

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF UNITI FIBER

Uniti Fiber files these Reply Comments in the above-referenced docket to outline its concerns with the US Telecom Petition for Forbearance (“Petition”),¹ which, if adopted, will allow the incumbent LECs to increase prices on the unbundled network elements (“UNEs”) that drive broadband deployment, and even remove the availability of inputs necessary for Uniti Fiber to operate its network. Uniti Fiber also provides several suggestions that, if adopted, would alleviate some of the concerns the company has with the Petition as-drafted, while also providing the ILECs much of the relief they seek.

I. Introduction and Background

The telecommunications market has shifted significantly since the passage of the 1996 Act. But, the core tenets that were carefully designed throughout the Telecommunications Act remain as important today as they did when they were drafted: promotion of network deployment, and an evolution towards more advanced services. These values, however, are rooted in one thing: competition. Competition drives network deployment by incentivizing the largest carriers to deploy network or face the loss of market share to new entrants. It also promotes higher quality services

¹ 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 (filed May 4, 2018) (“Petition”).

by compelling incumbents to evolve their offerings to meet those offered by new entrants like Uniti Fiber. And competition certainly drives down prices and benefits consumers—in the markets that Uniti Fiber enters, incumbent broadband service prices habitually drop and their services improve.

In light of the plan set forth in the Petition, the Commission must ask: Will the Petition advance broadband deployment, or will it create another barrier? The answers to this question is clear: by seeking to reduce or eliminate the availability of UNEs to competitive providers, the Petition seeks to relegate competitive entry across the entire United States “market.” This will, in turn, put an anchor around the neck of facilities-based providers like Uniti Fiber to enter new markets, disrupt existing customer services, and ultimately result in less broadband deployment with higher prices and fewer choices for consumers.

In the past two years, the Commission has taken very strong measures aimed at promoting broadband deployment. The creation of the Broadband Deployment Advisory Committee (“BDAC”) and the opening of the “barriers to broadband deployment” dockets demonstrate this Commission’s strong commitment to closing the digital divide. And those early efforts were only a start—the Commission’s orders over the past nine months alone have clearly demonstrated its unwavering dedication to its pro-broadband, pro-deployment agenda: the streamlining of small cell wireless broadband deployments, the expansion of the rural health care fund, and most recently, pole attachment reform. If allowed to go into effect, the Petition will stand in stark contrast to these prior endeavors. UNEs are a core component of the competitive marketplace not only for pure resellers, but also for facilities-based providers like Uniti Fiber. Any action, or inaction, that the Commission takes that in effect entertains the Petition will be in direct contrast to the great work it has otherwise done over the past two years promoting broadband deployment.

II. The Loss of UNEs Will Disrupt Existing Customer Services and Create a Barrier to Future Broadband Deployment

While Uniti Fiber is a “facilities-based” service provider, it nonetheless utilizes a significant number of UNEs to expand its reach, meet customer demands, and establish access to new markets. While we purchase numerous dry copper loops, DS1s and DS3s, we rely especially heavily on dark fiber interoffice transport to allow us to interconnect distant central offices (and the local customers served through those central offices) to our networks. Continued access to these elements is critical for the ongoing services we provide to our customers.

Uniti Fiber already faces numerous barriers when deploying network infrastructure including, but not limited to, state and local permitting and regulatory delays, physical barriers to deployment like waterways where local departments of transportation prevent us from attaching to bridges and other infrastructure, and expensive and time-consuming challenges with many railroads to undertake deployments even at public rights-of-way crossings. A loss of UNEs, or a significant increase in the rates that we pay for such network inputs, would needlessly add additional time, cost, and delay to an already difficult network deployment environment. And while these challenges will affect the way that we enter new markets, in many cases the loss of such elements will also directly result in the loss of service for some of our existing customers that we will simply be unable to reach with our own infrastructure, or be able to continue to serve under increased pricing pressure.

A. Dry Copper Loops

The dry copper loops that Uniti obtains from the incumbent carriers are used to provide services principally to residential and small business customers, primarily in the Gulf Coast region. Uniti Fiber installs its own equipment with these “dry” ILEC inputs in order to provide both

traditional POTS telephone services as well as advanced broadband services to its customers. These services are not replaceable with other loops—the electronics that Uniti Fiber deploys enable the company to utilize these UNEs to provide customized high-speed broadband to its customers. To put it plainly, if allowed to go into effect the Petition will force Uniti Fiber to abandon services to a wide swath of its residential and small business customers that it currently serves using dry copper loops. There are no substitutes for these inputs from any carrier at any price. The customers that Uniti Fiber serves with UNE dry copper loops chose Uniti Fiber over the incumbent carrier in their region. A grant of forbearance will be nothing less than a taking of competitive choice away from these customers, and replacing it with a single option: monopoly-era ILEC service, which will result in less customization, inferior service, and higher prices.

