

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

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

**REPLY OF SONIC TELECOM, LLC TO COMMENTS ADDRESSING PETITION FOR  
FORBEARANCE OF USTELECOM**

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**I. INTRODUCTION AND SUMMARY**

The record in the proceeding to date reflects overwhelming and nearly unanimous opposition to the USTelecom’s Petition for Forbearance to end unbundling requirements—the competition enabler of the Telecommunications Act of 1996.<sup>1</sup> Sonic Telecom, LLC (“Sonic”) and other competitors use unbundled network elements today to provide competitive, innovative services to consumers and enterprise customers; as a result of being able to use UNEs, Sonic has deployed fiber-to-the-premises to 110,118 locations—a substantial number of which have no other fiber option.<sup>2</sup> Over 68,000 more locations are currently in construction.

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<sup>1</sup> 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) (“Petition”).

<sup>2</sup> See Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Competitive Carriers Group Opposition”), Attach. 2, Table 2.

The record contains thousands of filings urging the Commission to deny the Petition. Sonic supports the commenters who urge the Commission to deny the Petition summarily for failure to comply with basic rules that require a petition for forbearance to contain the “facts, information, data, and arguments on which the petitioner intends to rely to make the *prima facie* case for forbearance.”<sup>3</sup> As Cox, INCOMPAS, FISPA, the Midwest Association of Competitive Communications, and the Northwest Telecommunications Association explain in detail, the Petition fails utterly to meet this basic requirement, and as such should be summarily denied rather than continue to occupy Commission and industry resources.<sup>4</sup> But if the Commission nonetheless (and contrary to its rules) decides to consider the Petition on the merits, the Commission must deny relief from unbundling requirements. As explained by Sonic and others in their Oppositions and as amplified by thousands of other individual commenters—real-life customers who would be negatively affected by a grant of the Petition—the Commission must deny the Petition. Maintaining current unbundling requirements—which already are subject to substantial limitations—will not only permit existing competition to continue but also will encourage deployment of fiber and advanced network technologies in both urban and rural areas.

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<sup>3</sup> See *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 Procedures Order*”).

<sup>4</sup> See Motion for Partial Summary Denial and Comments of Cox Communications, Inc., WC Docket No. 18-141, at 1-2 (filed Aug. 6, 2018) (“Cox Opposition”) (urging the Commission to deny the petition for failure to provide a basis for analysis of certain unbundling requirements); Motion for Summary Denial of FISPA, Midwest Association of Competitive Communications, Northwest Telecommunications Association and INCOMPAS, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Competitive Carriers Group Motion for Summary Denial”) (explaining that that the Petition fails to provide any supporting data or analysis of specific relevant product and geographic markets or analysis of how a grant would serve the public interest).

## II. THE COMMISSION SHOULD DENY THE PETITION FOR FAILING TO MEET BASIC REQUIREMENTS

As Cox and the Competitive Carriers Group have explained, the Petition fails to meet the requirements for forbearance petitions that the Commission established “to make the process fairer for commenters, more manageable for the Commission, and more predictable for petitioners.”<sup>5</sup> In some cases, the Petition does not even attempt to “specify how each of the statutory criteria is met with regard to each statutory provision or rule, or requirement from which forbearance is sought.”<sup>6</sup> Specifically, the Petition does not even mention 911/E911 database unbundling requirements but lumps them in with other rules from which it seeks forbearance as “any corresponding obligations under 47 C.F.R. §§ 51.301-51.321, 51-325-51.335.”<sup>7</sup> This is not a *prima facie* case on which the Commission can make a reasoned decision whether to forbear. Indeed, as the California Public Utilities Commission pointed out, even one of USTelecom’s largest members was unable to explain to it how forbearance would affect 911 services.<sup>8</sup> The Petition gives similar short shrift to requirements to unbundle OSS and subloops for multiunit premises.<sup>9</sup>

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<sup>5</sup> *Forbearance Procedures Order* at 9549 ¶ 12 (footnote omitted); *see also id.* Statement of Commissioner Robert M. McDowell, at 9588 (agreeing that adopting the *Forbearance Procedures Order* “will help the Commission to manage its resources, and to ensure the forbearance process is more efficient, predictable, fair, and transparent for all parties concerned”).

<sup>6</sup> 47 C.F.R. § 1.54(b)(1).

<sup>7</sup> *See* Petition, Appendix A.

<sup>8</sup> *See* Comments of the California Public Utilities Commission, WC Docket No. 18-141, at 4 (filed Aug. 6, 2018) (“California Commission Comments”).

