

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

In the Matter of)	
)	
Petition of USTelecom for Forbearance Pursuant)	WC Docket 18-141
to 47 U.S.C. §160(c) to Accelerate Investment in)	
Broadband and Next-Generation Networks)	

**CALTEL REPLY IN SUPPORT OF
INCOMPAS MOTION FOR SUMMARY DENIAL**

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Pursuant to the Commission’s Order granting extensions of time to file comments and reply comments on the USTelecom Petition,¹ the California Association of Competitive Telecommunications Companies² (“CALTEL”) files the following reply on behalf of its members, in support of the INCOMPAS *Motion For Summary Denial* filed in this proceeding on August 6, 2018 (“INCOMPAS Motion” or “Motion”).

I. DISCUSSION

¹ Order, DA 18-574, June 1, 2018, (“USTelecom Forbearance Extension Order”).

² CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. Most CALTEL members are entrepreneurial companies building and deploying fiber networks to provide competitive voice and broadband services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice. See www.caltel.org for a list of CALTEL member companies. CenturyLink is a member of CALTEL but is also a member of USTelecom. Century Link does not support CALTEL’s position on the USTelecom forbearance petition.

A. The INCOMPAS Motion Correctly States the Standard for Summary Denial of a Forbearance Petition

The Motion correctly states the standards the Commission enunciated in the *Forbearance Procedures Order* for summary denial of a forbearance petition:

Summary denial is appropriate where “the petition for forbearance, viewed in the light most favorable to the petitioner, cannot meet the statutory criteria for forbearance.” The Commission will deny summarily any “petition that on its face is incomplete or defective.” Under the “complete-as-filed” rule in 47 C.F.R. § 1.54(b), the petitioner must include with its petition all “facts, information, data, and arguments on which the petitioner intends to rely to make the *prima facie* case for forbearance.”¹⁸ “[T]he Commission requires petitioners to produce sufficient evidence and analysis to warrant the grant of a forbearance petition.” Failure to provide those facts, information, and data is grounds for summary denial.

Similarly, summary denial may be granted if “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.” The level of granularity necessary depends on the “scope of the relief sought,” and the Commission determines on a case-by-case basis whether the petitioner has met its burden of providing sufficient supporting data for a complete petition. As the Commission explained in the *Forbearance Procedures Order*, a complete-as-filed petition needs to include enough detail and clarity that interested parties are not presented with “unfolding arguments and evidence,” which would “unreasonably burden the resources of stakeholders.”³

The Motion also correctly asserts that the correct analytical framework for assessing petitions for forbearance is found in the Commission’s decision in the *Qwest Phoenix Forbearance Order*,⁴ the most recent decision in which the Commission

³ INCOMPAS Motion at pp. 6-7 [footnotes omitted], citing *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 (2009) (“*Forbearance Procedures Order*”).

⁴ See *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*”).

considered a petition for forbearance from the Act’s core local competition provisions. CALTEL agrees with INCOMPAS that USTelecom’s Petition completely fails to meet these standards.

B. The USTelecom Petition Fails to Meet the Burden of Production

USTelecom asserts that for “the residential marketplace . . . there is effectively no remaining UNE-based competition” and that competition in the marketplace “does not rely on unbundling.”⁵ As CALTEL observed in its Comments, this assertion is simply not true in California.

In California, CLECs utilize nearly half a million UNE loop arrangements, 93% of which are 2-wire bare copper DS0 loops that provide critical last-mile facilities to deliver competitive voice and broadband services to business and residential customers. DS0 loops can be used to provide POTS voice and high-speed broadband using VDSL2, ADSL2+ and Ethernet over Copper (“EoC”) technologies. EoC services bond together multiple DS0 loops and can be used to provide an integrated voice and high-speed data connection.

Customers benefit from the competitive choices offered by CLECs, which provide important incentives to ILECs and cable companies to deploy fiber and keep prices competitive. CLECs like Sonic Telecom are using UNEs to do what the California Public Utilities Commission (“CPUC”) termed as “climbing the ladder of competition.”⁶ CALTEL described Sonic’s evolution from an independent ISP to a gigabit fiber-to-the-

⁵ See *Petition* at pp. 27-28.

