



July 3, 2019

Via ECFS

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *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); *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:

USTelecom submits this *ex parte* letter in response to the June 28, 2019 *ex parte* letter of INCOMPAS in the above referenced dockets.¹ INCOMPAS argues that the Commission's analysis of competitive fiber locations should exclude any fiber owned by an incumbent local exchange carrier's ("ILEC") competitive local exchange carrier ("CLEC") affiliate within the ILEC's region.² As discussed below, there is no need for the Commission to carve such fiber routes from its competitive analysis as any potential competitive harms from such transactions were addressed during the merger approval process.

INCOMPAS highlights transactions between Verizon and XO, as well as CenturyLink and Level 3. In both of these instances, the transactions were approved after determining that the mergers would *not* create competitive harms. The transaction between Verizon and XO involved very little overlap between Verizon and XO fiber³ and was found to only have a *de minimis* effect on business data services ("BDS") competition in Verizon's ILEC region.⁴ Since it did not

¹ Letter from John Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-141, et al. (filed June 28, 2019) ("INCOMPAS *Ex Parte* Letter").

² *Id.* at 1.

³ *Applications of XO Holdings and Verizon Communications Inc. For Consent to Transfer Control of XO Communications, LLC*, Memorandum Opinion and Order, WC Docket No. 16-70, 31 FCC Rcd 12501, 12510-12, para. 20 (WCB 2017).

⁴ *Id.* at 12513-14 paras. 21, 26 ("WCB determined that more than 99 percent of the... XO buildings that have overlapping fiber facilities with Verizon within its incumbent LEC region have either (1) one or more alternative competitive fiber providers already in the building, or (2) one or more alternative competitive fiber providers within 0.1 miles of the building..."); *id.* at n. 77 ("more than 90 percent of the Applicant's overlap buildings have at least

present competitive harms, it was not necessary for the companies to divest any locations before granting approval of the transaction.⁵ In the CenturyLink/Level 3 Transaction, the companies entered into a consent decree with the Department of Justice requiring the companies to divest Level 3's fiber networks and related assets in the Albuquerque, New Mexico; Boise City-Nampa, Idaho; and Tucson, Arizona metropolitan statistical areas, and to also divest, via indefeasible rights of use, 24 strands of dark fiber in 30 overlapping long-haul transport routes.⁶ Thus, the potential competitive harms from these combinations have already been analyzed and addressed.

Please direct any questions to the undersigned.

Sincerely,

/s/ Patrick R. Halley

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one other fiber competitor also in the building in addition to Verizon and XO, and 99.68 percent have at least one fiber competitor either in the building or within 0.1 mile”).

⁵ *Id.* at 12512, para. 22.

⁶ *See, Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, WC Docket 16-403, 32 FCC Rcd 9581 para. 7 (2017); *U.S. v. CenturyLink, Inc. and Level 3 Communications, Inc.*, Civil Action No. 1:17-cv-02028, Final Judgment, 2018 U.S. Dist. LEXIS 61408 (D.D.C. Mar. 6, 2018).