<sup>9</sup> *See* Cox Opposition at 3-7.

As to other unbundled elements—including loops and dark fiber transport on which Sonic relies—USTelecom filed some of the information, facts, and data on which it intends to rely after it filed its petition, violating the “complete-as-filed” rule.<sup>10</sup> Other information remains unfiled, meaning that USTelecom cannot have established a *prima facie* case for relief.<sup>11</sup> What information has been filed is insufficient under controlling Commission precedent. As the Competitive Carriers Group explains, USTelecom’s failure to define and provide supported analysis of specific product and geographic markets prevents the Commission and interested parties from undertaking a meaningful analysis under the statutory criteria for forbearance.

Sonic agrees with these filers that the Commission should deny the Petition now without further consideration of the merits. Enforcing the existing procedural rules will allow Commission staff as well as service providers and other commenters to stop wasting time evaluating a petition that disregards basic requirements and fails to provide the information necessary for a meaningful analysis.

### **III. THE RECORD OVERWHELMINGLY REFLECTS OPPOSITION TO THE PETITION**

Nearly every party filing in response to the Petition opposes it. Many of the opponents—like Sonic—are CLECs that rely on unbundled network elements to provide innovative services to customers, some of whom have no other option for the specific services they need. Sonic and other CLECs also explained how their fiber deployment plans rely on the availability of unbundled loops and transport.<sup>12</sup> DS0 copper loops and dark fiber transport are the elements that

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<sup>10</sup> See Competitive Carriers Group Motion for Summary Denial at 7.

<sup>11</sup> See *id.*

<sup>12</sup> See, e.g., Comments of the Michigan Internet and Telecommunications Alliance on Petition for Forbearance of USTelecom, WC Docket No. 18-141, at 8 (filed Aug. 6, 2018);

enable Sonic to continue to increase the number of locations to which it deploys its own fiber—a plan that would be stopped if the Commission grants this Petition.

But the CLECs who make use of unbundled network elements represent only a portion of the parties in opposition to the Petition. The Small Business Administration—a federal agency—shared with the Commission its concerns about the potential for “devastating impact on small business” and encouraged the Commission “to study the impact forbearance would have on the small businesses, competition, and the deployment of next generation networks.”<sup>13</sup> State commissions also voiced their opposition to the Petition (and none support it): the commissions in California, Michigan, Ohio, and Pennsylvania all filed in opposition, citing among other things the need for unbundled networks to sustain competition in their states.<sup>14</sup> National advocacy and public interest groups also explained how devastating a grant of forbearance would be for consumers who benefit from competition and the innovation that competitors bring.<sup>15</sup>

Schools, small businesses, and non-profit organizations have written to the Commission to explain why they subscribe to a competitor’s service and to urge the Commission to preserve

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Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom, WC Docket No. 18-141 (filed Aug. 6, 2018).

<sup>13</sup> Letter from Major L. Clark, Acting Chief Counsel, and Jamie Belcore Saloom, Assistant Chief Counsel, Office of Advocacy, U.S. Small Business Administration, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-141 *et al.*, at 3 (filed Aug. 1, 2018).

<sup>14</sup> *See* California Commission Comments; Comments of the Michigan Public Service Commission, WC Docket No. 18-141 (filed Aug. 6, 2018); Comments Submitted on Behalf of the Public Utilities Commission of Ohio, WC Docket No. 18-141 (filed Aug. 6, 2018); Comments of the Pennsylvania Public Utility Commission, WC Docket No. 18-141 (filed Aug. 6, 2018).

<sup>15</sup> Comments of the Center for Democracy & Technology, WC Docket No. 18-141 (filed Aug. 6, 2018); Electronic Frontier Foundation’s Comments Regarding US Telecom Petition for Forbearance, WC Docket No. 18-141 (filed Aug. 6, 2018); Opposition of Public Knowledge, The Benton Foundation, Next Century Cities, New America’s Open Technology Institute, and the National Hispanic Media Coalition, WC Docket No. 18-141 (filed Aug. 6, 2018).

