

**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. 14-192

**OPPOSITION OF FULL SERVICE NETWORK LP AND  
THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE TO  
USTELECOM'S PETITION FOR FORBEARANCE**

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TABLE OF CONTENTS

	<u>Page No.</u>
I. BACKGROUND AND SUMMARY .....	1
II. THE STATUTORY STANDARD FOR FORBEARANCE .....	3
III. CATEGORY 5: USTELECOM’S PETITION FOR FORBEARANCE FROM ONA/CEI REQUIREMENTS IS PROCEDURALLY INAPT AND SHOULD BE SUMMARILY REJECTED BY THE COMMISSION.....	5
A. Summary of Previous Arguments Made by FSN and AICC .....	5
B. The Commission Denied USTelecom’s Previous Petition .....	6
C. The Commission Requested Further Evidence in the FNPRM .....	9
IV. CATEGORY 1: SECTION 271 FORBEARANCE WOULD BE HARMFUL TO COMPETITION .....	11
A. Background on Section 271 Commercial Agreements .....	12
B. Wireless, Cable, and VoIP Services are Not Valid Alternatives to Affordable RBOC Narrowband Services.....	15
V. CONCLUSION .....	18

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US TELECOM’S PETITION FOR FORBEARANCE**

Full Service Network LP (“Full Service Network” or “FSN”) and the Alarm Industry Communications Committee (“AICC”) submit this Opposition to the Petition of USTelecom for forbearance filed on October 6, 2014 pursuant to Section 160(c) from certain longstanding telecommunications regulations (“USTelecom Petition” or “Petition”). AICC joins in those portions of these comments relating to forbearance from Open Network Architecture (“ONA”) and Comparably Efficient Interconnection (“CEI”) (together “ONA/CEI”) requirements.<sup>1</sup>

**I. BACKGROUND AND SUMMARY**

**Category 5:** USTelecom’s 116-page Petition follows in the pattern of its previous forbearance petitions, criticizing a litany of existing regulations, but without the granular support required to support forbearance from Commission requirements. This Petition goes a step further, repeating the same arguments in support of the ONA/CEI forbearance that were rejected

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<sup>1</sup> AICC takes no position on the other sections of these comments which do not directly affect AICC and its members.

by the Commission just over a year a half ago in May 2013.<sup>2</sup> At that time, the Commission found that there was inadequate record evidence to forbear from ONA/CEI requirements.<sup>3</sup> The Commission, in an accompanying FNPRM, also laid out a specific pathway for any company that wanted to eliminate specific ONA elements.<sup>4</sup> Instead of following the Commission's explicit direction, USTelecom returned to the Commission—without any of the additional evidence that the Commission just said was lacking—and requested the same blanket ONA/CEI relief again. The Commission should make it clear that any further consideration of this issue will be pursuant to the framework detailed in the May 2013 Forbearance Denial Order separate FNPRM proceeding, and should, at a minimum, strike this portion of USTelecom's Petition as frivolous, procedurally inapt, and flatly inconsistent with the clear direction to USTelecom and other parties contained in recent Commission orders.

**Category 1:** USTelecom's Petition also makes a sweeping request for forbearance from all Section 271 requirements. Full Service Network currently offers competitive service to over 10,000 customers through a Section 271 commercial agreement and resale arrangements with Verizon. FSN and other similar providers that once offered service through the unbundled network element platform ("UNE-P"), can no longer depend on Section 251 unbundled network elements to provide service because that competitive alternative was eliminated by the 2005 UNE Remand Order. When the Commission eliminated UNE-P, however, it did so on the foundation that Section 271 commercial agreements would continue to provide competitive

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<sup>2</sup> *Computer III Further Remand Proceedings: Bell Operating Company Provision Of Enhanced Services; 1998 Biennial Regulatory Review – Review Of Computer III and ONA Safeguards And Requirements, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice Of Proposed Rulemaking, CC Docket Nos. 95-10, 98-10 (rel. May 17, 2013) ("May 2013 Order").*

<sup>3</sup> See e.g., *May 2013 Order*, at ¶ 23.

