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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) from Obsolete ILEC )  
Regulatory Obligations that Inhibit Deployment of )  
Next-Generation Networks )

WC Docket No. \_\_\_\_\_

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Federal Communications Commission  
Office of the Secretary

**PETITION FOR FORBEARANCE OF THE  
UNITED STATES TELECOM ASSOCIATION**

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APPENDICES

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PETITION FOR FORBEARANCE OF THE  
UNITED STATES TELECOM ASSOCIATION

Pursuant to Section 10 of the Communications Act of 1934 and Sections 1.53 and 1.54 of the Commission's rules,<sup>1</sup> the United States Telecom Association ("USTelecom") petitions the Commission for forbearance from various outdated regulatory requirements applicable to incumbent local exchange carriers ("ILECs"), as detailed below.<sup>2</sup> The relief requested will

<sup>1</sup> 47 U.S.C. § 160 ("Section 10"); 47 C.F.R. §§ 1.53, 1.54.

<sup>2</sup> Pursuant to Section 1.54 of the Commission's rules, 47 C.F.R. § 1.54, the specific requirements from which USTelecom seeks forbearance, as well as a list of pending proceedings in which USTelecom has taken a position regarding relief that is identical to, or comparable to, the relief sought in this Petition, are set forth in Appendix A. As noted in Appendix A and as discussed below, in some cases forbearance is requested for all ILECs subject to the rules, while in other cases, forbearance is requested only for: (1) those ILECs operating under price cap regulation at the federal level; (2) those ILECs operating under rate-of-return regulation at the federal level; or (3) those ILECs that are Bell Operating Companies (also referred to throughout as Regional Bell Operating Companies, or "RBOCs"), that have not previously been granted forbearance. Granting forbearance relief to broad classes of carriers is expressly contemplated by Section 10 and is consistent with Commission precedent. *See* 47 U.S.C. § 160(a) (providing for forbearance from "applying any regulation or any provision of the Act to a . . . class of telecommunications carriers or telecommunications services"); *United States Telecom Ass'n Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Order, 28 FCC Rcd 2605, 2608 ¶ 7 (2013) ("Where the section 10 forbearance criteria are met based on factors common to an entire class, it would be less consistent with the goal of establishing a 'a pro-competitive, deregulatory national policy framework' and would place a greater burden on both the industry and on agency resources to . . . require individual

promote the deployment of next-generation high-speed networks and fulfill the Commission's core goals of expanding infrastructure investment and increasing competition for services that have become central to Americans' daily lives.

**I. INTRODUCTION AND EXECUTIVE SUMMARY**

USTelecom is pleased to file this Petition, which offers the Commission a unique opportunity to make significant strides toward its goal of promoting the deployment of, and competition among, next-generation networks.

**A. Forbearance From Outdated ILEC-Specific Legacy Regulation Would Promote Broadband Deployment and Competition**

Several weeks ago, in remarks delivered at "1776: Where Revolutions Begin," Chairman Wheeler emphasized that "high-speed connections are crucial not only for the kind of innovation that will educate our children and deliver quality health care, but also improve energy efficiency, fill the employment ranks, and maintain the United States as the world's innovation leader for the 21st Century."<sup>3</sup> He further noted that "competition is the most effective tool for driving innovation, investment, and consumer and economic benefits," and lamented the lack of extensive competition for the provision of broadband service at high speed tiers.<sup>4</sup> He noted that cable companies provide "the overwhelming percentage" of higher-speed connections, and

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carriers within a class . . . to . . . file their own petitions seeking identical relief for identical reasons.").

<sup>3</sup> Tom Wheeler, Chairman, FCC, Prepared Remarks at 1776 Headquarters, Washington, D.C., *The Facts and Future of Broadband Competition* at 2 (Sept. 4, 2014), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0904/DOC-329161A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf).

<sup>4</sup> *Id.* at 1.

asserted that “only fiber gives the local cable company a competitive run for its money.”<sup>5</sup> Cable companies are also successful competitors for voice services. For example, the combined Comcast and Time Warner Cable would be the second largest voice service provider in the United States upon completion of their merger. Finally, Chairman Wheeler emphasized the Commission’s commitment to promoting additional competition, stating that “where greater competition can exist, [the Commission] will encourage it.”<sup>6</sup>

