chief of Staff to Commissioner Brendan Carr