B. DS1s and DS3s

The DS1s and DS3s that Uniti Fiber uses are primarily used for transport of data services for small and medium sized businesses. In many cases, Uniti Fiber obtains these services on a short-term basis before the company can construct its own facilities and transition away from UNE-based services. This allows Uniti Fiber to enter the market quicker, establish a customer base with which it can reasonably expect a return on capital, and then deploy its own facilities. Without access to UNEs, such competitive market entry would be unworkable. As a practice, Uniti Fiber does not use these types of UNEs for longer than is necessary for the company to deploy its own network. Timeframes for such arrangements generally differ between projects, but Uniti Fiber believes that, with some caveats, there may be a specific transition period that can be established for the availability of these elements after which they can terminate. Such an arrangement would be far better than the immediate disruption that the Petition's plan would inflict upon the market if allowed to go into effect.

C. Dark Fiber Transport

Uniti Fiber makes especially heavy use of dark fiber transport purchased as UNEs from the ILECs. The company utilizes these facilities in order to connect distant central office locations back to the Uniti Fiber core network. The company invests heavily in these purchases by installing its own equipment in order to “light” the dark fiber it obtains from the ILECs. A loss of this element will have a devastating effect on Uniti Fiber’s ability to expand its network into new markets. And if granted, the Petition will essentially balkanize Uniti Fiber’s existing network infrastructure into separate unconnected “islands” that lack transport capacity to move traffic to and from Uniti Fiber’s core network.

Again, Uniti Fiber’s first preference is to build its own network, or to utilize dark fiber interoffice transport services only so long as it needs to before it can independently establish its own network. That said, in some cases it is impractical for Uniti Fiber to overbuild such transport facilities. By definition, dark fiber is fiber that is currently unused. A loss of these elements would essentially force Uniti to either abandon existing central offices where it has deployed network relying on UNE dark fiber transport to connect those offices back to Uniti Fiber’s core network, or to overbuild routes where fiber already exists, unused. Any claim by the ILECs that the use of these *unused* existing facilities somehow is competitively harmful to them is specious. The effect of the Petition is to take what was once unused fiber, that was put into effective use by companies like Uniti Fiber to expand and stretch network to more and more underserved areas, and take that fiber *back to being unused again*. Or, looking at it another way, the proposals in the Petition are simply a means of squeezing monopoly prices out of competitors (and their customers) for something that again, was previously unused (or be faced with the prospect of overbuilding their own facilities to re-create ILEC facilities that are, again, by definition unused). Both of these scenarios, of course, are

anathema to promoting and fostering efficient and effective broadband deployment, especially with respect to rural and underserved markets. It would disrupt the competitive market by forcing competitors to expend capital in a completely unproductive way to overbuild existing (unused) network rather than using that capital to push new deployments to distant locations. The Commission must reject this and instead develop policies that incentivize rational and efficient network deployment.

III. Suggested Alternatives to The Petition's Proposed Plan

If allowed to go into effect as submitted, the Petition will cause significant disruption to Uniti Fiber and the telecommunications industry generally. Rather, the Commission should work with all interested stakeholders to find alternatives to the Petition that would provide the incumbents with much of the relief they seek while negating the harshest effects that the Petition's plan puts forward. It is undeniable that innumerable public interest benefits flow from facilities-based competition such as more consumer choice; lower costs; greater quality of service; long-term network evolution towards more advanced services; and infrastructure diversity, redundancy and resiliency (to name a few). As such, ***the Commission's primary focus with respect to UNE availability should be to incentivize the deployment of facilities on a rational and efficient basis.*** Uniti Fiber's suggestions in this regard are as follows:

A. A UNE "On-Ramp/Off-Ramp" Based on UNE Zones

Recognizing that UNEs are essential for competitive entry, result in significant public interest benefits for consumers, and are necessary in order to meet the dictates of the Telecommunications Act of 1996, the Commission should allow competitors to continue to access and use all currently-available UNEs under the same terms and conditions as they are currently obtained and used (*i.e.*, the competitive market "on ramp"). However, the Commission should establish a specific timeline

for the availability of UNE circuits (once purchased) that would have the effect of: 1) incentivizing competitors towards deploying their own networks rather than relying on ILEC networks perpetually, and 2) ensuring that disruptions to customers are minimized (*i.e.*, the “off-ramp”).

Subject to the proposed caveat set forth below (*i.e.*, the “*Reserved Tag*”), UNEs ordered in different (already-established) zones should have specific and finite transition periods. For example, UNEs located in Zones 1 should have a 7 year transition period; UNEs in Zones 2 should have a 9 year transition period; and UNEs in Zones 3 should have a 12 year transition period, etc. After the relevant transition period, the UNEs should either be relinquished, or moved to a non-UNE platform or wholesale/retail arrangement with the relevant ILEC.

