

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| <i>In the Matter of</i>                          | ) |                      |
|  | ) |                      |
| Petition of USTelecom for Forbearance Pursuant   | ) | WC Docket No. 18-141 |
| to 47 U.S.C. §160(c) to Accelerate Investment in | ) |                      |
| Broadband and Next-Generation Networks           | ) |                      |

**Motion for Partial Summary Denial and Comments of Cox Communications, Inc.**

Pursuant to the Public Notice and the June 1, 2018 Order in the above captioned proceeding, and the Federal Communications Commission’s procedural forbearance rules, Cox Communications, Inc. (“Cox”), by and through counsel, submits this motion for partial summary denial or in the alternative, comments, in response to the Petition filed by USTelecom – The Broadband Association (“USTelecom”).<sup>1</sup> Cox respectfully urges the Federal Communications Commission (“Commission”) to deny the Petition in so far as it seeks forbearance from Section 251(c) (3) unbundling obligations related to 911 and E911 databases, operations support systems (OSS), and subloops for multiunit premises wiring. The Petition provides no facts, data or analysis with respect to those network elements, thus preventing meaningful analysis by interested parties or the Commission. The petition should thus be summarily denied with respect to those network elements.<sup>2</sup>

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<sup>1</sup> Pleading Cycle Established For Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and From Certain Section 271 and 272 Requirements, Public Notice, WC Docket No. 18-141, DA 18-475 (rel. May 8, 2018); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investments in Broadband and Next Generation Networks* (“*Petition*”), Order, DA 19-574 (rel. June 1, 2018 (extending comment deadlines)); 47 C.F.R. § 1.56 (establishing rules for motions for summary denial).

<sup>2</sup> Alternatively, the Commission may treat this filing as comments. *See Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd 9543, 9559, ¶ 30 (2009) (“*Forbearance Procedural Order*”) (“Although

## **I. Introduction**

USTelecom's Petition seeks forbearance from unbundling and corresponding obligations for all unbundled network elements contained in section 51.319 of the Commission's rules.<sup>3</sup> The request thus includes forbearance from providing non-discriminatory access to 911 and E911 databases; non-discriminatory access to OSS, including pre-ordering, ordering, provisioning, maintenance and repair, and billing functions; and non-discriminatory access to the multiunit premises inside wire subloop.<sup>4</sup> Although USTelecom seeks to sweep these particular elements into its overall request, the Petition provides no basis for the Commission to make a determination that the forbearance requirements are met with respect to these three unbundled network elements.

## **II. The Commission's Procedural Standards for Forbearance**

The Commission's forbearance procedures require that the petition be complete as filed, which requires that the petition include the "facts, information, data, and arguments on which the petitioner intends to rely" for making a *prima facie* case.<sup>5</sup> The complete-as-filed rule requires petitioners to "show in detail how each of the [forbearance] statutory criteria are met" for each rule or requirement for which forbearance is sought.<sup>6</sup> Applied to this Petition, the rule requires USTelecom to provide a detailed, factual basis supporting forbearance from unbundling obligations for each network element. USTelecom bears both the burden of production with respect to making the *prima facie* showing and the ultimate burden of proof that the forbearance

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the Bureau may grant a motion for summary denial, it may instead use the record generated by the motion to better understand the threshold issues early in the process.").

<sup>3</sup> Petition App. A. (seeking forbearance from, *inter alia*, all of section 51.319 of the Commission's rules.).

<sup>4</sup> See 47 U.S.C. § 51.319(e) (911); 51.319(f) (OSS); 51.319(b) (2) (subloops for access to multiunit premises).

<sup>5</sup> *Forbearance Procedural Order*, 24 FCC Rcd at 9549, 9553, ¶¶ 11, 17.

<sup>6</sup> *Id.* at 9553, ¶ 17.

criteria are met for each rule for which it seeks forbearance.<sup>7</sup> The complete-as-filed rule ensures that the process is fair for commenters, manageable for the Commission, and more predictable for petitioners.<sup>8</sup> Petitions that are not complete as filed are subject to motions for summary denial. Summary denial is appropriate when “a petition does not address an issue at a sufficiently granular level to permit meaningful analysis of whether or not the statutory criteria are met.”<sup>9</sup>

### **III. The Petition Provides No Information to Determine Whether to Forbear With Respect to 911/E911 Databases, OSS, or Multiunit Premises Subloops**