<sup>4</sup> *May 2013 Order*, at ¶¶ 194–210.

alternatives for consumers.<sup>5</sup> As such, providers such as Full Service Network are dependent upon checklist items 4-7,<sup>6</sup> as well as other key checklist requirements, to offer critical competitive services. The Commission's commitment to protecting existing competition is clear. As Chairman Wheeler has repeatedly stated, "where competition exists, we will protect it."<sup>7</sup> As detailed in these comments, Full Service Network and other providers relying on commercial agreements provide essential competition and need the Commission to preserve section 271 to protect that competition.

The assumption that there are wireless, cable, and VoIP alternatives is not accurate because: a) many areas do not have cable (and therefore VoIP) alternatives; and b) in those areas that do have cable, FSN customers often cannot afford cable or have satellite services that cannot carry VoIP. Because Section 271 commercial agreements are an integral part of the competitive framework and provide competitive pressure to discipline local exchange pricing, the Commission should reject USTelecom's request to eliminate all Section 271 requirements and elements at this time.

## **II. THE STATUTORY STANDARD FOR FORBEARANCE**

In order for any aspect of USTelecom's Petition for Forbearance to be granted, USTelecom must demonstrate that:

(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;

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<sup>5</sup> *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 F.C.C. Rcd. 2533 at ¶ 215 (rel. Feb. 4, 2005) ("*TRRO*").

<sup>6</sup> 47 U.S.C. § 271(c)(2)(B)(iv)-(vii).

<sup>7</sup> Remarks of FCC Chairman Tom Wheeler, COMPTTEL Fall Convention & Expo – Dallas, TX (Oct. 6, 2014)(available at <http://www.fcc.gov/document/chairman-wheeler-comptel-fall-convention-expo-dallas-tx>)(last visited December 5, 2014)("Wheeler COMPTTEL Remarks").

(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>8</sup>

The statute particularly discourages the use of the forbearance process in instances where, as here, failure to enforce regulations would have an adverse impact on competition. The Commission, in making the public interest determination in Section 160(a)(3), must “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 providers of telecommunications services.”<sup>9</sup> As discussed further below, the Petition cannot meet these criteria with respect to either the request for ONA unbundling (Category 5) or Section 271 (Category 1) relief because the regulations in question were designed for the express purpose of encouraging competition, increasing consumer choice, disciplining prices, and as a bulwark against unreasonable and discriminatory rates and services. The Commission should therefore deny the Petition, at a minimum, with respect to both of these categories.<sup>10</sup>

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<sup>8</sup> 47 U.S.C. § 160(a).

<sup>9</sup> 47 U.S.C. § 160(b).

<sup>10</sup> FSN and the Alarm Industry Communications Committee focus herein on the USTelecom forbearance requests that are most critical to their respective business plans. This is not intended to lend validity to the remaining USTelecom forbearance requests which are not the focus of this Opposition. For example, AICC limits its comments to the request for forbearance from ONA requirements and takes no position on any other aspect of the Petition at this time. FSN contends that, to the extent that the Commission’s structural separations (47 C.F.R. § 64.702), Comparably Efficient Interconnection (“CEI”) equal access requirements, and all-carrier rules are part of the same regulatory framework as ONA unbundling, the Commission must preserve the complete framework to protect competition and to guard against discrimination.

### **III. CATEGORY 5: USTELECOM'S PETITION FOR FORBEARANCE FROM ONA/CEI REQUIREMENTS IS PROCEDURALLY INAPT AND SHOULD BE SUMMARILY REJECTED BY THE COMMISSION**

USTelecom's request for forbearance from "all remaining Computer Inquiry rules" (Petition at 73-85) should look very familiar to the Commission: the Commission rejected the same request contained in a previous Petition<sup>11</sup> a little over a year ago in May 2013.<sup>12</sup> Both FSN and the AICC oppose this Petition, as they opposed the previous one, because it would eliminate critical ONA elements that FSN and AICC members rely upon to provide competitive services. FSN and AICC will not repeat all the arguments made in their previous Oppositions. When the Commission rejected USTelecom's previous Petition, it also issued an FNPRM detailing the evidence that USTelecom and its members should present *in that proceeding* in order to eliminate specific ONA elements. Because USTelecom did not follow the Commission's direction to present particular evidence in that docket, its Petition as to Category 5 is procedurally inapt and should be summarily dismissed by the Commission.

