

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Petition of USTelecom for Forbearance
Pursuant to 47 U.S.C. § 160(c)

WC Docket No. 18-141

**REPLY COMMENTS OF
THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

AROCLES AGUILAR
HELEN M. MICKIEWICZ
JONATHAN C. KOLTZ

505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2760
Facsimile: (415) 703-2262
Email: jk5@cpuc.ca.gov

September 5, 2018

Attorneys for the
California Public Utilities Commission

On May 4, 2018, USTelecom asked the Commission to forbear from enforcing a host of pro-competitive laws and regulations on a nationwide basis.¹ The California Public Utilities Commission (CPUC or California) timely filed comments.² We now take this opportunity to make three points in response to the other parties' comments.

First: In the opening round we took exception to the sweep of USTelecom's petition, explaining instead that the Commission should analyze forbearance petitions on a market-by-market basis.³ We further explained that no metropolitan statistical area (MSA) in California where USTelecom seeks relief would see increased competition.⁴ Other state commissions in Michigan, Ohio, and Pennsylvania have likewise stated that USTelecom's petition would harm competition in their states.⁵ The population of those four states is about 74 million—or about 22 percent of the total population of the country. The Commission should not grant nationwide relief where the undisputed evidence of record shows that such relief would hurt more than a fifth of the nation. And while we were the only four states so far to comment in this proceeding, further record evidence

¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c)*, WC Docket 18-141 (filed May 4, 2018) (Petition).

² *Comments of the Cal. Pub. Util. Comm'n*, WC Docket 18-141 (filed Aug. 6, 2018).

³ *Id.* at 7-10.

⁴ *See generally id.*

⁵ *Comments of the Mich. Pub. Serv. Comm'n*, WC Docket 18-141, at 2-3 (filed Aug. 6, 2018) (arguing that USTelecom's petition is overly broad and explaining that CLECs in large parts of Michigan still rely on the Section 251(c) UNE-and-resale provisions to serve customers); *Comments of the Pub. Util. Comm'n of Ohio*, WC Docket 18-141, at 3 (filed Aug. 6, 2018) (writing that many CLECs in Ohio "must still rely on the availability of [UNEs] and resale services to serve their customers"); *Comments of the Pa. Pub. Util. Comm'n*, WC Docket 18-141, at 9-11 (writing that "the Commission must carefully scrutinize the merits of the relevant facts and arguments with the appropriate geographic, and hence company-specific, focus" and explaining that USTelecom's petition would harm competition in Pennsylvania).

shows that competition and access to essential services in other parts of the country would suffer as well.⁶

As far as we can tell, no party to this proceeding has asserted that *none* of the relief USTelecom seeks is warranted *anywhere*.⁷ It may be that there are parts of the country where competition is so well established and the CLECs so well entrenched that Section 251(c)'s UNE-and-resale provisions are no longer needed. It does not follow, however, that *all* of those provisions are obsolete *everywhere*.

The solution here is simple, if admittedly not easy: the Commission should analyze the likely effects of USTelecom's petition on a market-by-market basis, and should only forbear in those markets where the evidence shows it to be justified.

Second: As we noted in our initial comments, emergency-service networks (911, for example) often rely on copper facilities that are now subject to the UNE-and-resale provisions.⁸ It is unclear what effect ending those provisions would have on emergency service, and the Petition is silent on that point. We are concerned that, in the absence of any evidence or analysis, the Commission might take an action that materially harms emergency service. Other commenters share that concern, including companies that

⁶ See, e.g., *Comments of Liberty Cablevision of P.R.*, WC Docket 18-141 (filed Aug. 6, 2018); *Opposition of Manhattan Telecomms. Corp.*, WC Docket 18-141 (filed Aug. 6, 2018).

⁷ See, e.g., *Comments of the Cal. Pub. Util. Comm'n* at 7 ("The CPUC is willing to grant that, perhaps, some of the relief USTelecom seeks is warranted in some markets."); *Comments of the Mich. Pub. Serv. Comm'n* at 2 ("While there may be areas of the country where competition will still thrive without access to UNEs or resale the MPSC does not believe that this applies to the entire country."); *Comments of the Ohio Pub. Util. Comm'n* at 7 ("Forbearance, while appropriate under the right market circumstances, can wreak market havoc if too lightly granted.").

⁸ *Comments of the Cal. Pub. Util. Comm'n*, at 4.

operate in California.⁹ California depends on TDM connectivity to the selective routers responsible for 911 service. We agree with these commenters regarding the unique and important nature of 911 and, given that the Petition ignores 911 issues, implore the Commission not to grant USTelecom's Petition without first thoroughly exploring the effect it might have on these lifesaving services.

Third: Like USTelecom, Verizon asserts that any downside to forbearance is mitigable because, in the absence of the UNE-and-resale provisions, CLECs will simply build their own networks instead of relying on the ILECs.¹⁰ To support this assertion, Verizon offers one example, a CLEC called Zayo.¹¹ As the cliché goes, however, “the plural of anecdote is not data.” No one denies that *some* CLECs would survive—would perhaps even thrive—in the absence of UNEs. Some CLECs are indeed building out new fiber even now, and would continue to do so, UNEs or no. But some does not mean all, or most, or even a sizable minority. We are reminded of the anticipated network buildout contemplated by Congress and the FCC in enacting the 1996 Telecommunications Act, which envisioned the construction of competing networks as a means to achieve more

⁹ See, e.g., *Motion for Partial Summary Denial and Comments of Cox Commc'ns, Inc.*, WC Docket 18-141, at 5-6 (filed Aug. 6, 2018) (“[E]vidence of substantial facilities-based competition sufficient to warrant forbearance from loop and transport unbundling does not support forbearance from 911/E911, OSS and subloops where the petitioner failed to submit data specifically related to those UNEs.”); *Comments of ICG CLEC Coalition*, WC Docket 18-141, at 9 (explaining that Enhanced 911 service, though critical, is sufficiently low-volume that it would not justify a CLEC building out its own facilities to provide the service); *Opposition of Sonic Telecom, LLC*, WC Docket 18-141, at 3 (filed Aug. 6, 2018) (explaining that Sonic relies on access to the 911/E911 database through the ILEC) and at 7 (explaining that Sonic would also face increases in costs, estimated at \$50,000 per month, without access to the 911/E911 database UNE).

¹⁰ *Comments of Verizon*, WC Docket 18-141, at 8 (“[E]liminating UNEs for business customers poses no risk to competition . . . because competitors are able to deploy their own facilities . . .”).

¹¹ *Id.* at 10-11.

competition in telecommunications markets. Notwithstanding the anticipation, data the CPUC has provided paints a very different picture. For example, as we showed in our initial comments, there are significant areas in California where it would be prohibitively expensive to build additional facilities; in those areas, ensuring access to the ILECs' networks is the only way to ensure that CLECs are able to compete.¹² Undoubtedly the same holds true elsewhere. In the absence of considerably more evidence on the ability of CLECs to build new facilities in any given market, the Commission should not assume that all could do so on the strength of a few carefully-chosen examples.

We appreciate the opportunity to submit this reply. And we urge the Commission to deny the Petition or, at a minimum, to undertake a much more granular analysis than the Petition's proponents have done thus far.

Respectfully submitted,

/s/ JONATHAN C. KOLTZ
Jonathan C. Koltz
Attorney

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: 415-703-2760
E-mail: jk5@cpuc.ca.gov

September 5, 2018

¹² See *Comments of the Cal. Pub. Util. Comm'n*, at 21-27.