Morgan Lewis

Tamar E. Finn
Patricia Cave
tamar.finn@morganlewis.com
patricia.cave@morganlewis.com

December 11, 2018

Via ECFS

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

Re: WC Docket Nos. 18-141
Notice of Ex Parte Communication

Dear Ms. Dortch:

On December 7, 2018, William P. Hunt III, General Counsel, Senior Vice President & Secretary, on behalf of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications ("TPx"), the undersigned and Patricia Cave of Morgan, Lewis & Bockius LLP ("Morgan Lewis"), met with Nirali Patel, Legal Advisor to Chairman Pai.

TPx reiterated points made in its filings[1] opposing the USTelecom Petition for Forbearance (the "Petition").[2] TPx explained the continued importance of unbundled network elements ("UNEs") and resale to competitive markets and the adverse impact forbearance from Section 251(c) obligations would have on its customers. TPx urged the Commission to deny the Petition.

TPx described its use of UNEs to serve primarily small and mid-sized businesses, schools, libraries and other community anchor institutions in urban and suburban areas. TPx has made millions of dollars of investments in collocations and equipment to provide

---

[1] Opposition of TPx Communications, WC Docket No. 18-141 (filed Aug. 6, 2018); Reply Comments of TPx Communications, WC Docket No. 18-141 (filed Sept. 5, 2018); TPx Communications Support for Motion for Summary Denial, WC Docket No. 18-141 (filed Sept. 5, 2018); Letter from William P. Hunt, III, General Counsel, Senior Vice President & Secretary, TPx Communications to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Nov. 12, 2018); Letter from Craig Maloof, Vice President Network Planning, TPx Communications to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Dec. 3, 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).

broadband, voice, plain old telephone service ("POTS") and bundled services to its customers using UNEs obtained from incumbent local exchange carriers ("incumbent LECs"). TPx has found this customer segment to be a niche market largely left unserved by the incumbent LECs and competitive fiber providers.

Although TPx relies on Ethernet over Fiber ("EoF") for its last mile access to thousands of customers, it still uses a significant number of incumbent LEC DS0 loops to provide Ethernet over Copper ("EoC") service, primarily in California, Nevada and Texas. TPx explained that even where its existing customers have fiber within 500 feet of their premise, the costs for last mile deployment – which ultimately must be paid by TPx's customers – are prohibitive. TPx provided examples of customers without a fiber option in their building asking for a quote for fiber-based services. Even in central business districts and suburban areas, the non-recurring charges ("NRCs") for deploying fiber have been prohibitive, ranging from approximately $20,000 to $200,000. In addition to NRCs, the customer would incur installation costs for labor (truck roll) and new equipment. To date, TPx customers have been unwilling to pay these costs. TPx also explained that it uses wireless solutions in some instances but line-of-sight issues interfere with use of wireless solutions in its urban service areas.

TPx also obtains DS1 UNEs to provide service to customers with low bandwidth demands that cannot obtain EoC service due to loop length or low quality copper. In addition, TPx uses UNE loops to provide POTS, which its customers use for telephone service, fax machines, key systems, and alarm services. TPx explained that its local government customers, among others, continue to rely on line-powered POTS for reliability and alarm systems, and VoIP or other over-the-top solutions are insufficient to meet their needs.

TPx explained it uses Operations Support Systems ("OSS") and 911 UNEs to serve its customers, including those that TPx provisions service to using Ethernet and special access circuits. Neither USTelecom nor the incumbent LECs have provided *any* data to support forbearance from incumbent LECs' obligation to offer OSS and/or 911 UNEs. Even if the Commission were to determine – incorrectly – that incumbent LECs should no longer be required to offer certain UNE loops and/or transport in some areas, the Commission should deny forbearance from OSS and 911 unbundling obligations.

TPx reiterated its position that the Commission must look at each market individually rather than considering forbearance on a national scale because every local market is unique. TPx urged caution in justifying forbearance based on publicly available network maps that appear to show facilities-based competition. The practical reality in many local markets for small and medium business customers may not match the maps. Although competitive fiber providers' and/or cable companies' maps may appear to show sufficient facilities to compete with the incumbent LECs, in TPx's experience, the business plans of fiber providers inhibit the ability for TPx to partner with such providers to serve its niche customer base. For example, TPx's average customer requires only a 10-20 Mbps service

and some well-known fiber providers will not provision fiber for such low bandwidth services. Similarly, TPx has found cable facilities (if in the building or nearby) often are inferior substitutes due to the length of time it takes cable providers to initiate service and the unpredictability of the quality of the cable plant, which commonly requires significant investment or upgrades for TPx to serve its customers.

The Commission must have some idea of what a post-forbearance world would look like to determine if forbearance is in the public interest. Neither USTelecom nor the incumbent LECs have provided sufficient information to conduct this analysis. TPx has requested information from the incumbent LECs about their plans for commercial arrangements. To date only AT&T and CenturyLink have indicated a willingness to discuss commercial replacement products, but neither have offered details or a timetable for such negotiations. In stark contrast, Verizon and Frontier have told TPx that they will not offer any such details until *after* the Commission grants the Petition. The refusal of the incumbent LECs to preview their replacement offerings while asking the Commission to eliminate their competitors' statutory right to access UNEs shows that if the Petition is granted they will flex their market power to impose drastic price increases that would not be possible in a truly competitive marketplace. Competitive providers will have little option but to pass those costs on to their end users. Before granting any forbearance, the Commission should require the incumbent LECs to make their baseline commercial offering available to the industry and the Commission for review.

TPx does not oppose a natural decline in the availability of UNEs that results from incumbent LECs retiring their copper plant, which incentivizes the deployment of fiber. Instead of the operational cliff that forbearance would create – where competitive providers will need to obtain replacements for UNEs used to serve millions of customers nearly overnight – natural forbearance allows for a measured transition from UNEs to alternative access methods. Rather than giving incumbent LECs carte blanche to increase UNE rates or adopting a complex transition regime, the Commission should retain the existing framework that provides incumbent LECs relief from unbundling obligations only where they have deployed fiber.

Sincerely,

/s/ Tamar E. Finn

Tamar E. Finn
Patricia Cave

Counsel to U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications

cc: Nirali Patel (via E-Mail)