**Before the**

**Federal Communications Commission   
Washington, D.C. 20554**

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

**REPLY COMMENTS OF THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In accordance with the Order released by the Federal Communications Commission (Commission) on June 1, 2018, which extended the time for filing comments and reply comments, respectively,[[1]](#footnote-1) the Pennsylvania Public Utility Commission (Pa. PUC) files these reply comments in this proceeding. Pursuant to the June 1, 2018 Order, reply comments are due on or before September 5, 2018.

As an initial matter, these reply comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, the Pa. PUC’s position set forth in these reply comments could change in response to later events, including ex parte filings, legal proceedings or other regulatory developments at the state or federal level. Lastly, the instant reply comments build upon and reiterate prior filings of the Pa. PUC on several issues concerning forbearance.

**I. Introduction**

On May 4, 2018, USTelecom filed a Petition seeking forbearance from various Incumbent Local Exchange Carrier (ILEC)-specific statutory obligations designed to create a pro-competitive telecommunications marketplace. Pursuant to Section 10 of the Communications Act, as amended (Act), USTelecom avers that the statutory obligations are no longer necessary and distort competition and investment decisions. Specifically, in its Petition, USTelecom asked the Commission to forbear from applying, among other things, ILEC-specific unbundling and resale mandates in Section 251(c)(3) and (4) and associated Section 251 and 252 obligations.

In its Comments, the Pa. PUC opposed the USTelecom Petition and in particular, its request for the Commission to forbear from applying the ILEC-specific unbundling and resale mandates in the Telecommunications Act of 1996 (TA-96). In these Reply Comments, the Pa. PUC reiterates its concerns about the impact of the USTelecom forbearance request on competition and maintains its position that USTelecom should be required to provide sufficiently granular data by specific company, territory, and market prior to relinquishing unbundling or resale obligations currently imposed on ILECs.

**II. Discussion**

1. **The Pa. PUC Remains Concerned About the Impact of Granting Forbearance From the Statutory Unbundling Obligations on Competition.**

The Pa. PUC notes that Verizon is one of the two commentators that filed initial comments in support of USTelecom’s Petition. In an effort to prove that continued enforcement of the Section 251 unbundling and resale obligations is unnecessary to ensure charges and practices are not unjust or unreasonably discriminatory, Verizon states that commenters had incorrectly predicted in the past that curtailing regulations would hurt facilities-based competition. Verizon Comments at 26. Verizon states that facilities-based competition thrived after the Commission eliminated regulations that obligated ILECs to provide the UNE-Platform and line sharing for DSL in the *Triennial Review Remand Order*.[[2]](#footnote-2) *Id*.

However, as discussed in our comments, the Pa. PUC is concerned about the impact of the requested forbearance of the unbundling obligation on competition, especially when sufficient data has not been provided to support forbearance. Local exchange and exchange access services critically depend on maintenance and operation of the “local loop,” which is the physical infrastructure through which wire-based telecommunications service is provided. As long as an ILEC can exert monopoly power over the provision of local loops, it can use that local loop monopoly power to leverage its position in the telecommunications services market. Without sufficient data to confirm the existence of competitive options in all areas where USTelecom seeks forbearance, the local loop remains subject to such monopoly leverage.

Because the local loop is a natural monopoly or, at best, a duopoly given the prevalence of cable networks, the unbundling obligation imposed on ILECs allows small providers to access homes and businesses and provide service. As many opposing commentators, including the PA PUC, noted, wholesale access remains a critical bridge between today’s copper-based networks and the mainly fiber networks of the future and also facilitates bringing competition to those markets that are less naturally open to robust competition.[[3]](#footnote-3)

The clear purpose of TA-96, particularly the ILEC-specific unbundling requirements of Section 251(c)(3), is to prevent an ILEC from abusing its market power over the local loop to prevent competition. Even Verizon acknowledged that Congress conceived the unbundling, resale, and long-distance provisions of the TA-96 to foster competition in wireline local and long-distance voice markets. Verizon Comments at 4. According to the opposing commenters, the evidence indicates that CLECs continue to rely on UNEs to provide competitive voice and data service alternatives to residential customers, including many in underserved markets.[[4]](#footnote-4)

Moreover, as local providers with considerable market presence over the local loop, that Pa. PUC is concerned that the ILECs may impose significant price increases once forbearance is granted even if they pledge not to do so at this time. Granting the forbearance request for unbundling would permit ILECs to continue to offer service over legacy copper networks themselves and provide services to business customers but not via state commission-approved Interconnection Agreements and not at TELRIC rates USTelecom has already “tipped its hand” and indicated that its members would take “new orders for service” (presumably for wholesale interconnection and UNEs) via commercial negotiations or tariffed services where available. Petition at 44. USTelecom’s suggested price increase for the ILECs’ “embedded base of UNEs by up to 15 percent on the effective date of the grant of forbearance” is a potential barrier for competitive access and vibrant competition, which violates the pro-competitive goals of TA-96 and offsets and nullifies the competitive aspect of the current telecommunications market.

