

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

**COMMENTS OF INCOMPAS, FISPA, MIDWEST ASSOCIATION OF COMPETITIVE
COMMUNICATIONS, AND THE NORTHWEST TELECOMMUNICATIONS
ASSOCIATION IN SUPPORT OF COX COMMUNICATIONS, INC.’S MOTION FOR
PARTIAL SUMMARY DENIAL**

INCOMPAS, the internet and competitive networks association;¹ FISPA;² the Midwest Association of Competitive Communications (“MACC”);³ and the Northwest Telecommunications Association⁴ (collectively, the “Competitive Carriers Group”), on behalf of

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- ¹ INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace.
- ² FISPA is a national consortium of small to mid-range CLECs and service providers whose mission is to unite and advance our priorities of broadband choice, quality, and speed through member collaboration, advocacy, and education.
- ³ MACC is a leading Midwest trade association of competitive carriers formed to support an environment that fosters competition in the communications marketplace. MACC members supporting this filing include Birch Communications, First Communications, Granite Telecommunications, TDS Metrocom, and Allstream.
- ⁴ The Northwest Telecommunications Association (NWTa) is an association of Service Providers and small Competitive Carriers that offers broadband and voice service in all of Oregon, Washington, and Idaho. All providers serve some rural markets, many providing only to rural markets.

themselves and their respective members, hereby submit the following brief comments in support of Cox Communications, Inc.’s Motion for Partial Summary Denial.⁵

The Commission’s complete-as-filed rule requires USTelecom to “show in detail how each of the [forbearance] statutory criteria are met” for each rule or requirement (*i.e.*, for each unbundled network element) from which it seeks forbearance.⁶ As we set forth in our Motion for Summary Denial, the Commission should summarily deny USTelecom’s Petition⁷ with respect to *all* unbundling mandates in Section 251(c)(3) and Section 251(c)(4) avoided cost resale, because USTelecom failed to provide sufficient information to establish a *prima facie* case for forbearance from the provision of *any* currently-required unbundled network element (“UNE”) or from avoided cost resale.⁸ We stand by our motion and urge the Commission to grant it immediately.

Cox highlights that the Petition fails to provide any facts, data, or analysis with respect to Section 251(c)(3) unbundling obligations related to 911 and E911 databases, operations support systems (“OSS”), and subloops for multiunit premises wiring, “thus preventing meaningful

⁵ Motion for Partial Summary Denial and Comments of Cox Communications, Inc. (filed Aug. 6, 2018) (“Cox Motion”). Unless otherwise noted, all comments and motions cited herein are to WC Docket No. 18-141.

⁶ 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, 9553, ¶ 17 (2009) (“*Forbearance Procedures Order*”).

⁷ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks (filed May 4, 2018) (“Petition”).

⁸ Motion for Summary Denial of INCOMPAS et al. (filed Aug. 6, 2019) (also moving for summary denial of the Petition with respect to resale mandates in Section 251(c)(4), additional obligations in Sections 251 and 252 associated with unbundling and resale, and the time interval requirements for nondiscriminatory treatment of affiliates and non-affiliates under Section 272(e)(1)) (“INCOMPAS Summary Denial Motion”); see also Letter from Jeffrey R. Strenkowski, Vice President of Uniti Fiber, to Marlene H. Dortch, Secretary, FCC (filed Aug. 30, 2018) (supporting INCOMPAS Summary Denial Motion and Cox Motion).

analysis by interested parties or the Commission” of whether the statutory criteria for forbearance is met.⁹ As Cox correctly points out, these UNEs serve important and “vastly different functions” than the loop and transport elements that the Petition focuses on.¹⁰ The Petition ignores the need for “evidence specific to those network elements,” instead “sweep[ing]” 911/E911 databases, OSS, and multiunit premises subloops into its broad request for forbearance from “all unbundling obligations” without further analysis.¹¹ This failure to establish a *prima facie* showing warrants summary denial.¹²

As Cox correctly explained, 911/E911, OSS, and subloops, including multitenant inside wire subloop network elements, perform different functions than loop and transport UNEs, and the factors that USTelecom purportedly shows regarding the degree of competitive deployment or use of loop and transport UNEs in the market “are of no relevance to these other network elements.”¹³ Like Cox, many of our members rely on 911/E911, OSS, and subloop UNEs to serve business and residential customers, including customers in remote areas; to facilitate deployment of their own networks; or, in the case of 911/E911 databases, to serve public safety

⁹ Cox Motion at 1.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 3.