One key barrier to the deployment of new fiber facilities – and thus to the rise of competition in the provision of service at the speeds the Chairman discussed in his 1776 speech – is the continued application of legacy regulatory requirements to a subset of wireline telecommunications providers, the ILECs, that divert substantial resources away from such next-generation networks. While cable, wireless, and competitive fiber providers are free to focus their expenditures on next-generation networks suited to delivering higher-speed services, ILECs must direct a substantial portion of their expenditures to maintaining legacy networks and fulfilling regulatory mandates whose costs far exceed any benefits. Indeed, the Chairman stated in February that, “[d]ue in part to outdated rules, the majority of the capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all.”<sup>7</sup> And more than four years ago, the Administration’s *National Broadband Plan* warned of the adverse impact of

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<sup>5</sup> *Id.* at 3, 5.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> Tom Wheeler, Chairman, FCC, Prepared Remarks at Silicon Flatirons, University of Colorado Law School, Boulder, Colorado at 5 (Feb. 10, 2014) (“Silicon Flatirons Address”), *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0210/DOC-325531A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0210/DOC-325531A1.pdf).

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carryover regulations from the 20<sup>th</sup> Century that require telephone companies, and telephone companies alone, to continue to invest in antiquated services and technology:

Regulations require certain carriers to maintain POTS – a requirement that is not sustainable – and lead to investments in assets that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services.<sup>8</sup>

As one industry analyst has written, “[t]he least-regulated platforms – Internet, cable, and wireless – are the most successful, because they have been free to innovate and to invest their capital efficiently.”<sup>9</sup> In short, investment resources are finite, and continuing to require irrational expenditures in legacy networks will lead to stranded investment at the expense of new technologies.

This Petition is intended to present the Commission with a concrete agenda for allowing ILEC investment to be redirected away from legacy, narrowband, copper-based telephone networks and toward the deployment of next-generation facilities, thereby enhancing competition in the provision of truly high-capacity services and enhancing the nation’s communications infrastructure. USTelecom respectfully asks the Commission to forbear, under Section 10 of the Communications Act,<sup>10</sup> from applying a collection of badly outdated provisions

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<sup>8</sup> FCC, *Connecting America: The National Broadband Plan* at 59 (Mar. 2010), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf) (“*National Broadband Plan*”).

<sup>9</sup> Anna-Maria Kovacs, *Telecommunications Competition: The Infrastructure-Investment Race*, at 1 (Oct. 8, 2013), (“*Kovacs 2013 Telecommunications Competition Paper*”), attached to letter from Rick Boucher, Hon. Chairman, Internet Innovation Alliance, to Marlene H. Dortch, Secretary, FCC, GN Dkt. 12-353 *et al.* (Nov. 29, 2013), available at [http://internetinnovation.org/images/misc\\_content/study-telecommunications-competition-09072013.pdf](http://internetinnovation.org/images/misc_content/study-telecommunications-competition-09072013.pdf).

<sup>10</sup> 47 U.S.C. § 160.

that apply only to wireline ILECs, even though these providers now serve a small minority of all lines in service. These requirements drain resources and no longer do anything to promote competition or protect consumers. They force ILECs to dedicate resources to the configuration of their legacy telephone networks rather than investing those resources in the high-speed networks Chairman Wheeler discussed at the 1776 conference. Relief from these obligations will free resources to be used in ways that promote real competition and advance the public interest.

Forbearance is one of the key tools Congress provided the Commission to promote broadband deployment. Section 706(a) of the Telecommunications Act of 1996, for example, directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... by utilizing ... [*inter alia*] regulatory forbearance ... or other regulating methods that remove barriers to infrastructure investment.”<sup>11</sup> Last year, moreover, the Commission endorsed the principle “that eliminating unnecessary regulation will generally reduce providers’ costs and, in turn, benefit consumers through lower rates and/or more vibrant competitive offerings.”<sup>12</sup> Here, the Commission should

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<sup>11</sup> 47 U.S.C. § 1302(a). *See also Framework for Broadband Internet Service*, Notice of Inquiry, 25 FCC Rcd 7866, 7895 ¶ 69 (2010) (“In recognition of the need to tailor the Commission’s policies to evolving markets and technologies, Congress gave the Commission in 1996 the authority and responsibility to forbear from applying provisions of the Communications Act when certain criteria are met, and specifically directed the Commission to use this new power to ‘encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.’”).

