

**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)	
)	

**FIRST COMMUNICATIONS, LLC SUPPORT FOR
MOTION FOR SUMMARY DENIAL**

First Communications, LLC (“First Communications”), by its undersigned counsel, supports the Motion for Summary Denial filed by INCOMPAS, FISPA, the Midwest Association of Competitive Communications, and the Northwest Telecommunications Association (collectively, the “Competitive Carriers Group”).¹ As discussed in the Competitive Carriers Group’s Motion, on its face, the USTelecom Petition for Forbearance (“Petition”)² does not meet the burden of proof based on the standard established for forbearance relief. The Commission should summarily deny the Petition.

¹ INCOMPAS, FISPA, Midwest Association of Competitive Communications and the Northwest Telecommunications Association Motion for Summary Denial, WC Docket No. 18-141 (filed Aug. 6, 2018) (“*Competitive Carriers Group Motion*”).

² *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) (“*USTelecom Petition*”).

The Petition must state a *prima facie* case that includes all “facts, information, data, and arguments on which [it] intends to rely to make [its] *prima facie* case.”³ Section 10 requires the Commission to engage in a rigorous analysis of competition “by defining the relevant product and geographic markets”⁴ and “examining whether there are any carriers in those markets that, individually or jointly, possess significant market power.”⁵ Yet the Petition has not defined the relevant product markets, explained why it would be reasonable for the FCC to define the relevant geographic market as “national,” or shown that incumbent local exchange carriers (“ILECs”) lack significant power in every relevant market. Nor does the Petition “provide any supporting data with respect to the product and geographic markets in which competitive local exchange carriers (“CLECs”) utilize unbundled network elements (“UNEs”) or avoided-cost resale to offer telecommunications and other services.”⁶ The Petition does not address the key issues “at a sufficiently granular level to permit meaningful analysis of whether or not the statutory criteria are met” as demanded by the Commission’s rules.⁷

In the *Qwest Phoenix Forbearance Order*, the Commission evaluated Qwest’s market power to gauge whether sufficient competition existed to ensure prices would remain just and

³ *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 Procedural Requirements Order*”).

⁴ *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, 8646, ¶ 42 (2010) (“*Qwest Phoenix Forbearance Order*”); *aff’d*, *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

⁵ *Id.* at 8632, ¶ 21.

⁶ Competitive Carriers Group Motion, at 2.

⁷ *Forbearance Procedural Requirements Order*, 24 FCC Rcd. at 9554, ¶ 30.

reasonable if it granted forbearance.⁸ Under the *Qwest Phoenix* standard, a petitioner could rely upon facilities-based competition either in the wholesale market or from “a number of significant, full facilities-based competitors providing the relevant *retail* services.”⁹ The analysis of whether continued enforcement of a regulation is “not necessary for the protection of consumers” similarly depends on the presence of sufficient competition.¹⁰ Finally, in making the Section 10 public interest determination, the Commission must consider whether forbearance will promote competitive market conditions, including among providers of telecommunications services.¹¹

USTelecom bears the burden of making a *prima facie* case showing why and how rates would remain just and reasonable after forbearance. USTelecom does not present evidence that a fiber network is within one-half mile of the relevant geographic market—each UNE customer’s location¹²—to show the customer can obtain facilities-based service as an alternative to the competitor’s UNE-based service.¹³ It also fails to include sufficiently granular data to show that “any new entry would be timely; likely; or sufficient in its magnitude, character, and scope to operate as a competitive counterbalance to any attempted price increase by a hypothetical monopolist.”¹⁴ As the Commission recognized in denying Qwest’s request for forbearance in Phoenix, “[i]n the

⁸ *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8645-47, ¶¶ 41-43.

⁹ *Id.* at 8647, ¶ 43.

¹⁰ *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8671, ¶ 92; *See also* *Petition of NTCA—The Rural Broadband Association and the United States Telecom Association for Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Broadband Internet Access Transmission Services*, Order, FCC 18-75, ¶ 9 (rel. June 8, 2018).

¹¹ 47 U.S.C. § 160(b).

¹² *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8657, ¶ 64.

¹³ *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8667, ¶ 85 (finding there is “no record evidence that any ... over-builder is considering expanding its network into Phoenix.”).

¹⁴ *Id.*

absence of any record evidence that a *de novo* entrant is likely to construct a network in this market in the near future, [the Commission does] not find the theoretical possibility of such occurrence sufficient to support a finding that [the ILEC, or the ILEC in conjunction with the cable company] would not have the ability to exercise significant market power.”¹⁵ The Petition therefore fails to make a *prima facie* case that rates will remain just and reasonable.

To the contrary, USTelecom admitted that UNE rates will rise following forbearance when it proposed a transition framework with an immediate 15 percent rate increase.¹⁶ Although USTelecom has since reached a “compromise” with Windstream to prohibit price increases on existing UNEs before February 2021, the Commission can predict with certainty that rates will increase by a much greater amount after February 2021. USTelecom’s economic analysis suggested a 219% increase for loops.¹⁷ And, for new customers, First Communications has shown that retail prices for small-business voice and broadband service would likely increase by 50% or more immediately upon the effective date of forbearance.¹⁸ USTelecom’s failure to specify the “significant alternative sources of wholesale inputs” to UNEs¹⁹ that ILECs will make available post-forbearance does not provide sufficient granular detail necessary for the Commission to apply the “robust competition” standard that applies to UNE forbearance requests. Because USTelecom has not shown by “convincing analysis and evidence” that facilities-based competition is sufficient to discipline ILECs’ rates in the retail markets for low bandwidth services sold to small and medium

¹⁵ *Id.*

¹⁶ USTelecom Petition at 44.

¹⁷ See Opposition of First Communications, LLC at Attachment A, Declaration of Margi Shaw ¶ 11, WC Docket No. 18-141 (filed Aug. 6, 2018).

¹⁸ *Id.* at ¶ 18.

¹⁹ *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8659, ¶ 70.

business and community based organization customers or the retail business Plain Old Telephone Service line market, the Commission should grant the Competition Carriers Group's Motion and deny the Petition.

Respectfully submitted,

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