

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

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

**Reply Comments of Access Point Inc.; BullsEye Telecom, Inc.; Matrix Telecom,  
LLC dba Impact Telecom and Xchange Telecom LLC  
(“Wholesale Voice Line Coalition”)**

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**Reply Comments of Access Point Inc.; BullsEye Telecom, Inc.; Matrix  
Telecom, LLC dba Impact Telecom; New Horizon Communications Corp.;  
and Xchange Telecom LLC (“Wholesale Voice Line Coalition”)**

Access Point Inc.; BullsEye Telecom, Inc.; Matrix Telecom, LLC dba Impact Telecom; and Xchange Telecom LLC (collectively the “Wholesale Voice Line Coalition”) submit these reply comments in opposition to the petition filed by USTelecom for forbearance from Section 251(c)(3) unbundled network element (“UNE”) and Section 251(c)(4) resale obligations (“Petition”).<sup>1</sup>

**I. Introduction and Summary**

USTelecom’s Petition seeks broad nationwide forbearance from the Act’s unbundling and resale obligations despite the Commission’s clear, judicially approved requirement that such relief demands a rigorous review of competition in discrete geographic and product markets. The members of the Wholesale Voice Line Coalition, CLECs that serve customers across the United States, primarily focusing on providing “Plain Old Telephone Service” (“POTS”) — voice lines — to distributed multi-location business customers, oppose the Petition and filed comments in

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<sup>1</sup> See *Petition for Forbearance of USTelecom – The Broadband Association* (filed May 4, 2018) (“USTelecom Petition”); See also Public Notice, *Pleading Cycle Established for Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, WC Docket No. 18-141, DA 18-475 (rel. May 8, 2018) (“Public Notice”).

opposition.<sup>2</sup> As the coalition’s initial comments explained, the members of the coalition typically serve these distributed multi-location business customers at locations where there is limited demand for service and thus no business case for deploying fiber.<sup>3</sup> As a result, such customers either select service from the ILEC – the only TDM network provider — or from CLECs such as the members of the coalition that obtain ILEC services at wholesale — either as UNEs, resale or under “commercial” agreements from the ILEC. The current regulatory scheme under Section 251(c)(3) thus provides the only restraint on the ILEC’s exercise of pricing power over these TDM-based services.

Numerous other parties<sup>4</sup> also oppose the Petition and have likewise argued that the Petition fails to meet the threshold standard the Commission established for granting such relief in the *Qwest Phoenix Forbearance Order*.<sup>5</sup> For this reason, the Wholesale Voice Line Coalition

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<sup>2</sup> Opposition of Access Point Inc.; BullsEye Telecom, Inc.; Matrix Telecom, LLC dba Impact Telecom; New Horizon Communications Corp.; and Xchange Telecom LLC, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Wholesale Voice Line Coalition Opposition”).

<sup>3</sup> *Id.* at 17-18.

<sup>4</sup> See Comments of Blackfoot Communications, Inc. (filed Aug. 6, 2018); Opposition of California Internet, L.P. DBA GeoLinks (filed Aug. 6, 2018); Comments of Full Service Network LP (filed Aug. 6, 2018); Comments of Raw Bandwidth Telecom, Inc. and Raw Bandwidth Communications, Inc. (filed Aug. 6, 2018); Comments of WorldNet Telecommunications, Inc. (filed Aug. 6, 2018); Motion for Partial Summary Denial and Comments of Cox Communications, Inc. (filed Aug. 6, 2018); Opposition of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (MetTel) (filed Aug. 6, 2018); Opposition of Granite to USTelecom’s Forbearance Petition (“Granite Opposition”) (filed Aug. 6, 2018); Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association (“INCOMPAS et. al. Opposition”) (filed Aug. 6, 2018); Comments of CALTEL (filed Aug. 6, 2018); Comments of the Michigan Internet and Telecommunications Alliance (filed Aug. 6, 2018); Comments of ICG CLEC Coalition (filed Aug. 7, 2018); Letter from Medina County Fiber Network, to Marlene H. Dortch, Secretary, FCC (filed Aug. 6, 2018).