<sup>12</sup> *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7651 ¶ 41 (2013). The portion of this order resolving USTelecom’s forbearance petition will be cited throughout as *USTelecom Forbearance Order*,

use its broad forbearance authority as Congress intended, in furtherance of Chairman Wheeler’s stated goal of reforming “the regulatory model that developed around the realities of the 20th Century” to meet the needs of “a marketplace [that is] far different from that” – the one that exists today.<sup>13</sup>

**B. The Requirements From Which this Petition Seeks Forbearance Are Just Some of the Many Outdated Regulations that Should be Updated**

This Petition addresses just a subset of the disparate regulations that apply only to ILECs and impede infrastructure investment and competition. Forbearance from those obsolete regulations would eliminate some of these legacy impediments. But either through additional proceedings or, in the longer term, through an update of the Communications Act, further regulatory parity is warranted and necessary to reflect today’s realities. The requirements this Petition addresses include:

- Outdated provisions in Sections 271 and 272, and the related equal access rules;
- Rule 64.1903 structural separation requirements;
- The requirement that an ILEC provide an unbundled 64 kbps voice channel where it has replaced a copper loop with fiber;
- Section 214(e)(1) eligible telecommunications carrier (“ETC”) requirements where a price cap carrier does not receive high-cost universal service support;
- The remaining *Computer Inquiry* rules;

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28 FCC Rcd at 7630-7709 ¶¶ 1-187. The portion requesting comments on possible revisions to Section 64.1903 of the Commission’s rules will be cited *Second FNPRM*, 28 FCC Rcd at 7720-36 ¶¶ 211-43.

<sup>13</sup> Tom Wheeler, *Net Effects: The Past, Present and Future Impact of our Networks*, at 20 (Nov. 26, 2013) (“*Net Effects*”), available at [http://transition.fcc.gov/net-effects-2013/NET\\_EFFECTS\\_The-Past-Present-and-Future-Impact-of-Our-Networks.pdf](http://transition.fcc.gov/net-effects-2013/NET_EFFECTS_The-Past-Present-and-Future-Impact-of-Our-Networks.pdf).

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- The Section 224 and 251(b)(4) requirement that ILECs share newly deployed entrance conduit; and
- Rules prohibiting the use of contract tariffs to offer special access and high capacity data services in the absence of pricing flexibility.

Forbearance from these requirements will in each case satisfy the specific statutory criteria. Section 10(a) directs the Commission to forbear from applying a statutory provision or regulation to a telecommunications carrier or telecommunications service if “(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.”<sup>14</sup>

Section 10(b) further requires that in determining whether forbearance is “consistent with the public interest,” the Commission “shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among [telecommunications] providers.”<sup>15</sup> These conditions are satisfied for each of the above requirements, and forbearance will affirmatively benefit consumers by promoting competition and deployment of the next-generation network facilities that are most essential to our nation’s continued economic growth and prosperity.

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<sup>14</sup> 47 U.S.C. § 160(a).

<sup>15</sup> *Id.* § 160(a)(3), (b).

**C. The Marketplace Has Shifted Away From the 20<sup>th</sup> Century Regulatory Model, and the ILECs' Role in the 21<sup>st</sup> Century is Far Different**

Forbearance here will unleash many benefits for the American public, and there is no reason to believe that forbearance will impose any corresponding harms. The regulations at issue were designed for a one-wire, fixed, narrowband world, in which ILECs were presumed to exercise exclusive control over bottleneck facilities and in which regulators, in turn, were compelled to implement and enforce a web of mandates designed to curb ILEC power. That marketplace no longer exists. Communications have shifted decisively away from fixed, narrowband connections and toward new technologies, including mobile wireless service, Voice over Internet Protocol (“VoIP”), and multi-functional broadband offerings that render voice service just one application among many.

Fixed broadband subscriptions from telecommunications, cable, satellite, and fixed wireless providers have grown from seven million at the end of 2000 to 94 million as of mid-2013.<sup>16</sup> Mobile broadband subscriptions from multiple national and regional wireless providers have grown from three million at the end of 2005 to 181 million as of mid-2013.<sup>17</sup> From 2000 to 2013, U.S. IP traffic has grown by a factor of 420 from 432 petabytes per year, or the equivalent

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<sup>16</sup> Compare Industry Analysis Div., FCC, *High Speed Services for Internet Access: Status as of December 31, 2000* at Table 1 (Aug. 2001), available at [http://transition.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/hspd0801.pdf](http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0801.pdf), with Industry Analysis and Technology Div., FCC, *Internet Access Services: Status as of June 30, 2013* at Table 1 (June 2014) (“*Mid-2013 Internet Access Report*”), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-327830A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf).

<sup>17</sup> Compare Industry Analysis and Technology Div., FCC, *Internet Access Services: Status as of December 31, 2009* at Table 1 (Dec. 2010), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-303405A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-303405A1.pdf), with *Mid-2013 Internet Access Report* at Table 1.

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of 100 million DVDs, to 182 exabytes per year, or the equivalent of 42 billion DVDs.<sup>18</sup> Internet traffic is expected to grow another two and a half times by 2018 to 444 exabytes per year, or the equivalent of approximately 100 billion DVDs.<sup>19</sup> Rather than having a single “network of record” – the PSTN – the 21st Century’s communications infrastructure is a “network of networks.”

