



July 5, 2019

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *Technology Transitions*, GN Docket No. 13-5, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

Dear Ms. Dortch:

On July 3, 2019, the date of the Commission's Sunshine Notice for the above-referenced proceeding, USTelecom filed a written ex parte purporting to respond to INCOMPAS' ex parte of June 28, 2019, in which INCOMPAS inquired as to whether the Office of Economics and Analytics' April Data Tables had accounted for intervening acquisitions of CLECs by incumbent ILECs when it compiled those tables.<sup>1</sup> INCOMPAS' request was simple: when the Commission staff finalizes the list of wirecenters that meet the competitive trigger for transport, as the draft Order indicates, the Commission should ensure that the finalized list treats any competitive fiber that the incumbent LEC acquired within its operating region as incumbent LEC affiliated fiber and not as competitive fiber.

USTelecom asserts that the competitive analysis the Commission performed, and the divestitures that occurred, address any issues. But USTelecom's ex parte itself indicates that may not be the case. For example, it says there was "very little overlap" between Verizon and XO fiber, but that is not the same as XO fiber not being counted as competitive fiber within a half mile of Verizon's wirecenters. The same is true for Level 3 fiber and CenturyLink wirecenters. Furthermore, USTelecom cites Level 3's divestiture of 24 strands of long-haul fiber. But the special access data collection requested middle mile fiber maps; long-haul fiber

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<sup>1</sup> See Letter from Patrick R. Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 et al. (filed July 3, 2019) ("US Telecom July 3 Ex Parte"), responding to Letter from John Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 et al. (filed June 28, 2019) ("INCOMPAS June 28 Ex Parte"). This ex parte response is filed pursuant to 47 C.F.R. 1.1206(b)(2)(iv).

was not required to be included in the BDS Data Collection, and including that fiber in determining forborne wirecenters would distort the results of the competitive test.<sup>2</sup>

The integrity of the Commission's competitive test for UNE transport depends on the accuracy of the underlying identification of which wirecenters are within a half mile of a competitor's fiber. USTelecom does not refute the need to ensure that identification has correctly included any CLEC fiber that was not ILEC affiliated at the time of the data collection, but that was subsequently acquired. The Commission should ensure that is done.

Please contact me if you have any questions.

Sincerely,



John T. Nakahata  
*Counsel to INCOMPAS*

cc: Nirali Patel  
Arielle Roth  
Jamie Susskind  
Travis Litman  
Randy Clarke  
Kris Monteith  
Terri Natoli  
Ed Krachmer  
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<sup>2</sup> See Instructions for Data Collection for Special Access Proceeding, WC Docket No. 05-25, RM-10593, at 13-14 (Question II.A.5: Fiber Network Map) (updated December 5, 2014), <https://docs.fcc.gov/public/attachments/DOC-330865A2.pdf> (last visited July 3, 2019).