their options. Just as a few examples, a biotechnology company needing very reliable broadband connections for real-time monitoring of temperature probes and live cameras explains that, without Sonic, “the reliability of our network would decrease significantly and consequently, we would not have accurate monitoring of our scientific equipment which would be detrimental to our research and development.”<sup>16</sup> The Sonoma County Office of Education explains that “If we could no longer use Sonic as a vendor our cost would definitely go up, and the level of service would go down. . . . With other vendors the response time from emails are slow, not to mention the time it takes to resolve an issue.”<sup>17</sup> A print shop owner explains that “we switched from AT&T to Sonic due to the greatly reduced rate. It wasn’t all about the money, we get more from Sonic than we ever did from AT&T and we now have caring Customer Service as well, something AT&T lost long ago.”<sup>18</sup> A non-profit providing services to homeless women and children urges the Commission to deny forbearance, because “we cannot afford to have any IT people on staff so fast, helpful customer service is really important. . . . If we could not have Sonic, we might have to cut back our services to homeless women and children.”<sup>19</sup> A general contractor says it uses Sonic “in areas that ATT and Comcast can’t or won’t provide service in

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<sup>16</sup> Letter from Katherine Bossart, Ph.D., Chief Executive Officer, Integrated Research Associates, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 14, 2018).

<sup>17</sup> Letter from Candy Amos, Information Systems Support Analyst, Sonoma County Office of Education, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 14, 2018).

<sup>18</sup> Letter from Clifford Mark Akers, Akers Brothers & Sisters Printing, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 14, 2018).

<sup>19</sup> Letter from Cheryl Parkinson, Executive Director, The Living Room Center, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 14, 2018).



reasonable time frames or reliable services.”<sup>20</sup> A software startup explains that it chose Sonic because “they were the only provider available that could offer us symmetric services at this location . . . if we could not use Sonic, we would need to leave this office and find another location, since no alternatives are currently available.”<sup>21</sup>

In addition to these, over seven thousand consumers have written to the Commission about the importance of competition and a choice of service provider. Sonic has not been able to read all of the letters that have been filed, but a review of several hundred of them filed in August reflect a variety of concerns. Many explain that they appreciate the cost savings that competition brings. For example, a retired teacher who lives on a fixed income explains that “I appreciate Sonic.net’s service and affordable fees,”<sup>22</sup> and another consumer explains how competitive providers “make it possible for people like me to make their dollars go farther and provide for our families.”<sup>23</sup> A retiree explains that Sonic offers “great service at an affordable price” and encourages the Commission to maintain competition because she “cannot afford to

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<sup>20</sup> Letter from Bill West, Project Manager, Ironwood Commercial Builders, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 14, 2018).

<sup>21</sup> Letter from Claus Meisel, VP Engineering Operations, Resilio, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 14, 2018).

<sup>22</sup> Letter from Janet Clover to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 28, 2018); *see also, e.g.*, Letter from Mark Rasmussen to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018) (“I am a 70-year-old senior citizen . . . This is my lifeline to the world, and it is important to me that Sonic be able to continue providing their excellent customer service at competitive and affordable pricing.”); Letter from Dave Ramsey to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 28, 2018) (explaining how lower prices from a competitive provider affect him as a business owner).

<sup>23</sup> Letter from Angeline Fife to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 28, 2018).

pay more for my internet and telephone services.”<sup>24</sup> Many consumers explain how competitors distinguish themselves by providing exceptional customer service and how they prefer being able to reach an actual person rather than a frustrating “phone tree” and having service problems addressed very promptly.<sup>25</sup> Some note that with large incumbent providers, they often felt pressured to purchase other services with telephone or broadband, even if they do not want those services,<sup>26</sup> or were subject to frequent or unannounced price hikes and mystery fees.<sup>27</sup>

These and the other filings show in real-life terms what the costs to consumers and small enterprises would be if the Commission eliminated unbundling requirements. Consumers benefit from competition. The Commission should encourage that competition, not dismantle it by granting the Petition.

Verizon and the Internet Innovation Alliance stand apart from these consumers, small businesses, and others to support the Petition. Neither can remedy the failure of USTelecom to file a complete application or conduct the necessary market-specific analyses, and neither shows that abandoning unbundling requirements will serve the public interest.

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<sup>24</sup> Letter from Adria-Ann McMurray to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018).

<sup>25</sup> *See, e.g.*, Letter from Roger House to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018); Letter from Eric Leven to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018); Letter from Anja Woltman to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018); Letter from Bernard Mcphillips to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018).

<sup>26</sup> *See, e.g.*, Letter from Timothy Murphy to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018).

<sup>27</sup> *See, e.g.*, Letter from Susan VanKuiken to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 28, 2018); Letter from Helen Block to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Aug. 29, 2018).

