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Via ECFS

Ex Parte Notice

July 1, 2019

Ms. 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:

In recent filings, certain CLECs have reiterated claims that USTelecom's requested forbearance from Section 251(c)(4) resale and voice grade loop unbundling should be denied because it would disrupt their business plans for providing traditional telephone services to business and government customers, and that the elimination of Section 251(c)(4), in particular, would eliminate a "regulatory backstop" necessary to protect against abuse of purported ILEC market power.¹ The Commission should reject these specious claims and grant the forbearance sought by USTelecom.

The Commission's sole inquiry in this forbearance proceeding is whether USTelecom's petition satisfies the forbearance criteria in Section 10,² which USTelecom has already demonstrated for Section 251(c)(4) resale and unbundled DS0 loops used to provide voice services.³

¹ Letter from John T. Nakahata, Counsel to INCOMPAS, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed June 3, 2019) (INCOMPAS June 3rd Letter); Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., WC Docket No. 18-141 (filed June 14, 2019) (Joint CLECs June 14th Letter); Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., WC Docket No. 18-141 (filed June 26, 2019) (Joint CLECs June 26th Letter).

² 47 U.S.C. § 160(a).

³ See Letter from Patrick R. Halley, Senior Vice President, USTelecom, WC Docket No. 18-141 (filed June 20, 2019) (USTelecom June 20th Letter).

In this submission, CenturyLink further explains why these ILEC-specific regulatory requirements are “not necessary for the protection of consumers,”⁴ nor as a regulatory backstop.⁵ The requested forbearance will not require end user customers to give up traditional time-division multiplexed (TDM) telephone services, as the facilities and services underlying those resale- and UNE-based services will remain in place. These customers also can upgrade to VoIP and other IP-based services, which provide comparable, and often superior, functionality to their TDM counterparts. Deployed properly, they are just as reliable as “self-powered” TDM services, even in power outages. As a result, most business and government customers have chosen to move to IP-based voice services. Given these trends away from ILEC legacy services, CenturyLink uses, and will continue to use, all available sales channels to keep customers on its legacy network, including through commercial arrangements for wholesale voice services.

Section 251(c)(4) Resale and Voice Grade Loop Unbundling Are Not Necessary for the Protection of Consumers

The elimination of Section 251(c)(4) resale and unbundled voice grade loops will have no impact on the typical consumer. INCOMPAS and the Joint CLECs do not dispute this. Indeed, UNE loops account for less than two percent of all fixed lines and less than one-half of one percent of all connections, including wireless connections, and the percentage of resold lines is similarly inconsequential.⁶ INCOMPAS instead demands that the Commission maintain these ILEC-specific regulatory requirements, despite the massive migration away from ILEC TDM services, so that CLECs can continue to sell these resale- and UNE-based services to the small set of business and government customers that prefer to keep copper-based services indefinitely. Nothing in Section 10 suggests that purported short-term harm to a small group of consumers such as this precludes forbearance, especially where that forbearance will benefit most consumers and advance the Commission’s deployment goals in ways that will benefit all of them.⁷ Moreover, INCOMPAS and the Joint CLECs greatly overstate the impact of this commonsense regulatory relief even for the small set of customers actually buying these CLEC services.

⁴ 47 U.S.C. § 160(a)(2).

⁵ While this submission focuses on *analog* DS0 loops (as well as Section 251(c)(4) resale), nationwide relief for *digital* DS0 loops is also fully justified by the record in this proceeding, and, at a minimum should be granted in areas in which cable companies have deployed robust broadband services. *See* Letter from Patrick R. Halley, Senior Vice President, USTelecom, WC Docket No. 18-141 (filed May 10, 2019).

⁶ Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141 (filed May 4, 2018), at 17-18.

⁷ USTelecom June 20th Letter at 3.

Forbearance from Section 251(c)(4) resale and analog loop unbundling will not require end user customers to give up traditional telephone services.