#### **A. Summary of Previous Arguments Made by FSN and AICC**

In their previous Opposition filings, FSN and AICC detailed the history of ONA/CEI unbundling.<sup>13</sup> The express purpose of ONA unbundling was "both to safeguard against access discrimination and to promote competition and market efficiency in the information services industry."<sup>5</sup> In its previous Opposition, FSN made clear that it relies upon specific ONA elements, such as stutter dial tone and ANI triggers which enable FSN to provide voicemail, directory assistance, operator services, and other enhanced services that are critical for FSN to

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<sup>11</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 (filed Feb. 16, 2012).

<sup>12</sup> *May 2013 Order*, ¶ 29.

<sup>13</sup> Opposition of Full Service Network LP to USTelecom's Petition for Forbearance, WC Docket 12-61 (April 9, 2012).

provide competitive local exchange service.<sup>14</sup> Now as then FSN has over 10,000 customers that rely upon FSN's access to ONA elements for their services to work properly and in a manner that provides them with a competitive alternative to RBOC (in FSN's case, Verizon) services. AICC likewise noted that it required ONA elements in order for its members to provide competitive alarm and other related services.<sup>15</sup> FSN and AICC noted that the previous USTelecom Petition, like the current one, does not meet the forbearance standard because it would harm competition, harm consumers, and would not be in the public interest.<sup>16</sup>

### **B. The Commission Denied USTelecom's Previous Petition**

The Commission denied USTelecom's previous request for forbearance from the requirement to offer ONA elements and other *Computer Inquiry* requirements, in part based on the lack of specificity as to what elements are currently being used by competitors and what inputs would be available to replace them:

Although we recognize that the market has changed dramatically since the Commission first imposed the *Computer Inquiry* requirements, USTelecom has not demonstrated that market conditions warrant the broad forbearance it requests. As we stated above, USTelecom is required to substantiate its request with record evidence, and it has not done so. We thus deny forbearance.<sup>17</sup>

The Commission specifically pointed to the lack of specifics in USTelecom's Petition:

Here, USTelecom seeks the immediate and nationwide elimination of all narrowband *Computer Inquiry* requirements. It seeks this sweeping relief without providing any evidence of what alternative network inputs would be available for narrowband enhanced services, where they would be available, or on what terms they might be available from other competitive network platforms. We therefore cannot determine on this record that enforcement of the regulation is unnecessary to ensure that the telecommunications carrier's charges, practices, classifications,

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<sup>14</sup> *See, e.g., id.* at 5.

<sup>15</sup> Comments of the Alarm Industry Communications Committee at 4, CC Dkt. 98-10 (July 31, 2013) ("*AICC Comments*").

<sup>16</sup> *See, e.g., id.* at 3-7.

<sup>17</sup> *May 2013 Order*, ¶ 22.

or regulations are just, reasonable, and not unjustly or unreasonably discriminatory under section 10(a)(1).<sup>18</sup>

Despite the fact that the Commission specifically requested detailed evidence to support a request to eliminate the *Computer Inquiry* rules, USTelecom returns to the Commission with a new Petition containing the same warmed over pablum. For example, with no specifics, USTelecom claims: “Even the types of enhanced services most closely associated with narrowband POTS lines—alarm services and voicemail—today can easily be obtained by consumers over competing platforms.”<sup>19</sup> Previous filings by Full Service Network make it clear that resellers—one of the principal competitive entry methods guaranteed by the Act—are completely dependent upon ONA elements to provide service:

The elimination of ONA unbundling could eliminate resellers ability to offer ancillary services such as stutter dial tone, which in turn makes it impossible to offer voicemail. Without voicemail, a reseller simply cannot offer service competitive with the ILEC. Likewise, the elimination of operator services and directory assistance at reasonable regulated rates will simply make it impossible for resellers to compete.<sup>20</sup>

The Alarm Industry Communications Committee has likewise demonstrated that “the alarm industry is still dependent upon narrowband services and facilities provided by the BOCs, and will continue to be for some time.”<sup>21</sup> The USTelecom Petition again lacks the specificity that the Commission said was lacking in its *May 2013 Order*.