Amidst this sea change, ILEC voice market shares have fallen precipitously. As of June 2013, ILECs served a total of about 78.5 million switched and VoIP access lines – *just 44 percent* of the 178 million they served at the end of 2000.<sup>20</sup> Traditional switched lines had fallen to 70.5 million by June 2013, or only 40 percent of lines served at the end of 2000.<sup>21</sup> By the end of 2012, virtually 100 percent of all U.S. households were located in Zip Codes with at least one non-ILEC interconnected VoIP provider, and 92 percent were in Zip Codes with ten or more

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<sup>18</sup> USTelecom, *Estimated Internet Protocol Traffic 1990-2013* available at <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/internet-usage/estimated-us-ip-traffic> (last visited Sept. 30, 2014) (citing Cisco Visual Networking Index).

<sup>19</sup> Cisco Visual Networking Index (VNI), *VNI Forecast Widget Advanced Editor*, available at <http://www.ciscovni.com/forecast-widget/advanced.html> (last visited Sept. 30, 2014). Cisco data show 15,162 petabytes per month in 2013 growing to a projected 37,018 petabytes per month in 2018. We convert to exabytes per year by dividing by 1,000 and multiplying by 12.

<sup>20</sup> Compare Industry Analysis and Technology Div., FCC, *Local Telephone Competition: Status as of June 30, 2009* at 12, Table 1 (Sept. 2010) (“*2009 Local Telephone Competition Report*”), available at <https://prodnet.www.neca.org/publicationsdocs/wwpdf/9310fccreport.pdf>, with Industry Analysis and Technology Div., FCC, *Local Telephone Competition: Status as of June 30, 2013* at 12, Table 1 (June 2014) (“*Mid-2013 Local Telephone Competition Report*”), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-327830A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf).

<sup>21</sup> Compare *2009 Local Telephone Competition Report* at 12, Table 1, with *Mid-2013 Local Telephone Competition Report* at 5, Figure 4.

such providers.<sup>22</sup> The Commission's most recent local telephone competition report found that, as of June 30, 2013, there were 45 million interconnected VoIP subscriptions, including more than 36 million residential interconnected VoIP subscriptions.<sup>23</sup> Interconnected VoIP accounted for 47 percent of residential fixed voice connections, with non-ILEC VoIP lines accounting for 38 percent and ILEC VoIP accounting for 9 percent.<sup>24</sup> From the end of 2008 to mid-2013, non-ILEC VoIP lines grew by 16 million, from 21 million to 37 million.<sup>25</sup>

That report also found that there were eight states where non-ILECs had more wired telephone lines (switched access or VoIP) than ILECs.<sup>26</sup> In an additional 10 states, non-ILECs had 45 percent to 50 percent of the wired voice connections.<sup>27</sup> Moreover, ILECs continue to lose access lines and associated revenues overall, even after accounting for customers who migrate to their IP-based offerings.<sup>28</sup> And even this data does not account for non-interconnected VoIP services such as Skype, which reported approximately 25 million connected U.S. users as of

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<sup>22</sup> Industry Analysis and Technology Div., FCC, *Local Telephone Competition: Status as of December 30, 2012* at 30, Table 20 (Nov. 2013), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-324413A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-324413A1.pdf). The most recent Commission report, the *Mid-2013 Local Telephone Competition Report*, does not include the corresponding tables describing non-ILEC availability by zip code.

<sup>23</sup> See *Mid-2013 Local Telephone Competition Report* at 5, Figure 4.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 15, Table 4.

<sup>26</sup> *Id.* at 20, Table 9.

<sup>27</sup> *Id.*

<sup>28</sup> See, e.g., *Grading the Top 13 Wireline Service Providers in Q3 2013*, FierceTelecom, (Nov. 14, 2013), available at <http://www.fiercetelecom.com/special-reports/grading-top-13-wireline-service-providers-q3-2013>.