The Joint CLECs strongly imply that if the Commission forbears from Section 251(c)(4) and voice grade loop unbundling requirements, the voice customers served via those regulatory offerings will have to migrate to IP-based services.⁸ That is not the case. Forbearance from these regulatory requirements will have no impact on the ILECs' legacy networks and services, which will remain in place following forbearance, as will alternative sales channels for the services purchased by these end user customers.

For example, end user customers routinely purchase CenturyLink's TDM voice services through indirect sales channels, such as system aggregators and IT consultants, who offer telecommunications solutions for business customers from a variety of providers. Despite the absence of an avoided-cost discount, such sales channels generate revenues that dwarf those resulting from Section 251(c)(4) resale. CenturyLink's Section 251(c)(4) resale revenues account for only 3% of CenturyLink's total resale revenues. Even CLECs that purchase Section 251(c)(4) resale acknowledge that they purchase most of their ILEC voice services via commercial agreements.⁹

Of course, customers wishing to retain POTS or other ILEC copper-based services also can buy those services directly from the ILEC at rates, terms, and conditions very similar to those obtained from the CLEC. Whether provided by a CLEC via Section 251(c)(4) resale or by the ILEC as a retail service, the underlying network and services are the same. In either case, the ILEC's voice services are largely governed by state tariffs or price lists typically specifying uniform rates, terms, and conditions within each covered geographic area, without regard for the competitive alternatives available to a specific end user. To be sure, an ILEC may eventually choose to discontinue legacy voice services with Commission approval, or to retire copper voice grade loops, in a given geographic area, which would require end users to switch to alternative services and/or facilities, whether they are served directly by the ILEC or through a resale provider. Such business decisions will be driven primarily by factors other than regulation, such as anticipated demand for legacy services, continuing availability of equipment necessary to provide those services, and the potential for sufficient return on investment for next-generation facilities and services.

Thus, the forbearance proposed by USTelecom by itself will not require end users to migrate from POTS or other ILEC copper-based services.

⁸ See Joint CLECs June 14th Letter at 3, and see also at 1-2.

⁹ See, e.g., Opposition of Granite to USTelecom's Forbearance Petition, WC Docket No. 18-141, at 25 (filed Aug. 6, 2018) (Opposition of Granite) ("Most of Granite's leasing arrangements with ILECs are through such commercial wholesale agreements."). Hence, the one-stop shopping that the Joint CLECs claim distinguish their service offerings does not depend on the continuing availability of Section 251(c)(4) resale or voice grade loop unbundling.

IP-based telephone services provide comparable capabilities to TDM telephone services.

Even if forbearance from Section 251(c)(4) resale and voice grade loop unbundling requirements would force some end user customers to migrate from TDM-based telephone services to VoIP or other types of voice-grade services, which it would not, that alone would not provide a valid basis to deny the requested forbearance. As the Commission recognized last year, voice customers view interconnected VoIP and mobile wireless services as offering comparable functionality to traditional ILEC voice services, as reflected by the plummeting number of switched access lines, while the numbers of VoIP and mobile wireless subscriptions continue to climb.¹⁰

Despite this dramatic migration from copper-based TDM services to IP- and wireless-based alternatives, the Joint CLECs claim that copper-based TDM services have “a unique set of service characteristics for which other telephone services available to business customers do not constitute an economic alternative[.]” and therefore constitute a separate relevant product market.¹¹ According to the Joint CLECs, some business and government customers prefer to rely on traditional, copper-based TDM services for certain critical business functions, because those TDM services are “self-powered” and therefore continue to operate during power outages.¹² These customers purportedly “are unable to rely on managed VoIP and wireless services that are not self-powered and cannot function without electricity.”¹³

While these statements may have been at least partially accurate in the past, they do not reflect current industry trends, including for critical business functions. At one time, copper-based TDM was the technology of choice for critical business and government functions. However, if properly configured, IP-based services are much more reliable than their TDM counterparts today. Unlike TDM services, which are confined to a single transmission path and

¹⁰ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, FCC 18-74, 33 FCC Rcd 5660, 5673-74 ¶ 32 (2018) (*Wireline Infrastructure Second Report and Order*). Those trends have only continued, as the number of U.S. homes with only wireless phones has reached 57.1%, an increase of 3.2% since the end of 2017. See Stephen J. Blumberg and Julian V. Luke, Division of Health Interview Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2018*, at 1 (rel. June 2019), available at <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf>.