USTelecom returns to its old argument that the development of wireless, cable, and VoIP alternatives means that there are competitive alternatives to every ONA element-based service currently provided. We have previously refuted this argument:

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<sup>18</sup> *May 2013 Order*, ¶ 23.

<sup>19</sup> Petition at 78.

<sup>20</sup> Reply Comments of Full Service Network LP, WC Docket 12-61 (April 24, 2012) (“*FSN Reply Comments*”).

<sup>21</sup> *AICC Comments*, at 3.

The fact is that Full Service Network customers seeking high quality landline narrowband services are not looking at broadband and wireless services, let alone satellite providers, as realistic alternatives to FSN narrowband services. In many cases where Full Service Network sells narrowband services, neither broadband nor reliable high-quality wireless services are available at all. The Commission should demand a more thorough and granular analysis of narrowband competition that does not include intermodal services that are not legitimate substitutes for narrowband services before proceeding with further reforms.<sup>22</sup>

By way of example, FSN has had 909 applications in Pennsylvania in the last three years from customers who, for one reason or another, were not satisfied with the wireless coverage in the home, did not have broadband, and were seeking narrowband POTS. FSN provided service to all of these customers over its resale and commercial agreement/UNE-P services.

More importantly, the Commission also concluded that there is strong evidence in its *May 2013 Order* that ONA elements are currently in use and cannot be eliminated:

We seek to avoid stranding narrowband consumers who may rely on any type of enhanced service provided by competitors. . . . The record contains, in particular, evidence that the immediate elimination of ONA inputs would have a detrimental impact on alarm monitoring and voice mail services. The Alarm Industry Communications Committee (AICC) states that its members, many of which provide security services to government facilities, power plants, dams, and banking operations, rely on the availability of narrowband network elements to provide enhanced services, and they urge the Commission to maintain the substantive ONA and CEI requirements. . . . It further states that narrowband ONA elements are not available on broadband platforms. . . . Full Service Network LP (FSN) states that it relies heavily on ONA basic service offerings to provide voicemail, directory assistance, and operator services. It asserts that, if the BOCs are no longer required to offer non-discriminatory access to ONA service elements, competitors will be impeded in their ability to offer resold local exchange service packaged with enhanced service features requested by customers.<sup>23</sup>

The Commission also found that:

To the extent that there are cable and broadband entities that offer alternatives to allow competitive ESPs to bypass the legacy narrowband networks, USTelecom has not demonstrated where, or on what terms, such alternatives are available.

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<sup>22</sup> Reply Comments of Full Service Network LP, CC Docket Nos. 95-20, 98-10 (August 30, 2013) (“*FSN FNPRM Reply Comments*”).

<sup>23</sup> *May 2013 Order*, ¶ 25 (citations omitted).

Other than referencing some general alarm monitoring services advertised by cable companies and VoIP providers, USTelecom has not shown that competitive ESPs have viable alternatives to connect to end users.<sup>24</sup>

Despite these recent findings, USTelecom raises the same arguments again, with no new additional evidence, and despite the Commission's clear direction as to the new docket that would address any future request for ONA unbundling should proceed.