The supporters suggest that services to residential consumers and small business are not relevant to the Commission’s analysis of the Petition.<sup>28</sup> Yet the record shows conclusively that the use of unbundled network elements to serve this segment is alive and well. Verizon says that these UNEs are no longer necessary because “Fiber can provide these reliable high-bandwidth services.”<sup>29</sup> That assumes both that fiber is available to the customer and that the service provider is willing to offer the services that meet the customer’s needs. As shown in Sonic’s and the Competitive Carriers Group’s Oppositions, fiber is hardly ubiquitous. Indeed, it is the availability of UNEs that allows competitors to build the base necessary to fund fiber deployment. And as many customers have stated on the record, they cannot always obtain the specific services they need at affordable prices from the incumbent, and with customer service that meets their needs. DSOs and dark fiber UNEs remain highly relevant to residential and small business customers.

Like USTelecom, its supporters err by pointing to the availability of mobile wireless voice and interconnected VoIP services as evidence that UNEs are no longer necessary.<sup>30</sup> This approach ignores the Commission’s admonition in the *Qwest Phoenix Forbearance Order* that a forbearance petition justified by competition must include a product- and geographic-specific market analysis.<sup>31</sup> In no way does a handful of national statistics about subscriptions to voice

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<sup>28</sup> See Comments of Verizon, WC Docket No. 18-141, at 9 (filed Aug. 6, 2018) (“Verizon Comments”); Comments of Internet Innovation Alliance, WC Docket No. 18-141, at 3 (filed Aug. 6, 2018) (“IIA Comments”).

<sup>29</sup> Verizon Comments at 9.

<sup>30</sup> Verizon Comments at 14-19; IIA Comments at 3.

<sup>31</sup> 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, ¶ 43 (2010) (“*Qwest Phoenix Forbearance Order*”).

service justify forbearance from UNE requirements, which are a wholesale product supporting not only voice services but specific broadband and data services in thousands of local geographic markets.

Finally, the supporters' arguments that the current unbundling requirements "stifle[] innovation and deter[] investment" are belied by the record.<sup>32</sup> Sonic, as one example, provides symmetric (up to 100 Mbps) and asymmetric services (up to 400 Mbps/50 Mbps) using UNE DS0 loops and e.SHDSL, VDSL2, or ADSL2+ technologies. Using dark fiber transport, Sonic uses its own electronics to obtain up to 240 Gbps over a single pair of dark fiber interoffice transport UNEs today and has plans to more than double that capacity by deploying new electronics. Other CLECs are similarly providing high-speed, innovative services using UNEs.<sup>33</sup> Moreover, UNEs serve as a bridge to fiber deployment. Sonic now serves nearly a third of its customers over its own fiber, and other competitors have provided similar information about their use of UNEs as a bridge to fiber deployment.<sup>34</sup> This is innovation and investment. If Verizon or other ILECs wish to stop providing copper loops as unbundled network elements, they have the solution they need already—once they invest in fiber, their copper loop unbundling requirements end.<sup>35</sup> Regulatory relief, however, would apparently be more convenient than investing in fiber.

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<sup>32</sup> Verizon Comments at 21; *see also* IIA Comments at 5-8.

<sup>33</sup> *See, e.g.*, Competitive Carriers Group Opposition, Declaration of John Hoehne (Access One); Declaration of Fletcher Kittridge (Biddeford Internet Corp. d/b/a GWI) ¶ 11; Declaration of Brian Worthen (Mammoth Networks) ¶ 3; Declaration of Jeff Rhoden (Origin Networks d/b/a InfoStructure) ¶ 6; Declaration of Matthew Kohly (Socket Telecom) ¶¶ 6, 11.

<sup>34</sup> *See, e.g., id.*, Declaration of Jeff Buckingham (Douglas Services d/b/a Douglas FastNet) ¶ 7; Declaration of Dan Bubb (Gorge Networks) ¶ 6; Declaration of Fletcher Kittridge (Biddeford Internet Corp. d/b/a GWI) ¶ 11; Declaration of Brian Worthen (Mammoth Networks) ¶ 13; Declaration of Matthew Kohly (Socket Telecom) ¶ 22.

<sup>35</sup> *See* 47 C.F.R. § 51.319(a)(3).

#### IV. CONCLUSION

The record reflects overwhelming opposition to the Petition. The Commission should summarily deny the Petition for failure to comply with the Commission's own requirements for making a *prima facie* case and filing a complete petition. But if the Commission decides to conduct a full proceeding, it should deny the Petition on the merits. To do otherwise would stifle competition, eliminate options for consumers, and end the innovation and service quality on which so many residential and small business customers rely.

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