

September 24, 2018

Ex Parte via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In re 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)

Dear Ms. Dortch,

On September 20, 2018, the undersigned counsel for INCOMPAS; Karen Reidy, Vice President, Regulatory Affairs of INCOMPAS; and Mengyu Huang, counsel for INCOMPAS, met with Sue McNeil, Terri Natoli, Claudia Pabo, and Megan Capasso of the Wireline Competition Bureau. In addition, Eric Ralph of the Wireline Competition Bureau joined the meeting by phone.

INCOMPAS reiterated points made in its filings¹ opposing the Petition² and requesting summary denial. We disagreed with USTelecom's argument that the Commission should not consider the impact of unbundled network elements ("UNEs") on promoting competition for the provision of broadband internet access service.³ As supported by the record, UNEs enable competitive local exchange carriers ("CLECs") to provide voice and broadband services to consumers that lack any alternatives for wireline broadband internet access, to jump start fiber deployment in underserved markets, and to offer innovative services that push incumbent carriers and cable companies to improve their broadband offerings.⁴ The impact on broadband

¹ Opposition of INCOMPAS et al., WC Docket No. 18-141 (filed Aug. 6, 2018) ("INCOMPAS Opposition"); Motion for Summary Denial of INCOMPAS et al., WC Docket No. 18-141 (filed Aug. 6, 2018); Reply Comments of INCOMPAS et al., WC Docket No. 18-141 (filed Sept. 5, 2018); Comments of INCOMPAS et al. in Support of Cox Communications, Inc.'s Motion for Partial Summary Denial, WC Docket No. 18-141 (filed Sept. 5, 2018).

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) ("Petition").

³ See Reply Comments of USTelecom—The Broadband Association, WC Docket No. 18-141, at 31-32 (filed September 5, 2018) ("USTelecom Reply").

⁴ See, e.g., INCOMPAS Opposition at 3-4, 14-15, 18-20; Opening Comments of Raw Bandwidth Telecom, Inc., WC Docket no. 18-141, at 10 (filed Aug. 6, 2018); Comments of WorldNet Telecommunications, Inc., WC Docket No. 18-141, at 13 (filed Aug. 6, 2018);

availability is relevant for assessing whether forbearance would harm consumers and the public interest.

We explained that the Petition must be rejected because USTelecom posits only a nationwide market for UNEs and avoided-cost resale, assuming a uniformity of competition and entry barriers that is clearly wrong and unsupported by the record.⁵ The record makes clear that significant variations in competitive conditions exist among different product and geographic markets.⁶ The record also makes clear that avoided-cost resale enables the provision of a distinct product market for traditional TDM-based services,⁷ which the Petition fails to analyze separately. Assessing forbearance based on one nationwide market, as USTelecom proposes, would fly in the face of administrative law principles by ignoring an important aspect of the problem, the uneven levels of competition and customer impact among diverse markets.⁸ The Commission should reject USTelecom's misguided standard for granting forbearance and grant our motion for summary denial.

USTelecom's one-size-fits-all forbearance would harm not only remote rural markets but also underserved urban markets, where the existing UNE and avoided-cost resale requirements are critical for reaching customers and advancing competition, which in turn spurs broadband and fiber deployment.⁹ Similarly, forbearance from Section 272(e)(1)'s nondiscrimination requirement would remove a critical safeguard for competition.¹⁰ In light of the evidence on record, the Commission should deny the Petition.

Please let me know if you have any questions.

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); Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom, WC Docket No. 18-141, at 2-8 (filed Aug. 6, 2018) ("Sonic Opposition").

⁵ See, e.g., Petition at 8-10, 13-14; USTelecom Reply at 5-6.

⁶ See, e.g., INCOMPAS Opposition at 2-3, 11-20; Comments of the Michigan Public Service Commission, WC Docket No. 18-141, at 3 (filed Aug. 6, 2018) ("Mich. PSC Comments"); Opposition of Public Knowledge et al., WC Docket No. 18-141, at 21 (filed Aug. 6, 2018).

⁷ See, e.g., INCOMPAS Opposition at 6-7, 16-18; Opposition of Granite, WC Docket No. 18-141, at 16-21 (filed Aug. 6, 2018); Opposition of U.S. TelePacific Corp. et al., WC Docket No. 18-141, at 17-18 (filed Aug. 6, 2018) ("TPx Opposition"); Declaration of Sean J. Sullivan ¶ 19 (appended to Opposition of MetTel, WC Docket No. 18-141 (filed Aug. 6, 2018)).

⁸ See *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁹ See, e.g., INCOMPAS Opposition at 3-4, 14-15; Mich. PSC Comments at 3-4; Sonic Opposition at 20-21; TPx Opposition at 2-3, 17-18.

¹⁰ INCOMPAS Opposition at 75-77.

Ms. Marlene H. Dortch
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Sincerely,

A handwritten signature in black ink, appearing to read 'John Nakahata', written in a cursive style.

John Nakahata
Counsel to INCOMPAS

cc: Sue McNeil
Eric Ralph
Terri Natoli
Claudia Pabo
Megan Capasso