⁶ *CPUC 2016 Competition Decision* at p. 133, fn 344.

home provider in its comments in the Wireline Broadband proceeding as well as in response to a petition to preempt a San Francisco building access ordinance, focusing on how Sonic's reliance on UNE loops has been key to fueling its deployment.⁷

Another CALTEL member, San Luis Obispo-based Digital West, utilizes DS0 loops to leverage its fiber network to provide business customers in surrounding rural areas (many of which are anchor institutions as well as wineries and other agricultural-based firms) with voice and high-speed broadband services that are otherwise not available from the ILEC or local cable company. Both Digital West and Sonic are aggressively pursuing expansion of their respective fiber networks, but are facing delays and constraints in attempting to gain access to utility poles.

CALTEL member TPx Communications uses DS0 loops to provide EoC broadband service to nearly 13,000 locations in California. The average TPx EoC customer orders 15 Mbps of Ethernet. TPx uses approximately 148,000 analog DS0 loops to provide local exchange service using ILEC UNE loops connected to TPx's nearly 300 collocations in ILEC central offices. Additionally, TPx's customers want local exchange service, typically referred to as Plain Old Telephone Service or POTS, in addition to voice and broadband for their fax and/or alarm services. There are no functionally equivalent substitutes to POTS for these services, in particular for alarm lines that guarantee continued availability and reliability of the alarm services. For example, copper

⁷ *CALTEL Wireline Broadband Comments* at pp. 5-6. *See also* Comments of CALTEL and Declaration of Dane Jasper, In the Matter of Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council, MB Docket No.17-91, filed May 18, 2017.

lines do not require backup power for continued operations, while other alternatives (*e.g.*, wireless or fiber) require access to an independent power source.

DS0 loops are also used by CLECs to provide last-mile connection as well as turn-key finished services to other competitive providers, such as CALTEL member company BullsEye Telecom. For example, a Vice President of TPx Communications made a presentation to the CPUC last year that stated that TPx had 90 wholesale customers which were primarily served using UNEs.⁸ The Davis Community Network, which describes itself as a nonprofit organization that provides internet-related services and support to local nonprofit organizations, discussed the downstream impact on its provider, an independent ISP that is itself a CLEC wholesale customer, as well as on Davis Community Network's end-user customers.⁹

In addition, the importance of interoffice dark fiber to provide backhaul and to connect last-mile and middle-mile networks of competitive providers together cannot be overstated. As INCOMPAS observes, "There are no economically viable alternatives to unbundled interoffice dark fiber transport...no comparable replacement exists for unbundled interoffice dark fiber transport."¹⁰

Both Sonic and Digital West utilize dark fiber unbundled dedicated transport ("UDT") to interconnect their entire networks (and the last-mile networks of their

⁸ See Presentation of Kelsey M. Forsyth, TPx Communications, at CPUC Public Workshop: Copper Communication Facilities Usage in the IP Transition, December 6, 2017, at <http://www.cpuc.ca.gov/general.aspx?id=6442455666> .

⁹ *Ex Parte* Letter of the Davis Community Network, dated June 7, 2018.

¹⁰ *INCOMPAS July 13 Ex Parte Letter* at pp. 2-3.

wholesale customers) in order to provide service to both urban and non-urban customers. Sonic reports that all of its more than 70,000 on-net customers (served both by UNE and by self-deployed Gigabit fiber loops), as well as fiber-to-the-premises business customers that receive speeds up to 10 Gigabits, rely on 560 dark fiber UDT circuits. This includes service to rural areas; for example, Sonic uses UDT to provide middle-mile connections for customers served by Race Communications, the recipient of a grant from the CPUC to serve the previously underserved, heavily-forested, and very rural community of Occidental, California. And Digital West uses UDT to interconnect a number of central offices on California's central coast to serve customers, some of which otherwise have no broadband access. These include remote wineries, such as Clos Solene in Paso Robles, which is served via bonded DS1s, and the community surrounding Lake Nacimiento, which is served via DS0 sub-loops from a remote terminal that connects to the Paso Robles central office.¹¹

These facts demonstrate clearly that USTelecom has failed to meet its burden of production, and has failed to make a *prima facie* case for forbearance.

¹¹ Facilities-based competitive providers in other states have also discussed the importance of dark fiber transport in recent *Ex Parte* letters. See, e.g., *Ex Parte* Letter of Uniti Fiber, dated July 13, 2018 ("*Uniti Fiber Ex Parte Letter*").

II. CONCLUSION

For the reasons stated herein, and for the reasons stated in the INCOMPAS Motion for Summary Denial, the Commission should deny the USTelecom Petition for Forbearance on a summary basis.

Respectfully submitted,

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