The Petition fails to provide any information that would allow meaningful analysis either by commenters or the Commission with respect to forbearance from 911/E911, OSS and multiunit premises subloop unbundling obligations. Of the Petition’s 45 pages, USTelecom spends but one catchall sentence on OSS and subloops, and nowhere specifically mentions 911/E911 databases. After acknowledging that the Petition “focuses on DS0, DS1 and D3 loops and DS1/D3 transport offerings,” USTelecom simply sweeps in “all unbundling obligations” including “subloops” and “operations support systems.”<sup>10</sup> Its purported *prima facie* showing with respect to these elements consists entirely of this single conclusory statement:

“Forbearance with respect to these elements is warranted by the same factors that render forbearance appropriate for loop and transport elements.”<sup>11</sup> This conclusory assertion does not come close to meeting USTelecom’s obligation to demonstrate “in detail” why nondiscriminatory access is no longer needed for 911/E911 databases, OSS or multiunit premises subloops. The factors identified in the petition primarily involve the degree of competitive loop

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<sup>7</sup> *Id.* at 9554-9556, ¶¶ 20-21.

<sup>8</sup> *Id.* at 9549-9550, ¶ 12.

<sup>9</sup> *Id.* at 9559-9560, ¶ 30.

<sup>10</sup> Petition at 27.

<sup>11</sup> *Id.*

and transport deployment and the declining use of unbundled loops and transport. These factors are of no relevance to these other network elements that facilitate the very self-deployment, including intermodal competition, on which the Petition relies.

That the information, data, analysis and argument contained in the Petition, including the economic benefits study appended to the Petition, go solely to supporting the proposed elimination of DSx last-mile loop and transport obligations is self-evident.<sup>12</sup> USTelecom, for example, argues that loop and transport obligations are no longer needed in light of substantial facilities-based competition, particularly intermodal competition from cable VoIP and wireless providers.<sup>13</sup> It also points to competition in the business data services (BDS) market, as demonstrated in the recent BDS proceeding, as grounds to eliminate unbundling obligations for facilities used in that market.<sup>14</sup> The BDS proceeding, however, solely reviewed loop and transport facilities.<sup>15</sup> Finally, USTelecom provides information regarding the extent to which demand for unbundled loops and transport has declined.<sup>16</sup> This information then forms the heart of USTelecom's argument that "mandatory unbundling requirements" are "*unnecessary* in the presence of robust facilities-based competition" and "*affirmatively harmful*" in that they purportedly undermine investment in competing network infrastructure.<sup>17</sup>

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<sup>12</sup> See, e.g., Petition at 2 (unbundling mandates at issue "principally involve access to old copper facilities"). USTelecom appends a study called Assessing the Impact of Forbearance from 251(c) (3) on Consumers, Capital Investment and Jobs. Petition App. B. Although the study uses the general term UNEs, it is clear that only UNE loop and transport facilities were studied. See, e.g., App. B at 15-16 (identifying model inputs as various types of UNE loops).

<sup>13</sup> See, e.g., Petition at 4-7 (arguing that Congress intended UNEs to be transitional mechanism until competitors "deploy their own networks"); *id.* at 7-11 (providing data on extent of "predominantly intermodal" competition" in voice services); *id.* at 26 ("widespread intermodal competition renders Section 251(c)'s unbundling and resale mandates unnecessary."); *id.* at 28, n. 83 ("Today, ubiquitous facilities-based competition from wireless and VoIP, coupled with the dwindling significance of UNEs and substantial UNE line loss, make it imperative that the Commission shift its focus.").

<sup>14</sup> Petition at 28-29 (arguing that the BDS framework "leaves no room for any continued unbundling obligations").

<sup>15</sup> *Id.* at 11-15 (summarizing Commission findings regarding extent of competitively provided loops and transport for business data services).

<sup>16</sup> *Id.* at 15-18.

<sup>17</sup> *Id.* at 25 (emphasis in original).

The Commission has previously concluded that evidence of substantial facilities-based competition sufficient to warrant forbearance from loop and transport unbundling does not support forbearance from 911/E911, OSS and subloops where the petitioner failed to submit data specifically related to those UNEs. In the *ACS Forbearance Order*, which granted forbearance from loop and transport unbundling obligations in areas with substantial facilities-based competition, the Commission refused to forbear from 911 and OSS unbundling where the record contained no evidence specific to those network elements.<sup>18</sup>