<sup>5</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd. 8622 (2010) (“*Qwest Phoenix Forbearance Order*”); *aff’d*, *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

urges the Commission to grant INCOMPAS' Motion for Summary Denial.<sup>6</sup> In these reply comments, the Wholesale Voice Line Coalition will instead focus largely on the comments of Verizon, one of the few parties filing initial comments that did not at least raise doubts about the Petition's failure to present evidence regarding competition in discrete product and geographic markets. In short, Verizon's comments contain the same analytical errors as USTelecom's petition, painting an incomplete picture of competition using nationwide statistics, and ignoring discrete product markets, such as the POTS market where the Voice Line Coalition members compete, where customers still demand TDM services and do so in many locations where facilities based competition does not exist and may not exist for many years. For these reasons the Commission should deny the Petition's request for forbearance.

## **II. The Filed Comments Demonstrate that USTelecom's Petition is Overbroad and Inconsistent with the Qwest Phoenix Forbearance Standard**

The vast majority of comments demonstrate the likely harm to local telecommunications competition that would occur if the Commission were to grant forbearance from the Act's unbundling and resale obligations on a nationwide basis as USTelecom's Petition requests. The record in this proceeding demonstrates the continued role that UNEs and resale play in keeping retail telecommunications markets competitive. While Verizon and the Internet Innovation Alliance filed comments in support of the Petition's request for nationwide forbearance, the bulk of the filed comments, at a minimum, support the proposition that the Commission must examine competition granularly in discrete product and geographic markets, consistent with Commission precedent.

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<sup>6</sup> Motion for Summary Denial of INCOMPAS, FISPA, the Midwest Association of Competitive Communications and the Northwest Telecommunications Association, WC Docket No. 18-141 (filed Aug. 6, 2018).

Indeed, several State Commissions filed comments urging the Commission to conduct a market-specific analysis because competition varies from market to market and overbroad forbearance would harm consumers.<sup>7</sup> Many of these comments observe that the Petition’s claims (and those of Verizon in support of the Petition) regarding nationwide competition are overbroad and that competition in the local markets they monitor is far more limited.<sup>8</sup>

Verizon’s comments are likewise prone to the same reliance on broad generalizations regarding competition at the national level without any regard to discrete product and geographic markets. Like the Petition, Verizon relies wholly on claims that national trends and data are sufficient to support the Petition’s request for forbearance. Neither the Petition nor Verizon provides analysis of competition in relevant geographic and product markets.

This failure to focus on discrete product markets is an invitation to arbitrary decision making. For example, Verizon and USTelecom justify forbearance because of data regarding the adoption of VoIP service nationally by certain consumers. But VoIP service is not a substitute for the POTS services that members of the coalition provide using UNE and resale inputs acquired from the ILECs. Verizon, for example, contends that the voice market is “fiercely competitive,” because “62 percent of residential consumers receiving wireline voice services” nationwide receive such service through interconnected VoIP.<sup>9</sup>

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<sup>7</sup> Comments of the California Public Utilities Commission (filed Aug. 6, 2018) at 2; Comments of the Michigan Public Service Commission (filed Aug. 6, 2018) (“Michigan PSC Comments”) at 2; Comments of the Ohio Public Utilities Commission (filed Aug. 3, 2018) at 6-7; Comments of the Pennsylvania Public Utility Commission (filed Aug. 6, 2018) at 3.

<sup>8</sup> See, e.g., Michigan PSC Comments at 2.

<sup>9</sup> Verizon Comments at 14, 17.