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December 2010,<sup>29</sup> or for the ability to communicate over long distances via text messaging, e-mail, or social networks, or the emergence of other converged communications services offering various combinations of voice, text, and video, such as iMessage, Snapchat, Viber, and WhatsApp.<sup>30</sup>

The rise of mobile communications has had perhaps an even greater impact than the advent of interconnected VoIP. According to the Commission's most recent wireless competition report, "approximately 97 percent of the U.S. population is covered by the networks of at least three mobile voice providers, close to 93 percent is covered by the networks of at least four mobile voice providers, and about 80 percent is covered by five."<sup>31</sup> The FCC reports that there were 305,742,000 wireless voice connections in the U.S. as of mid-2013. This figure is more than double the number of in-service access lines as of mid-2013.<sup>32</sup>

As Dr. Kevin Caves observes in his attached Declaration, "[m]easured as a proportion of end-user switched access lines, interconnected VoIP subscriptions, and mobile wireless subscriptions, ILECs' aggregate market share fell from 60.5 percent to 18.5 percent" from 2000 to 2012,<sup>33</sup> and ILEC fixed access lines accounted for *less than 18 percent* of the voice market as

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<sup>29</sup> See Declaration of Dr. Kevin Caves ¶ 13 (Oct. 6, 2014), attached as Appendix B ("Caves Decl.").

<sup>30</sup> See *id.*

<sup>31</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Sixteenth Report, 28 FCC Rcd 3700, 3747 ¶ 45 (2013).

<sup>32</sup> See *Mid-2013 Local Telephone Competition Report* at 3, Figure 2 (reporting 135,127 retail access lines in service, including interconnected VoIP lines).

<sup>33</sup> Caves Decl. ¶ 12, attached as Appendix B.

of mid-2013.<sup>34</sup> Moreover, National Health Interview Survey data show that the proportion of U.S. households using wireless voice service in lieu of a landline connection reached 41 percent by the second half of 2013,<sup>35</sup> and about 34 percent of all households with both landline and wireless connections mostly relied on their wireless service.<sup>36</sup> The cut-the-cord phenomenon is prominent across geographic areas and demographic groups.<sup>37</sup> Even the poor and elderly – traditionally presumed to be particularly dependent on land lines – have been transitioning to mobile service.<sup>38</sup>

As Professor John Mayo concludes in his attached Declaration, “[t]he past ten years have witnessed a complete dismantling of one-hundred years of loyalty by Americans to wireline voice telephone service.”<sup>39</sup> This shift has dramatically reshaped the competitive landscape. Professor Mayo notes that “[t]oday . . . a plethora of data and analysis reveal that wireless

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<sup>34</sup> This figure reflects the 78,537,000 ILEC access lines and VoIP connections listed in the *Mid-2013 Local Telephone Competition Report* at 12, Table 1, the 56,590,000 non-ILEC access lines listed in that report, and the 305,742,000 wireless accounts reported by FCC as of mid-2013. See also Caves Declaration ¶¶ 10, 12.

<sup>35</sup> See Caves Decl. ¶ 26. See also Declaration of Professor John Mayo at ¶ 16 (Oct. 6, 2014) (“Mayo Decl.”) (reporting cut-the-cord rate of almost 42 percent based on independent research), attached as Appendix C.

<sup>36</sup> See Caves Decl. ¶ 28.

<sup>37</sup> See *id.* ¶ 22.

<sup>38</sup> See Mayo Decl. ¶¶ 17-26.

<sup>39</sup> *Id.* ¶ 6.

services present a substantive, viable and economically constraining influence on the behavior of wireline telephone providers.”<sup>40</sup>

When taking into account both cord-cutting and landline alternatives, just one-third of U.S. households rely on switched or VoIP service from an ILEC<sup>41</sup> and barely one-quarter rely on traditional switched service from an ILEC.<sup>42</sup> As Dr. Caves concludes, wireless voice service has evolved into a competitive alternative to wireline service, and ILEC wireline voice prices are disciplined by a range of competitive alternatives, including wireless telephony, cable voice, over-the-top VoIP, and offerings from competitive local exchange carriers (“CLECs”).<sup>43</sup>

The market for high-capacity dedicated “Business Data Services” – defined here as tariffed TDM special access (DS0 and above) and enterprise broadband services – also is strongly competitive, with the rise of cable, CLECs, and other alternative providers driven by burgeoning demand for Internet-based and higher capacity wireless services. ILECs hold no privileged position in this market, and they face stiff competition from cable MSOs, wireless providers, CLECs and others. According to the Commission’s latest *Local Competition Report*, from December 2008 through June 2013, ILEC business line counts declined by approximately

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<sup>40</sup> *Id.* ¶ 36.

<sup>41</sup> *See Caves Decl.* ¶ 27.

<sup>42</sup> Patrick Brogan, USTelecom, *Growing Voice Competition Spotlights Urgency of IP Transition*, Research Brief, at 1-3 (Nov. 22, 2013) (26 percent of U.S. households projected to be served by ILEC switched landline voice service by the end of 2013), *available at* <http://www.ustelecom.org/sites/default/files/documents/111813-voice-comp-research-brief.pdf> (“*Research Brief*”); Letter from Jonathan Banks, Sr. VP, Law & Policy, USTelecom, to Marlene Dortch, Secretary, FCC, at 1, WC Dkt. No. 10-90 (filed Dec. 5, 2013) (same) (“*Banks Letter*”).