The suggested timeframes are reasonable given the different circumstances that already exist within the various “zones,” and are necessary to allow competitors enough time to obtain the customer base and density needed in order to transition to their own deployed networks. And they are not so long as to deter and incentivize carriers from immediately seeking to compete in new markets with the goal of deploying their own competitive networks as quickly as possible. In many cases these zones are also already established and currently in use with respect to circuit availability and pricing in incumbent tariffs.² And finally, they would give all parties an objective, known, “ticking clock” for the transition off the UNE that is clear and finite.

All UNEs in existence at the effective date of the Commission’s order in this proceeding should be subject to the timeframes set forth above (starting on the effective date of the Commission’s order). And to be clear, Uniti Fiber does not believe that under this framework (and subject to the caveat set forth below), that competitors should be allowed “release” a UNE circuit

² To the extent any incumbent LEC tariffs do not already contain zone-based UNE pricing, such tariffs can easily be amended to do so.

only to order it again after the relevant timeframe lapses. They also should not be allowed to extend the life of a UNE circuit by “upgrading” it (for example, giving up a DS1 in exchange for a DS3 for the same route). And they likewise should not be allowed to utilize affiliates to purchase the same circuit on a rolling basis. In sum: once a company orders a circuit (based on A and Z locations), neither itself nor any of its commonly-owned affiliates may repurchase that circuit, or purchase a higher-level circuit, as a means of extending the timeframes set forth above.

B. The “Reserved” Tag

There are certain UNEs that are simply unavailable from other sources, at any cost. As a means of ensuring that existing customer services are not disrupted, and that competitive infrastructure investments are not skewed only towards areas where CLECs can most easily overbuild existing ILEC network (thus further densifying areas that are likely to already have competitive choices), the Commission should allow competitors to “tag” a certain number of UNE circuits with each ILECs as being “reserved” and therefore not subject to the “on-ramp/off-ramp” transition periods set forth above.

As the record in this proceeding shows, competitors often face hurdles such as geographic barriers, environmental permitting, and other barriers that prevent them from deploying their own networks where existing UNEs are currently available. For example, the Corps of Engineers simply won’t permit Uniti Fiber to deploy network in certain areas along the Mississippi River due to environmental and other concerns. We are also prevented by many state Departments of Transportation from attaching to bridges. Thus, some UNEs that Uniti Fiber currently purchases simply cannot be obtained through other means.

The fact of the matter is that there will always be some small percentage of UNEs that are simply incapable of being transitioned to a competitor’s own network for one reason or another.

As such, Uniti Fiber suggests that the Commission establish a specific number of UNEs that each competitor can obtain from the ILECs that are not subject to the on-ramp/off-ramp framework. This benchmark should be pegged against the number of colocations that the competitor has with the relevant incumbent. Thus, for example, for every central office colocation that Uniti Fiber has with a particular ILEC, it should be granted 10 UNEs (*i.e.*, “tags”) that it need not transition under the on-ramp/off-ramp timeframes discussed above. The competitive entrant should be required to designate those circuits with the ILEC in question at least on an annual basis, and should be allowed to un-tag such circuits and tag other circuits as it sees fit and as circumstances change at any time. To make this arrangement workable, and to avoid disputes, the competitor should not need to justify any particular “Reserved” tag it makes. Any tagged circuit simply counts against the total number available to the company given the number of central office colocations it has with the relevant incumbent. And any circuit that is “unreserved” or “untagged” should be immediately subject to the transition periods set forth above based on the date when the circuit was *first ordered* not when it was un-tagged (thus, the “Reserved” tag cannot be used to toll or extend the “on-ramp/off-ramp” timeframes).

Uniti Fiber believes that these common-sense suggestions will provide the incumbents a great deal of the relief they seek by placing defined time limits for the vast majority of UNEs obtained by competitive providers, creating a simple mechanism to ensure that certain circuits remain available indefinitely when a competitive provider deems it impractical to replace, while incentivizing all parties towards stronger facilities-based competition. It will also allow competitors to continue to enter new markets, and even difficult markets, with full knowledge of what facilities they must eventually deploy and under what specific timeframe(s).

IV. Conclusion

As Uniti Fiber recently set forth in its Support of Motions for Summary Denial,³ the company believes that the USTA Petition is fatally flawed, and submits that the Commission should deny the Petition for failing to meet the standards for the relief it seeks. Should the Commission entertain the Petition, it should undertake efforts to minimize customer disruption, and incentivizes competitive facilities-based entry. Uniti Fiber looks forward to working with the Commission and other stakeholders to find solutions to meet these goals.

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Dated: September 5, 2018

³ See Uniti Fiber, Support of Motions for Summary Denial, WC Docket No. 18-141 (dated Aug. 30, 2018).