USTelecom's Petition ignores the vastly different functions performed by 911/E911, OSS and multiunit premises subloop network elements than the transport functions performed by loop and transport UNEs, and their importance in supporting facilities-based competition. In the *Triennial Review Order*, the Commission refused to eliminate unbundling of 911 and E911 databases because of the "unique nature of 911 and E911 and the public safety issues inherent in ensuring nondiscriminatory access to such databases."<sup>19</sup> The Commission there noted that carriers that deploy their own facilities, such as their own switches, still need access to 911 and

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<sup>18</sup> See e.g., *In the Matter of ACES of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Section 251(c) (3) and 252(d) (1) in the Anchorage Study Area*, 22 FCC Rcd 1958, 1971, ¶ 20, n. 70 (2007) ("*ACS Forbearance Order*") ("We expressly do not forbear today from requirements under section 251(c) (3) with respect to 911 and E911 databases or operations support systems . . . [t]here is no record evidence to support granting ACS forbearance relief from its obligations to provide E911 databases or operations support systems."). The Commission also rejected ACS's request to forbear from Section 253(b) (2) multiunit premises subloops based on un rebutted evidence that competitors needed such access when they deployed their own loops. See *id.* at 1971, n. 70, 1972-73, ¶ 24, n. 76. See also *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19443, ¶ 57, n. 150 (2005) ("*Qwest Omaha Forbearance Order*") (granting relief from loop and transport obligations in certain wire centers based on presence of facilities-based completion but declining to forbear from 911 and E911 database and OSS unbundling obligations).

<sup>19</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order, 18 FCC Rcd 16978, 17332, ¶ 557 (2003) ("*Triennial Review Order*").

E911 databases.<sup>20</sup> Similarly, OSS functionality supports not just ordering of other UNEs or resale, but is a separate stand-alone UNE that is used for interconnection and other purposes.<sup>21</sup>

Subloops were specifically adopted as separate UNEs in order to maximize the flexibility of facilities-based competitors to interconnect their own loop facilities to ILEC inside wire.<sup>22</sup> Multiunit premises subloops enable competitors to access business and residential customers in commercial buildings with their own outside loops. As the Commission noted, “lack of access to the inside wire subloop would impede facilities-based carriers’ ability to develop their own networks, which, once developed could eventually lead to the elimination of the loop element from unbundling obligations.”<sup>23</sup> The Commission assumed that loop unbundling obligations might be eliminated, but multiunit premises subloops would nevertheless remain necessary. Moreover, the Commission required unbundled access to multiunit premises subloops regardless of the capacity or type of outside loop provided by the competitor. The Commission thus recognized that the ability of providers to self-provision high capacity loops does not obviate the need for nondiscriminatory access to multiunit premises subloops.<sup>24</sup> Multiunit premises subloops also highlight that unbundling obligations do not simply refer to price, but to nondiscriminatory methods of access to those elements that create a more level playing field.<sup>25</sup>

USTelecom bears the burden of providing information, data and analysis in its initial filing to demonstrate that access to these specific network elements is no longer necessary.

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<sup>20</sup> *Id.* at 17328-29, ¶ 551.

<sup>21</sup> *Id.* at 17335, ¶ 562 (OSS needed to ensure ILECs comply with “network element, resale and interconnection obligations.”) (emphasis added); *id.* at 17336, ¶ 564 (OSS necessary for competitors effectively to “interconnect with the incumbent LEC.”) *See generally*, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 11 FCC Rcd 15499, 15763, ¶ 517 (1996) (“*Local Corporation Order*”) (describing different functions performed by OSS).

<sup>22</sup> *Triennial Review Order* at 17184, n. 1007.

<sup>23</sup> *Id.* at 17187-88, ¶ 345.

<sup>24</sup> *Id.* at 17188-90, ¶¶ 347-48 & n. 1041.

<sup>25</sup> *See e.g.*, 47 C.F.R. § 51.319(b) (2) (i)-(ii) (describing methods of technically feasible direct access to multiunit premises subloops).

Without any information regarding the extent of continued reliance and use of these network elements, particularly by facilities-based competitors, the extent of competitive alternatives to those network elements, or how incumbent LECs intend to provide access to those network elements if forbearance is granted, the Petition must be denied as facially insufficient under the complete as filed rule. USTelecom's bald assertion that forbearance from these network elements is "warranted by the same factors that render forbearance appropriate for loop and transport elements" is woefully inadequate given the very different functions that these elements perform.

#### **IV. Conclusion**

For the reasons set forth above, Cox respectfully requests that the Commission issue an order denying USTelecom's Petition to forbear with respect to unbundling obligations for 911/E911 databases, OSS and multiunit premises subloops.

Respectfully submitted,

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