The Pa. PUC is concerned that the use of non-cost based pricing for UNEs, i.e., pricing that will not follow the Commission’s long-established TELRIC standard that has been implemented by the states often through live evidentiary adjudications, will have a detrimental impact on competitive access. Pursuant to Section 252 of TA-96, the states adjudicate the rate setting for UNEs in accordance with the TELRIC standard established by the Commission and upheld by the U.S. Supreme Court.[[5]](#footnote-5) USTelecom provides no justification for this proposed “+15%” nationwide UNE rate increase. Lacking affirmative support, the proposed across-the-board rate increase also runs counter to the fact that ever evolving efficiencies in telecommunications and broadband technologies may contribute to rate stability or even reductions in the TELRIC-driven costs and rates that are utilized in wholesale interconnection arrangements. Moreover, existing TELRIC-based UNE costs and rates are not uniform across the nation as it has been clearly demonstrated after the implementation of TA-96 by the states.[[6]](#footnote-6)

With forbearance from the unbundling obligation, the Pa. PUC is concerned that competitors will either have to build out a redundant network and last mile facility or pay unreasonable prices charged by ILECs and cable companies to provide business data services and/or voice service to end-user customers. However, it would be unrealistic and uneconomical for a competitor to construct redundant facilities to provide traditional TDM service. The configuration of the wireline network and the last mile facilities at each customer location typically makes it economically infeasible to build out a network at each location. To serve enterprise customers and/or residential customers, competitors typically rely upon copper or other types of connections that already exist at their customers’ locations and for which their customers already have the necessary equipment. If the Commission were to grant forbearance from unbundling and resale obligations, ILECs, just like cable companies now, would no longer be legally obligated to provide open access to their networks. The result could be problematic to small competitive providers as those only facilities-based providers can price them out of the market completely. On these bases alone, the Pa. PUC concludes that USTelecom has failed to support its claim that the continued existence of the unbundling and resale obligations is affirmatively harming competition or that retention of those obligations is contrary to the public interest.

Verizon also echoes USTelecom’s claim that UNEs and, to an extent, resale are impeding ILEC investment in next generation networks.[[7]](#footnote-7) Consequently, USTelecom and Verizon assert that forbearance from these statutory obligations will incent them to invest in new technologies. However, the Pa. PUC notes that smaller rural ILECs providing service in similar areas have already invested in next generation networks even as their rural suspensions and exemptions have evaporated and they have faced increasing competition and struggled with financial limitations. Seen in this light, the Pa. PUC questions the claim that, upon removal of the UNE and resale obligations, ILECs will suddenly be spurred to invest into next-generation networks and technologies. Nevertheless, if their contention is true and the Commission is persuaded by this declaration, it should place conditions on the grant of forbearance. For example, the Commission should impose on the non-CAF Phase II ILEC recipients that benefit from the forbearance the same or similar buildout requirements that it has imposed upon CAF Phase II recipients. Simply put, if forbearance is, in fact, an incentive to deploy advanced network and broadband services throughout ILECs’ territories, then the benefitting ILECs should be subject to additional broadband deployment obligations as a condition to receiving forbearance.

1. **The Commission Should Not Grant Forbearance from the Unbundling and Resale Obligations of Section 251(c)(3) and (4) of TA-96 Because USTelecom Has Not Provided Sufficiently Granular Data to Meet the Relevant Statutory Criteria.**

Many parties filed comments opposing the granting of the Petition. Many of those that opposed the Petition noted that USTelecom provided no facts, data or analyses to support forbearance from the ILEC-specific unbundling obligations and resale obligation. Essentially, as CALTEL stated in its opposing comments, USTelecom is making an unprecedented request that the Commission grant allILECs in allgeographic markets and alltelecommunications market segments forbearance from the requirements to provide allunbundled network elements and services for resale at wholesale rates pursuant to Section 251(c).[[8]](#footnote-8)

Essentially, USTelecom is requesting forbearance from the unbundling obligations so that its members’ networks can be on the same footing as the owners of the other “bottleneck” networks, that of cable companies.[[9]](#footnote-9) The Pa. PUC understands the ILECs’ desire for regulatory parity with the cable companies. However, it does not change the fact that there is insufficient granularity in the data submitted by the Petitioner to justify its forbearance request regarding the ILEC-specific unbundling and resale statutory mandates.