<sup>43</sup> *See Caves Decl.* at ¶ 2.

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12.5 million, for a loss of 27 percent.<sup>44</sup> Over this same interval, non-ILEC business line counts grew by approximately 5.4 million.<sup>45</sup> In all, more than 30 providers – most of them non-ILECs – offer enterprise broadband services nationally or to large areas of the country. Indeed, as of mid-2013, the third-largest provider of U.S. business Ethernet services was a CLEC, tw telecom.<sup>46</sup>

Cable providers are particularly well poised to win increasing shares of the Business Data Services market.<sup>47</sup> In their most recent earnings reports, for example, Comcast reported 22.4 percent year-over-year growth in its quarterly business service revenues,<sup>48</sup> Time Warner Cable reported 22.3 percent growth,<sup>49</sup> and Charter reported 19.0 percent growth.<sup>50</sup> Cable's strength in this sector will only be enhanced by developments such as the proposed Comcast/Time Warner Cable merger. In the Application the companies filed with the Commission, they highlighted the ways in which the combined company's greater geographic scale and other benefits stemming

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<sup>44</sup> *Id.* ¶ 15.

<sup>45</sup> *Id.*

<sup>46</sup> Press Release, Vertical Systems Group, *Mid-Year 2013 U.S. Carrier Ethernet Leaderboard* (Aug. 20, 2013).

<sup>47</sup> Caves Decl. ¶¶ 16-18.

<sup>48</sup> See Comcast, *Comcast Reports 2<sup>nd</sup> Quarter 2014 Results* (July 22, 2014), available at <http://www.cmcsa.com/releasedetail.cfm?ReleaseID=861091>.

<sup>49</sup> See Press Release, Time Warner Cable, *Time Warner Cable Reports Second Quarter 2014 Results at 2* (July 31, 2014), available at <http://ir.timewarnercable.com/files/2014%20Earnings/2Q14/Q2%202014%20TWC%20Earnings%20Release%20FINAL.pdf>.

<sup>50</sup> See News Release, Charter Communications, *Charter Announces Second Quarter 2014 Results: Strategic Initiatives and Investment Delivering Intended Results*, at 1 (July 31, 2014), available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjQ0OTY0fENoaWxkSUQ9LTF8VHlwZT0z&t=1>

from the merger will make it a stronger competitor in the provision of high-capacity Business Data Services.<sup>51</sup>

Likewise, ILECs are not dominant in the provision of long-distance service, leaving aside whether that is even still a meaningful way to classify services in today's all-distance world. The Commission declared legacy AT&T non-dominant in the long-distance market decades ago, and the Commission has since confirmed that no provider is dominant in the provision of long-distance service.<sup>52</sup> Indeed, the stand-alone market for long-distance service has collapsed, with customers taking long-distance service that comes bundled with their local telephone service in the vast majority of cases.<sup>53</sup> As noted in the Caves Declaration, “[c]ompetition from wireless carriers, VoIP operators, and other sources have rendered the distinction between local and long distance calling increasingly obsolete.”<sup>54</sup>

Under these circumstances, there is no reason for the Commission to short-change its pro-deployment, pro-competition goals by declining to forbear from the regulations at issue here. As Chairman Wheeler observed earlier this year, “the elimination of circuit-switched monopoly markets certainly obviates the need for old monopoly-based regulation of that technology.”<sup>55</sup>

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<sup>51</sup> See Comcast/Time Warner Cable Public Interest Statement at 90-97, MB Dkt. No. 14-57 (Apr. 9, 2014).

<sup>52</sup> See *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (“*Section 272 Sunset Order*”).

<sup>53</sup> See Caves Decl. ¶¶ 91-93.

<sup>54</sup> *Id.* ¶ 91.

<sup>55</sup> *Net Effects* at 20.

The forbearance sought herein promises to direct additional resources toward the high-speed networks of tomorrow, heralding an era of further increases in competition for truly high-speed broadband services. This result will further the core objectives articulated by Chairman Wheeler and the Commission. USTelecom is pleased to play a role in ensuring the further development of robust broadband competition, and looks forward to working with the Commission on these issues.