### C. The Commission Requested Further Evidence in the FNPRM

USTelecom's arguments have already been presented, rebutted, and rejected by the Commission. USTelecom seems to be banking on the idea that the Commission will have institutional amnesia with respect to the very specific course that the Commission has already charted for USTelecom and its members to obtain relief from ONA unbundling. When the Commission denied USTelecom's last Petition, it issued an FNPRM and detailed the evidence that USTelecom must produce to obtain relief from ONA unbundling and other *Computer Inquiry* requirements:

Below, we propose to eliminate CEI requirements and seek comment on a specific streamlined process we might adopt to review BOC requests to eliminate or modify their ONA offerings. As explained above, the BOCs requested forbearance from enforcement of all CEI and ONA requirements—relief that would have resulted in an immediate, universal elimination of wholesale access to their narrowband networks for ESPs.<sup>25</sup> We have denied the immediate relief that the BOCs requested because the record in that proceeding did not support granting relief.<sup>26</sup> We expect that this Further Notice ***will provide data that may allow us to grant some relief from these legacy regulations in an efficient and comprehensive manner.***<sup>27</sup>

The Commission made clear that it would establish a new process through which any elimination of ONA elements must proceed, and that such process would rely upon specific data from

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<sup>24</sup> *Id.*, ¶ 26 (citations omitted).

<sup>25</sup> *See supra*, ¶¶ 22-29.

<sup>26</sup> *Id.*

<sup>27</sup> *May 2013 Order*, ¶ 199 (emphasis added).

individual carriers.<sup>28</sup> No party filed for reconsideration or appeal of this portion of the Order. Therefore, the procedurally apt docket in which to produce concrete evidence to support ONA unbundling, if any, is the FNPRM proceeding: CC Docket Nos. 95-20, 98-10.

USTelecom's Petition relating to ONA unbundling is frivolous given that the Commission has just addressed this issue and opened a proceeding to establish a process for USTelecom members to provide specific evidence in support of future requests for ONA unbundling. The Commission has warned parties in the past that filing frivolous pleadings violates 47 C.F.R. § 1.52 and cautioned parties against filing frivolous pleadings:

By this Public Notice, the Federal Communications Commission reminds parties to our proceedings and their attorneys that our rules prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay in proceedings before the Commission or its staff. See e.g., 47 C.F.R. § 1.52. The Commission intends to fully utilize its authority to discourage and deter the filing of such pleadings and to impose appropriate sanctions where such pleadings are filed.<sup>29</sup>

A pleading may be deemed frivolous under 47 C.F.R. § 1.52 if there is no "good ground to support it" or it is "interposed for delay."<sup>30</sup> See also Implementation of Cable Television Consumer Protection Act, 9 FCC Rcd 2642, 2657 (1993) (frivolous complaint is one "filed without any effort to ascertain or review the underlying facts" or "*based on arguments that have been specifically rejected by the Commission ... or [having] no plausible basis for relief*") (emphasis added). USTelecom's Petition on this issue and the forbearance approach to ONA unbundling has been specifically rejected by the Commission. The Commission went to the effort of opening a docket to address this issue and providing a mechanism for ONA unbundling changes in response to a recent USTelecom petition. USTelecom's renewed forbearance petition on this issue imposes an undue financial and resource burden on the much smaller competitors of

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<sup>28</sup> *May 2013 Order*, ¶¶ 199-210.

<sup>29</sup> FCC Public Notice, *Commission Taking Tough Measures Against Frivolous Pleadings*, FCC 96-42 (rel. Feb. 9, 1996).

<sup>30</sup> *Id.*

the RBOCs. USTelecom may want to conduct a PR campaign on this issue, but to do so through this Petition is a clear abuse of Commission process and procedures.

The Commission provided guidance on this issue: “all Bureaus and Offices are encouraged to fully utilize the Commission's sanctions powers, which include the authority to strike such pleadings pursuant to 47 C.F.R. § 1.52 or other applicable rules and to issue forfeitures under 47 U.S.C. § 503 for violations of 47 C.F.R. § 1.52 or other applicable rules.”<sup>31</sup> The Commission should request that USTelecom withdraw this issue from its Petition and any other issues already addressed by the Commission, or the Commission should strike these portions of the Petition *sua sponte* and take such other action as the Commission deems appropriate to discourage similarly frivolous petitions in the future.