The Pa. PUC agrees with the comments of MetTel, Public Knowledge and Granite that in analyzing a request for forbearance from the core local competition provisions of TA-96, the Commission must apply its traditional market power test, which requires identification of relevant product and geographic markets and an assessment of competition therein.[[10]](#footnote-10) Citing national statistics garnered from Commission reports, USTelecom asserts that there is no remaining UNE-based competition. However, USTelecom has not proved this claim with any granularity. As noted by INCOMPAS, USTelecom’s Petition does not differentiate between UNEs used for voice services, for data services, or for bundled services. As a result, the numbers cited by the Petition in support of its claim that there is robust competition likewise do not identify specific relevant product markets. Furthermore, as noted by the Michigan Public Service Commission, VoIP, which requires a broadband connection, is not available in all areas of every state as many rural areas are unserved by broadband providers.[[11]](#footnote-11) As the Pa. PUC previously stated in its comments, at the very least, USTelecom must support its claims with additional state-specific information before the Commission should even consider granting this forbearance request.

**Conclusion**

The Pa. PUC opposes USTelecom’s request for forbearance from Section 251(c) and related Section 252 requirements. Until the Commission has conducted an impairment analysis under Section 252(d)(1) of TA-96, or in the alternative, should the Commission decide to proceed under forbearance, until USTelecom provides sufficient granular support to warrant forbearance of Section 251(c)(3) and (4) obligations by specific company, territory, and market, the Commission should not grant USTelecom’s blanket request to allow relinquishment of unbundling or resale obligations currently imposed on ILECs.

The Pa. PUC appreciates this opportunity to file reply comments in this proceeding.

Respectfully submitted,

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1. *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). [↑](#footnote-ref-1)
2. *See* *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, *Order on Remand*, 20 FCC Rcd 2533 (2005) (“*TRRO*”). [↑](#footnote-ref-2)
3. *See, e.g.*, California PUC Comments at 12-21; Michigan PSC Comments at 5; PUC of Ohio Comments at 3. [↑](#footnote-ref-3)
4. First Communications LLC Comments at 2; Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (MetTel) Comments at 4. [↑](#footnote-ref-4)
5. *Verizon Communications, Inc., et al. v. FCC*, 535 U.S. 467, 122 S.Ct. 1646 (2002). The U.S. Supreme Court conclusively established that the TELRIC methodology for deriving the UNE costs and rates was reasonable and that the resulting rates were not confiscatory. *Id.,* 535 U.S. at 523, 526, 122 S.Ct. at 1678‑80; 122 S.Ct. 1680. Furthermore, the Court affirmed the use of “a hybrid jurisdictional scheme with the FCC setting a basic, default methodology for use in setting rates when carriers fail to agree, but leaving it to *state utility commissions to set the actual rates*.” *Id.* 535 U.S. at 489, 122 S.Ct. at 1661 (emphasis added). [↑](#footnote-ref-5)
6. *See, e.g.*, *Generic Investigation Re Verizon Pennsylvania Inc.’s Unbundled Network Element Rates*, Docket No. R‑00016683 (Pa. PUC Final Opinion and Order entered December 11, 2003; Compliance Order entered July 16, 2004). [↑](#footnote-ref-6)
7. Verizon Comments at 31. [↑](#footnote-ref-7)
8. CALTEL Comments at 4. [↑](#footnote-ref-8)
9. Currently, as the telecommunications marketplace stands today, 90% of last-mile networks are owned by two industries *i.e.*, cable and telecommunications, and only one of those industries – the ILEC industry – has a carrier or provider of last resort obligation to serve all consumers in any given service territory. *In re: National Broadband Plan for Our Future*, Docket No. 09-51, Pa. PUC Reply Comments (October 12, 2010), p. 5. Moreover, cable company networks are not subject to unbundling their network elements to competitors, while ILECs are. *In re: Intercarrier Compensation*, Docket No. 01-92, Pa. PUC Reply Comments (December 28, 2008), p. 14. [↑](#footnote-ref-9)
10. MetTel Comments at 3; Public Knowledge Comments at 9, Granite Comments at 11. [↑](#footnote-ref-10)
11. Michigan PSC Comments at 5-6. [↑](#footnote-ref-11)