**II. THE COMMISSION SHOULD FORBEAR FROM ENFORCING OUTDATED PROVISIONS IN SECTIONS 271 AND 272 AND RELATED OBLIGATIONS, AS WELL AS THE LEGACY EQUAL ACCESS RULES**

The remaining obligations of Sections 271 and 272, as well as the Commission's equal access rules, are either moot or irrelevant to today's marketplace. Section 271 has been fully implemented in every RBOC region, Section 272 has largely sunset, and the market-opening mission of those provisions has been accomplished. But the Performance Assurance Plans ("PAPs") that Section 271 spawned remain a costly burden unnecessary in today's marketplace. The local markets that Section 271 and those Plans were designed to open to competition have long been open to competition, and those provisions have lost their relevance. In order to eliminate barriers to infrastructure investment and competition, the Commission should forbear from applying Sections 271 and 272 and should send a strong signal that the PAPs are no longer needed. Similarly the Commission should forbear from applying the equal access requirements, which predated the 1996 Act but were preserved by Section 251(g). Equal access requirements are irrelevant to today's highly competitive, bundled, all-distance services.

**A. The World Contemplated in Sections 271 and 272 Has Disappeared**

The regime established for RBOC entry into long distance services under Sections 271 and 272 of the Act rests on presumptions regarding market structure that no longer reflect

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realities, and imposes archaic, irrelevant obligations. Under Sections 271 and 272, enacted as part of the Telecommunications Act of 1996, an RBOC could enter the long distance market in its home region only if the RBOC could demonstrate that its local markets were sufficiently “open to competition,”<sup>56</sup> under criteria set forth in Section 271, and only through a structurally separate affiliate meeting the requirements of Section 272.<sup>57</sup> Although Section 271’s local market-opening mission has been accomplished, its remaining requirements are embodied in the statutory “competitive checklist” set out in Section 271(c)(2)(B), much of which is duplicative of other provisions of the Act.

Section 272 was intended to protect the emerging competitive long distance market by erecting safeguards separating the RBOCs’ in-region interLATA services from their local exchange and access operations.<sup>58</sup> Although most of the provisions of Section 272 have sunset,<sup>59</sup> there remain obligations originally intended to protect long distance competition from supposed RBOC “market power with respect to in-region, long distance services.”<sup>60</sup> The sole purpose of these requirements was to protect long distance competition in a world that assumed the need for separate local and long distance services and providers.

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<sup>56</sup> *Application by Qwest Communications International Inc., for Authorization To Provide In-Region, InterLATA Services in Minnesota*, Memorandum Opinion and Order, 18 FCC Rcd 13323, 13359 ¶ 67 (2003) (“*Qwest Minn. Section 271 Order*”).

<sup>57</sup> 47 U.S.C. §§ 271, 272; *Application by Bell Atl. N.Y. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Serv. in the State of N.Y.*, Memorandum Opinion and Order, FCC Rcd 3953, 3956 ¶ 3 (1999) (“*Bell Atlantic NY Section 271 Order*”).

<sup>58</sup> *See Section 272 Sunset Order*, 22 FCC Rcd at 16444-45 ¶¶ 7-8.

<sup>59</sup> *See id.* at 16447 ¶12.

<sup>60</sup> *Id.* at 16450 ¶19.

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Today’s voice communications marketplace bears little resemblance to the market that existed when Congress enacted Sections 271 and 272. As discussed above, the market for voice services has been blown wide “open to competition” – the standard for entry under Section 271<sup>61</sup> – and has expanded beyond traditional wireline services. To the extent consumers seek voice alternatives to ILEC services, they look completely outside of ILEC telecommunications networks – to wireless service providers that serve nearly 90 percent of all households<sup>62</sup> and invariably treat each minute of service the same way irrespective of the distance the call travels, to cable companies and other non-ILEC providers that in many states have now surpassed ILEC voice subscriber counts for the remaining households that still purchase landlines,<sup>63</sup> and to over-the-top broadband applications, many of which impose only minimal charges (if any) for providing long distance voice service.

In 2007, the Commission recognized that “intermodal competition between wireline services and services provided on alternative service platforms, such as facilities-based VoIP and mobile wireless, has been increasing and is likely to continue to increase.”<sup>64</sup> As discussed above,

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<sup>61</sup> *Qwest Minn. Section 271 Order*, 18 FCC Rcd at 13359 ¶ 67.

<sup>62</sup> Stephen J. Blumberg and Julian V. Luke, Centers for Disease Control (CDC), *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2013*, at 5, Table 1 (July 2014), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf> (“*CDC Second Half 2013 Wireless Report*”).

<sup>63</sup> According to the FCC’s *Mid-2013 Local Competition Report*, as of mid-2013, non-ILECs served more than 50 percent of landlines in eight states representing about 17 percent of all landlines in the U.S. In an additional ten states, non-ILECs served between 45 and 50 percent of all landlines. Non-ILECs served more than 40 percent of landlines in 27 states representing 55 percent of all landlines in the U.S.