#### **IV. CATEGORY 1: SECTION 271 FORBEARANCE WOULD BE HARMFUL TO COMPETITION**

USTelecom’s effort to eliminate the requirements of Section 271 does not meet any of the three prongs of the test for forbearance. The elimination of Section 271 would lead to unjust, unreasonable, and discriminatory pricing; it would increase prices for consumers; and it would clearly not be in the public interest. In addition, given the Commission’s particular attention to the impact of forbearance on competition,<sup>32</sup> it would undermine one of the critical means of competitive entry, Section 271 commercial agreements. This would remove a critical discipline on RBOC pricing of local exchange services, pricing that has already been drifting upwards over the last decade.

On this issue, like ONA unbundling, Chairman Wheeler’s insistence on protecting competition again comes into play: “where competition exists, we will protect it.”<sup>33</sup> There is

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<sup>31</sup> *Id.*

<sup>32</sup> *See e.g., May 2013 Order*, at ¶ 23.

<sup>33</sup> *See Wheeler COMPTTEL Remarks*.

significant competition from FSN—over 10,000 customers—and other carriers that rely upon Section 271 commercial agreements and resale to provide competitive local service. Because USTelecom’s request for forbearance does not meet any of the three prongs of the forbearance test, the Commission should protect that competition and the lower consumer prices that such competition engenders.

**A. Background on Section 271 Commercial Agreements**

A brief review of the history of Section 271 commercial agreements confirms that these agreements are not, as USTelecom represents, “either moot or redundant.”<sup>34</sup> Section 271 commercial agreements are not redundant because section 251 unbundled switching is no longer required to be provided.

Previously, competitive carriers such as Full Service Network could offer the Unbundled Network Element Platform (“UNE-P”) by acquiring and combining unbundled switching, loops, and transport pursuant to Section 251. However, in the Triennial Review Remand Order (“TRRO”), the Commission eliminated the availability of mass market switching nationwide.<sup>35</sup> That finding, however, was in part based upon the availability of commercial agreements that include unbundled switching subject to Section 271: “Moreover, several carriers have entered into commercial agreements with incumbent LECs establishing arrangements similar to the UNE-P, again limiting the need for hot cuts, and we expect more carriers will enter into such agreements.”<sup>36</sup> The result was that RBOCs had to provide unbundled network elements, even where they had been eliminated as Section 251 UNEs: “As a Bell operating company, AT&T

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<sup>34</sup> Petition at 22.

<sup>35</sup> *TRRO*, ¶ 204.

<sup>36</sup> *TRRO*, ¶ 215.

must comply with the requirements of § 271, including those requirements that the FCC has removed from the purview of § 251.”<sup>37</sup>

Ever since the Commission eliminated Section 251 unbundled switching, RBOCs such as Verizon have been required to offer commercial agreements, pursuant to which they must combine Section 251 elements with Section 271 elements.<sup>38</sup> Full Service Network has its own Section 271 commercial agreement with Verizon which it relies upon to provide critical competitive services to thousands of customers within Verizon’s footprint. As is often the case, USTelecom has not provided any granular analysis to support its Petition on this point. US Telecom has not provided any detail as to how many competitive customers would lose service if Section 271 commercial agreements were eliminated. Also lacking is critical information as to where those competitive customers are located, and what actual competitive alternatives, if any, would be available to them. The apparent goal of USTelecom and its members is to shake these customers off of competitive services, and win them back to RBOC services. This is not what the Commission envisioned when it eliminated Section 251 mass market switching, and would clearly not be beneficial to competition or the public interest.

Nor can companies like Full Service Network rely upon the general obligations of Sections 201 and 202 to obtain just, reasonable and nondiscriminatory rates, terms, and conditions. The rates, terms and conditions of UNE-P are supported by a long history of Commission precedent and case law and provide unique benefits and consumer advantages over other entry vehicles such as resale. The Commission and courts have continued to enforce the requirements of Section 271 commercial agreements by, for example, requiring that RBOCs continue to offer unbundled elements under Section 271, and combine Section 271 and Section

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<sup>37</sup> *BellSouth v. Kentucky Public Service Comm’n*, 669 F.3d 704, 708 (6<sup>th</sup> Cir. 2012).