¹¹ Opposition of Granite, at 16.

¹² See, e.g., Declaration of Larry G. Antonellis ¶¶ 15-19, attached as Attachment A to Granite Opposition (Antonellis Declaration); Joint CLECs June 26th Letter at 2.

¹³ Antonellis Declaration ¶ 18.

therefore will fail if that path is disrupted, IP services can be routed over diverse transmission paths, to maintain continuity if the primary transmission path is interrupted. Thus, a pharmacy chain, might use a dedicated Internet connection in its stores to route its IP voice and data traffic, but if that connection is disrupted for any reason, the pharmacy can have that traffic automatically rerouted over another wireline or wireless connection without noticeable impact to its business operations.

While IP services are not “self-powered,” neither are copper-based TDM services. TDM services continue to operate during a power outage only because the ILEC provider of those services has deployed batteries and generators in its network that maintain power to the copper lines during the outage. Similarly, VoIP and other IP services will remain operational during a power outage or disruption if they are configured with back-up power. Business and government customers commonly meet this need via uninterruptible power supplies (UPS), which provide near-instantaneous protection for power interruptions by storing energy in batteries or other means. The UPS are used for backup power not only for their communications systems, but also for computer networks, point-of-sale terminals, and other business-critical functions. Obviously, all such equipment needs backup power during an outage.

In addition to potential redundancy, VoIP and other IP-based services offer numerous functionalities that TDM services lack. For example, IP-based services enable a multi-location business customer, such as a retail chain, to create a virtual private voice network connecting their various locations, utilize credit card processing machines without having to pay for additional access lines, and perform other productivity-enhancing functions, such as remotely checking inventory. IP services also tend to be more cost effective than similar TDM services. As a result, business and government organizations of all types and sizes are moving to IP-based services, if they haven’t already.

Despite the advantages of IP services, some customers may prefer to retain TDM services, at least for now, especially for legacy applications.¹⁴ That does not mean, however, that those services constitute a relevant product market dominated by ILECs. Business and government customers can choose from a variety of facilities-based alternatives to meet these needs. Appropriately configured, VoIP and wireless services are functional substitutes for corresponding TDM services and, over time, will fully supplant those legacy services.

The Commission also has recognized the substitutability of traditional telephone and VoIP services. In the *Wireline Infrastructure Second Report and Order*, the Commission adopted a new streamlined test to enable carriers to more quickly and easily discontinue legacy voice services, including traditional business telephone services, and migrate to interconnected VoIP services.¹⁵ Under this “alternative options test,” a carrier is presumptively entitled to discontinue legacy voice services after a 15-day comment and 31-day automatic grant processing

¹⁴ As noted, the requested forbearance will not prevent them from doing so.

¹⁵ *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5673 ¶ 30.

period if it provides a stand-alone interconnected VoIP service throughout the affected service area, and at least one other standalone facilities-based voice service, including potentially another interconnected VoIP service, is available from another provider in that area.¹⁶ The Commission concluded that this process would assure customers “a smooth transition to a voice replacement service that provides capabilities comparable to legacy TDM-based voice services and, often, numerous additional advanced capabilities.”¹⁷

Thus, the Commission has rejected the Joint CLECs’ claim that interconnected VoIP services are inherently inferior to traditional telephone services, because they are not self-powered, and therefore fall into a separate product market.¹⁸ The Joint CLECs’ argument is also contradicted by the dramatic shift in the business world from legacy voice services to VoIP. Despite retaining a legacy ILEC business, CenturyLink now provides nearly twice as many business VoIP lines as it does business POTS lines.