<sup>64</sup> *Section 272 Sunset Order*, 22 FCC Rcd at 16455-56 ¶ 27.

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subsequent data has borne out the Commission's prediction. The impact of this competition on the ILECs cannot be overstated. Today, RBOC access line counts continue to shrink along with long-distance minutes of use placed from landlines, while the line counts of other providers continue to grow. Total ILEC retail switched access lines have fallen by 60 percent since the year 2000, from 178 million to 71 million.<sup>65</sup> From the end of 2007 to mid-2013, there were almost 60 million retail switched access lines lost, and the rate of decline was still around 9.5 million per year as of mid-2013.<sup>66</sup>

Interstate switched access minutes of use, the most readily available proxy for interstate long distance traffic, declined from 567 billion in 2000 to 161 billion in 2013, a drop of 72 percent.<sup>67</sup> Interstate switched access minutes declined by 188 billion minutes from 2007 to 2013, and were falling at a rate of 24 billion minutes per year in 2013.<sup>68</sup>

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<sup>65</sup> Compare 2009 Local Telephone Competition Report at 12, Table 1, with Mid-2013 Local Telephone Competition Report at 16, Table 5. Data reflect all ILECs industry-wide, not just the RBOCs to whom the requested relief would apply. RBOC-specific data are not available consistently over time. Nonetheless, RBOCs trends are likely similar to the industry-wide trends, since they represent the vast majority of lines. In fact, it is likely that RBOCs have seen greater proportionate line losses than the industry as a whole, since the RBOCs on average have experienced a greater degree of competitive entry.

<sup>66</sup> Compare 2009 Local Telephone Competition Report at 12, Table 1, with Mid-2013 Local Telephone Competition Report at 16, Table 5 (from more than 129,600,000 lines to roughly 80,000,000 lines by mid-2012, and to slightly over 70,500,000 lines by mid-2013).

<sup>67</sup> NECA & USAC Data, Network Usage by Carrier Section, 1999 through 2003, at Summary Tab, <http://transition.fcc.gov/wcb/iatd/neca.html> (Year 2000 data); NECA & USAC Data, Network Usage by Carrier Section, 2009 through 2013, at Tab 1, <http://transition.fcc.gov/wcb/iatd/neca.html> (Year 2013 data) ("NECA 2013 Data"). This data provides a reasonable proxy for the proportionate change in long distance traffic because long distance providers must purchase switched access to originate and terminate long distance calls. Of course, interstate access minutes only reflect a subset of long distance minutes since some calls are intrastate long distance. Unfortunately, intrastate long distance usage data are not readily available. Like access line data, these minutes of use data reflect industry-wide ILEC

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Moreover, the separate local and long distance marketplaces envisioned in Sections 271 and 272 have largely disappeared. As the Commission recognized almost a decade ago, “long distance service purchased on a stand-alone basis is becoming a fringe market.”<sup>69</sup> Ubiquitous, distance-agnostic voice services are widely available, and customers have shifted to a wide variety of all-distance alternatives. From the consumer’s perspective, a minute of service is a minute of service, regardless of the technology platform used by the provider. In 2007, the Commission found that “a majority of consumers purchase local and long distance services from a single provider today,” and that “this percentage has been increasing over time.”<sup>70</sup> Recognizing the explosion of intermodal options, the Commission noted at that time that “competition is increasingly occurring between bundled offerings, rather than between a bundled package offered by an intermodal competitor and stand-alone local and long distance services offered by incumbent LECs.”<sup>71</sup>

These trends have only continued since then. The notion of separate ILEC customer local and long distance voice markets is obsolete. As of June 30, 2013, ILEC lines represented

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totals, since it was not possible to isolate RBOC data consistently over time. Also, unlike the access line data, these are full-year data, rather than mid-year. To make a year-end comparison, one could estimate year-end access lines, based on recent trends, in which case ILEC access lines would have fallen by more than 4.5 million to about 66 million, or approximately 63 percent of year-end 2000 levels by year-end 2013.

<sup>68</sup> NECA 2013 Data at Tab 1; NECA & USAC Data, Network Usage by Carrier Section, 2006 through 2010, at Tab 1, <http://transition.fcc.gov/wcb/iatd/neca.html>.

<sup>69</sup> *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18342 ¶ 91 (2005) (“*SBC-AT&T Order*”).

<sup>70</sup> *Section 272 Sunset Order*, 22 FCC Rcd at 16455 ¶ 26.

<sup>71</sup> *Id.* at 16455-56 ¶ 27.