<sup>38</sup> *Id.* at 712.

251 elements together.<sup>39</sup> Eliminating Section 271 commercial agreements would provide RBOCs with a new opportunity to disrupt the contracts, pricing, and business plans of their competitors. When Section 251 switching was eliminated, RBOCs immediately increased the price of inputs available under Section 271, and history suggests that any further change to the legal landscape would lead to similar competitor price increases, with the goal ultimately of making competitive platform services uncompetitive.

The Petition repeatedly claims that the market-opening mission of Section 271 has been accomplished.<sup>40</sup> But it is premature to declare “mission accomplished”: a key part of market-opening competition—particularly for narrowband services—derives from former UNE-P providers who are dependent on the Section 271 checklist and commercial agreements to provide competitive services. Because USTelecom does not want to draw attention to the full impact of eliminating Section 271, it provides no granular detail as to the impact of eliminating Full Service Network and similar competitors from the marketplace.

But such granular detail is required to prevail on a forbearance petition: “A petition for forbearance must include in the petition the facts, information, data, and arguments on which the petitioner intends to rely to make the *prima facie* case for forbearance.”<sup>41</sup> A petition may provide information by reference to the information or data of third parties.<sup>42</sup> Yet the Petition lacks any reference to any data as to what the impact would be on providers that rely upon Section 271 commercial agreements and their customers. In fact, the Petition does not even mention Section 271 commercial agreements and the hundreds of thousands of competitive

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<sup>39</sup> *BellSouth v. Kentucky Public Service Comm’n*, 669 F.3d at 708, 712.

<sup>40</sup> *See, e.g.*, Petition at 21.

<sup>41</sup> *Forbearance Requirements Order*, 24 FCC Rcd. at 9553, ¶ 17.

<sup>42</sup> “If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify the data or information, and the parties that possess it, and explain the relationship of the information to the *prima facie* case.” *Id.*

customers that are served by them. The Commission should reject this portion of the USTelecom forbearance petition as lacking the necessary factual predicate, particularly given that facts presented by FSN and others will bear out that forbearing from Section 271 regulation would be harmful to competition, consumers, and the public interest.

**B. Wireless, Cable, and VoIP Services are Not Valid Alternatives to Affordable RBOC Narrowband Services**

The Petition's rationale for eliminating Section 271 is that "wireless, VoIP and cable" "provide bundled all-distance service packages that do not rely in any way on ILEC local facilities."<sup>43</sup> But USTelecom's reliance on wireless, VoIP, and cable broadband services is completely misplaced. First, the Petition provides no detail as to where such competition exists, how that compares with the areas where Section 271 commercial agreements are relied upon, and most importantly, whether those services are adequate substitutes for the narrowband services that Full Service Network's customers have chosen to purchase. The reality is that wireless, VoIP, and broadband services are not viable alternatives for the narrowband services offered by Full Service Network.

As discussed above, FSN has had 909 local service applications in Pennsylvania in the last three years from customers who, for one reason or another, were not satisfied with the wireless coverage in the home, did not have broadband, and were specifically seeking narrowband POTS.<sup>44</sup> FSN provided service to all of these customers over its resale and Section 271 commercial agreement services. In Full Service Network's experience, there is still a strong consumer demand for reliable, high quality residential narrowband services, and the Commission should continue to support that customer demand by encouraging robust competition for narrowband services. Full Service Network customers are not interested in broadband,

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<sup>43</sup> Petition at 22.

<sup>44</sup> All of Full Service Network's customers are specifically seeking out narrowband services.

broadband/VoIP, or wireless services, and the Commission should not confuse these other services with the demand for reliable narrowband phone service, where Section 271 commercial agreements remain a critical competitive alternative.