But as the Coalition explained in its comments, VoIP is no substitute for the POTS services it provides to customers through its UNE and resale arrangements.<sup>10</sup> Xchange, for example, provides POTS service to buildings in New York for use as an emergency line in elevators and the state prohibits such lines from using standard VoIP connections.<sup>11</sup> Xchange and the other members of the coalition provide services that meet specific customer requirements that are incompatible with VoIP, and thus require TDM-based service.<sup>12</sup> And such service is only available from the ILECs.<sup>13</sup> VoIP is distinguishable from POTS since it “requires a broadband connection to function and while universal broadband may one day be achieved, today there are still large areas of the country that are unserved by broadband providers.”<sup>14</sup>

### **III. The Requested Forbearance Will Result in Increased Prices to American Businesses and Consumers**

Not surprisingly, both Verizon and USTelecom suggest that regulation of unbundling and resale aren’t needed because customers, both retail and wholesale, have a wealth of alternatives for their telecommunications requirements.<sup>15</sup> But the ILECs then suggest that, despite the assertion of robust competition, wholesale CLEC customers will eschew alternative supply offered via such competition and will seek access to ILEC inputs under “commercial agreements.”<sup>16</sup> In other words, the ILECs are asking for the Commission’s blessing to increase prices to their

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<sup>10</sup> Wholesale Voice Line Coalition Opposition at 16.

<sup>11</sup> See Technical Bulletin, Fire Alarm Signal – FCNYS Section 907 & BCNYS Section 907, New York State Department of State, Division of Code Enforcement and Administration (Dec. 28, 2010).

<sup>12</sup> Granite Opposition at Attachment B, Declaration of William P. Zarackas, ¶ 8 (“Zarackas Decl.”).

<sup>13</sup> Zarackas Decl., ¶ 14.

<sup>14</sup> Michigan PSC Comments at 3.

<sup>15</sup> Verizon Comments at 25-26; 28-29.

<sup>16</sup> Verizon Comments at 29.

wholesale customers – those customers, including members of the coalition, that lack available alternatives to the critical inputs needed to service customers.

The coalition members’ experience with such agreements, however, is that there are few if any alternatives for wholesale inputs because there is no meaningful facilities-based competition for such inputs; nor can any meaningful deployment of alternatives be expected in the short term.

Thus, it is readily apparent that the ILECs want to move their wholesale and other customers that rely on Section 251(c) UNEs and resale to “commercial agreements” in order to raise prices.<sup>17</sup> The industry’s experience with such one-sided commercial agreements in use for voice line services demonstrate that such commercial agreements are likely to result in increased prices to the sole benefit of the ILECs.<sup>18</sup>

#### **IV. Verizon’s Claims Regarding Fiber Investment Are Misleading**

Verizon’s claim that the Section 251(c) UNE and resale obligations deter investment in fiber facilities lacks credibility. Verizon argues that requiring ILECs to comply with their statutory obligations to provide UNEs and resale discounts deters investment in new and innovative technologies.<sup>19</sup> This claim ignores the existence of regulatory relief already in place in the Commission’s unbundling rules — relief that Verizon requested before it deployed FiOS.

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<sup>17</sup> See Verizon Comments at 2, 29 (claiming its intent to make available “regulated and commercial wholesale offerings” after the UNEs are no longer available as a result of any forbearance).

<sup>18</sup> See Granite Comments at 26 (explaining how the availability of discounted or “avoided-cost resale effectively limits the ability of any particular ILEC to demand higher rates under commercial wholesale agreements”).

<sup>19</sup> Verizon Comments at 20-21.



Under the current unbundling rules, ILECs are free to retire their copper facilities and eliminate their obligation to provide copper UNE loops by replacing copper loops with fiber.<sup>20</sup> Contrary to Verizon's and USTelecom's assertions that forbearance would incentivize fiber deployment, the Commission found that *retaining* UNE and resale requirements affirmatively incentivizes incumbent LECs to upgrade by deploying fiber facilities.<sup>21</sup> The ILECs are plainly not requesting relief from unbundling so they can deploy fiber; they are requesting relief to avoid deploying fiber. The Commission should not be fooled.

## V. Conclusion

For the reasons discussed in this Reply, the Commission should deny USTelecom's Petition for Forbearance.

Respectfully submitted,

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<sup>20</sup> See INCOMPAS et. al. Opposition at 71; CALTEL Comments at 35-38.

<sup>21</sup> See *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8677, ¶ 108 (recognizing that “the unbundling obligations associated with legacy DS0 loop facilities, for example, ...give[s] Qwest incentives to deploy fiber-to-the-home.”)