Continued unbundling of voice grade loops are not necessary to discipline rates for commercial telephone services provided to CLECs.

For more than a dozen years, CenturyLink has sold commercial voice services to various CLECs. CenturyLink values these wholesale customers. It originally designed these services to keep CLECs on its network following the Commission’s elimination of the UNE-P requirement in the *Triennial Review Remand Order*.¹⁹ For the most part, these commercial services include an unbundled loop provided via an interconnection agreement and shared transport and switching obtained through a commercial agreement. Throughout the time CenturyLink has offered these products, no regulation has prevented CenturyLink from raising prices on these commercial elements. Instead, CenturyLink’s pricing for these commercial products has been disciplined by the same market forces, such as the migration to cable and wireless alternatives, that have led to steadily declining revenues for CenturyLink’s traditional telephone services. Those market forces will remain regardless of whether the Commission eliminates the requirement to unbundle DS0 voice grade loops. Thus, there is no need for the Commission to maintain the loop

¹⁶ *Id.*, 33 FCC Rcd at 5673 ¶ 30, 5675 ¶ 34 n.104.

¹⁷ *Id.* at 5675-76 ¶ 34. The Commission also declined to impose a requirement that the services that meet the alternative options test are interoperable with third-party devices and services, finding that such a requirement was unnecessary given market pressures to design for such interoperability. *Id.* at 5676 ¶ 34.

¹⁸ See Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., WC Docket No. 18-141, Attachment, at 1 (filed Apr. 8, 2019).

¹⁹ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (2005) (*Triennial Review Remand Order*), subsequent history omitted.

unbundling requirement to “regulate” the rates CenturyLink charges for these commercial services, which have been free from price regulation in the fourteen years in which they have been offered.

For all these reasons, neither Section 251(c)(4) resale nor continued unbundling of voice grade loops is necessary for the “protection of consumers,” consistent with the second prong of the forbearance statute.²⁰

Section 251(c)(4) Is Not Needed as a “Regulatory Backstop”

The Joint CLECs also assert the curious claim that even though they generally opt to buy voice services from ILECs on a commercial basis rather than via Section 251(c)(4) resale, it is critical that the Commission maintain the avoided-cost resale requirement as a “regulatory backstop.”²¹ To the extent such logic ever made sense, it certainly does not today in the absence of ILEC market power for the telecommunications services subject to the avoided-cost resale requirement, such as traditional telephone service. Most states in which CenturyLink operates as an ILEC accordingly no longer regulate its rates for business telephone services, or for that matter for any of its telephone service rates. Similarly, the Commission has eliminated dominant carrier regulation of ILEC switched access services, finding that the switched access lines “that once dominated the landscape have been displaced by wireless and VoIP connections.”²²

Low and falling demand for Section 251(c)(4) resale further proves that this ILEC-specific regulation is no longer necessary as a regulatory backstop (assuming it ever was). In 2018, avoided-cost resale accounted for only 4% of CenturyLink’s wholesale revenues. And CenturyLink’s revenues for avoided-cost resale are declining at 15% per year.

As noted, CenturyLink’s prices, including for its wholesale commercial voice products, are driven primarily by market forces, and principally by the nearly ubiquitous availability of facilities-based alternatives. Those prices are not affected by the availability of Section 251(c)(4) resale.

²⁰ 47 U.S.C. § 160(a)(2).

²¹ Joint CLECs June 14th Letter at 3.

²² *Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, GN Docket No. 13-5; WC Docket No. 13-3; RM-11358, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 at 8289 ¶ 16 (quotation omitted) (2016).

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Thus, none of the recent arguments raised by INCOMPAS and the Joint CLECs prevent the Commission from granting USTelecom's well-justified request to forbear from Section 251(c)(4) resale and voice grade loop unbundling requirements.

Sincerely,

/s/ Craig J. Brown

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