¹² *Forbearance Procedures Order* ¶ 30 (explaining that 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”).

¹³ Cox Motion at 3-5.

functions.¹⁴ Subloops help CLECs access loops otherwise unavailable because of fiber feeder,¹⁵ and “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.”¹⁶ 911/E911 database UNEs impact public safety and customers’ ability to access emergency services.¹⁷ And OSS not only is necessary for the provision of all UNEs¹⁸ “but is [also] a separate stand-alone UNE that is used for interconnection and other purposes.”¹⁹ These three UNEs all serve important and different functions warranting specific, detailed analysis on the state of competition and the impact of forbearance with respect to each element.

Despite seeking forbearance from all unbundling obligations, the Petition fails to provide any meaningful discussion of 911 and E911 databases, OSS, and subloops. As Cox noted, “[o]f the Petition’s 45 pages, USTelecom spends but one catchall sentence on OSS and subloops, and nowhere specifically mentions 911/E911 databases.”²⁰ As discussed above, to survive summary denial USTelecom must provide, for each UNE, detailed evidence supporting forbearance from

¹⁴ See, e.g., Declaration of Dan Bubb ¶¶ 4, 6 (discussing subloop use and reliance on UNEs to establish customer base to facilitate fiber deployment) (“Gorge Decl.”); Declaration of Jeff Buckingham ¶¶ 5, 9, 11 (discussing subloop use) (“Digital West Decl.”); Declaration of R. Matthew Kohly ¶ 12 (discussing competitive and public safety impact of 911/E911 database UNEs) (“Socket Decl.”); Declaration of Margi Shaw ¶ 12, attached to Opposition of First Communications, LLC (filed Aug. 6, 2018) (discussing subloop use) (“First Communications Decl.”). Unless otherwise noted, all cited declarations herein are attached to Opposition of INCOMPAS, FISBA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association (filed Aug. 6, 2018).

¹⁵ See, e.g., Gorge Decl. ¶ 4; First Communications Decl. ¶ 12; Digital West Decl. ¶¶ 5, 9, 11.

¹⁶ Cox Motion at 6.

¹⁷ See *id.* at 5-6; Socket Decl. ¶ 12; Comments of the California Public Utilities Commission at 3-4 (filed Aug. 6, 2018).

¹⁸ INCOMPAS Summary Denial Motion at 20; see also Cox Motion at 2, 6.

¹⁹ Cox Motion at 6.

²⁰ *Id.* at 3.

its unbundling obligations. USTelecom cannot satisfy the complete-as-filed rule by relying on a conclusory statement that “[f]orbearance with respect to these elements is warranted by the same factors that render forbearance appropriate for loop and transport elements.”²¹ Yet this is precisely what USTelecom attempts to do. Failure to present any information with respect to these elements renders the Petition “facially insufficient under the complete as filed rule”²² and fully supports Cox’s motion for partial summary denial.

Not only does the Petition fail to provide arguments and evidence sufficient to establish its *prima facie* case for forbearance *for any UNE*, which alone warrants summary denial, the Petition falls particularly short with respect to 911/E911 databases, OSS, and multiunit premises subloops, condensing its purported *prima facie* showing for these specific elements into one conclusory sentence. This cannot stand. For the reasons set forth above and consistent with our Motion for Summary Denial, the Competitive Carriers Group supports Cox’s motion for the Commission to summarily deny the Petition with respect to these network elements.

²¹ Petition at 27.

²² Cox Motion at 7.

Respectfully submitted,

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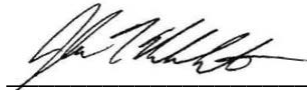
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