In addition, the RBOCs overstate the erosion of their market presence, claiming, for example, that the RBOCs and ILECs are “barely hanging on to a small fraction of the total voice marketplace.”<sup>45</sup> There is no question that the BOCs remain a dominant presence in the U.S. landline markets, particularly with respect to narrowband residential services. The fact is that Full Service Network customers seeking high quality landline narrowband services are not looking at broadband and wireless services, let alone satellite providers, as realistic alternatives to FSN narrowband services. VoIP services, also highlighted in the Petition,<sup>46</sup> are only available to a customer that purchases expensive broadband service and then pays an additional amount to a separate VoIP services provider. Full Service Network customers often cannot afford multiple services but are looking for reliable, low-cost narrowband services. In many cases where Full Service Network sells narrowband services, neither broadband nor reliable high-quality wireless services are available at all. The Commission should demand a more thorough and granular analysis of narrowband competition that does not include intermodal services that are not legitimate substitutes for narrowband services before proceeding with further reforms.<sup>47</sup>

If the Commission intends to consider intermodal competition, as part of such inquiry, the Commission should also consider the extent to which narrowband services are used to encourage intermodal competitive alternatives. Narrowband services can be used, for example,

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<sup>45</sup> Petition at 24.

<sup>46</sup> *See, e.g.*, Petition at 8.

<sup>47</sup> Full Service Network is focused on the issues raised in the Petition that are most critical to its business plan. But given that many of USTelecom’s forbearance requests are based on the RBOCs ostensibly eroding market share, the Commission should closely scrutinize the rationale for all of the requests in the Petition.

by a satellite TV subscriber to complement that offering, or by an economically challenged consumer trying to pick and choose services rather than reflexively purchasing the expensive Telco/Cable triple play.

While there is clearly an ongoing BOC effort to blur the lines as to the availability and quality of service across a wide variety of intermodal alternatives, market data provide the best measure of where services are actually available and consumers provide the ultimate test of what they consider to be viable substitutes. The Wireline Competition Bureau has recently recognized that certain wireless services, such as Verizon Voicelink service, are poor substitutes for reliable landline service and face significant quality of service limitations.<sup>48</sup> The AICC has also highlighted in comments on a previous USTelecom forbearance petition that its reliance on the particular technical specifications of narrowband ONA services is critical to the viability of its members.<sup>49</sup> The Commission should deny USTelecom's request for Section 271 relief because USTelecom has failed to present evidence as to viable narrowband alternatives, relying instead on data points about the availability of intermodal competition which is clearly not a substitute for low-cost narrowband service. The data points and factoids about wireless, VoIP, and cable penetration presented by USTelecom are irrelevant. An FSN customer seeking reliable, low-cost narrowband service, would not be interested to know, for example, that 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 . . . ."<sup>50</sup> USTelecom has not met its burden to provide granular data about the narrowband market. The Commission should therefore find that

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<sup>48</sup> See Letter from Julie Veach, Chief, Wireline Competition Bureau, FCC, to Kathleen Grillo, Verizon Communications, Inc., DA 13-1760 (Aug. 14, 2013).

<sup>49</sup> *AICC Comments*, at 4.

<sup>50</sup> Petition at 9. Likewise, whether services are offered as separate local and long distance, or newer "all-distance" plans is irrelevant. See, e.g., Petition at 24. Section 271 provides a strong enforcement tool against RBOCs offering unbundled network elements, regardless of how services are ultimately packaged to consumers.

USTelecom has not met its burden to show that there would not be an adverse impact on narrowband pricing to competitors and consumers. Based on this lack of evidence, the USTelecom has not demonstrated that the elimination of Section 271 would not be harmful to consumers, competition, and the public interest.

## V. CONCLUSION

The ONA unbundling and Section 271 commercial agreement requirements are not bureaucratic anachronisms but core building blocks of local competition which are critical to the resale and platform entry methods. The local competition that was relied upon to permit RBOC Section 271 entry in the first place included competition from these resale and platform entry vehicles. USTelecom has not met its burden and there is strong evidence that elimination of these entry methods would lead to unjust and unreasonable pricing, harm to competition, and that granting the Petition on these issues would not be in the public interest. The Commission should summarily deny the Petition on the issue of ONA unbundling, and should deny USTelecom's effort to eliminate Section 271 requirements, including Section 271 platform competition.

Respectfully submitted,

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