

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 Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks	)	WC Docket No. 14-192
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Connect America Fund	)	WC Docket No. 10-90

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2015

Released: December 28, 2015

By the Commission: Chairman Wheeler and Commissioner Rosenworcel issuing separate statements; Commissioners Clyburn, Pai, and O’Rielly approving in part, dissenting in part, and issuing separate statements.

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**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (Order), we grant full or partial forbearance from the majority of categories of requirements covered by the petition for forbearance filed by the United States Telecom Association (USTelecom) pursuant to section 10 of the Communications Act of 1934, as amended (the Act).<sup>1</sup> USTelecom seeks forbearance from six categories of rules applicable to incumbent local exchange carriers (LECs) or subcategories of incumbent LECs, which USTelecom characterizes as “outdated” regulations “whose costs far exceed any benefits.”<sup>2</sup>

2. In addressing USTelecom’s petition, we continue our commitment to eliminating unnecessary burdens on industry and promoting innovation while ensuring our statutory objectives are met.<sup>3</sup> We seek to benefit consumers by relieving carriers from having to focus resources on complying

<sup>1</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192 (filed Oct. 6, 2014) (2014 USTelecom Forbearance Petition or Petition). On September 25, 2015, pursuant to § 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until January 4, 2016, the date on which the Petition shall be deemed granted in the absence of a Commission decision that the Petition fails to meet the standard for forbearance under § 10(a) of the Act. See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, Order, DA 15-1059 (WCB rel. Sept. 25, 2015).

<sup>2</sup> 2014 USTelecom Forbearance Petition at 1, 3. As filed, the Petition also sought forbearance from application of the structural separations requirements that govern independent incumbent LECs in their provision of long distance services. See 2014 USTelecom Forbearance Petition at 38-50, App. A-1. However, USTelecom filed a request to withdraw this portion of the Petition, “without prejudice as to further action,” on November 6, 2015. See Letter from Lynn Follansbee, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192 (filed Nov. 6, 2015). The Bureau granted USTelecom’s request on November 16, 2015. *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, Order, DA 15-1319 (WCB rel. Nov. 16, 2015) (*Petition for Partial Withdrawal Approval Order*).

<sup>3</sup> See *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, et al.*, WC Docket No. 12-61, *et al.*, Memorandum Opinion and Order and Report

with outdated legacy regulations that were based on technological and market conditions that differ from today and instead allowing them to concentrate on building out broadband and investing in modern and efficient networks and services. We grant forbearance to the full extent supported by the record, and in accordance with our statutory obligation to assess whether a rule is necessary under section 10, and whether forbearance is consistent with the public interest. This action modernizes our rules by removing outmoded regulations, while preserving requirements that remain essential to our fundamental mission to ensure competition, consumer protection, universal service, and public safety.<sup>4</sup>

3. We take three separate actions in response to USTelecom’s request for forbearance from “All remaining 47 U.S.C. § 214(e) obligations, where a price cap carrier does not receive high cost universal service support, including 47 C.F.R. § 54.201(d);” and “the Commission’s determination that an Eligible Telecommunications Carrier is required to provide the ‘supported’ services throughout its service area regardless of whether such services are actually ‘supported’ with high-cost funding throughout that area.”<sup>5</sup> In December 2014, the Commission granted partial forbearance in connection with the request to forbear from section 214(e) obligations.<sup>6</sup> First, we find that USTelecom has not met its burden under section 10 to demonstrate that forbearance from this category of rules is warranted beyond the partial forbearance already granted. Second, we reject certain requests for similar relief that have been made in pending rulemaking proceedings addressing universal service support. Third, we decline to reinterpret section 214(e)(1) to conclude that eligible telecommunications carriers (ETCs) are only required to meet their obligations in areas where they receive support and also decline to take certain steps related to ETC obligations that were raised by commenters in the pending rulemaking proceedings.

## II. BACKGROUND

### A. The USTelecom Petition

4. USTelecom, a national trade association representing incumbent LECs, filed this Petition on October 6, 2014, and the Bureau issued a Public Notice seeking comment on November 5, 2014.<sup>7</sup> We received 11 comments, five oppositions, and seven replies in the record by the time the pleading cycle closed on December 22, 2014.<sup>8</sup> Subsequently, on September 25, 2015, the Bureau extended the deadline

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and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7630, para. 2 (2013) (*2013 USTelecom Forbearance Long Order*).

<sup>4</sup> Nothing in this Order prevents states from enforcing existing state requirements and/or adopting new provisions similar or equivalent to any of those from which we forbear here based on authority they have under state law.

<sup>5</sup> 47 U.S.C. § 214(e); 2014 USTelecom Forbearance Petition at App. A.

<sup>6</sup> In December 2014, the Commission granted partial forbearance of USTelecom’s petition. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15663-71, paras. 50-70 (*December 2014 Connect America Order*).

<sup>7</sup> *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations*, WC Docket No. 14-192, Public Notice, 29 FCC Rcd 13535 (WCB 2014) (*2014 USTelecom Forbearance Public Notice*). Section 10(c) states that “any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers.” 47 U.S.C. § 160(c). USTelecom is not itself a carrier or class of carriers. USTelecom’s members, which are telecommunications carriers, individually would have standing to request forbearance under section 10, and we find that USTelecom is an appropriate entity to submit a petition on their behalf. *C.f. Warth v. Seldin*, 422 U.S. 490, 511 (1975) (stating that, as a general matter, a trade association has standing to act on behalf of a member where the association alleges that its member would suffer an injury as a result of the challenged action, and the injury is of a sort that would make out a justiciable case had an association member challenged the action directly); *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 999 (D.C. Cir. 1966).

<sup>8</sup> See Appendix A for a full list of commenters in this proceeding.

for Commission action on the Petition.<sup>9</sup> In the Petition, USTelecom describes the rules from which it seeks forbearance for all incumbent LECs in all geographic markets as follows:

- **Category 1:** “All remaining Section 271 obligations, 47 U.S.C. § 271; all remaining Section 272 obligations, 47 U.S.C. § 272; all remaining legacy equal access regulations carried forward via 47 U.S.C. § 251(g); the nondiscrimination and imputation requirements set out in the *Section 272 Sunset Order*.”<sup>10</sup>
- **Category 2:** “All remaining obligations under 47 C.F.R. § 64.1903, including any conditions imposed by prior Commission Orders granting partial forbearance from 47 C.F.R. § 64.1903.”<sup>11</sup> (USTelecom has since received approval to withdraw the portion of its Petition that seeks relief from this category of requirements.<sup>12</sup>).
- **Category 3:** “*Triennial Review Order* requirement to make 64 kbps voice channel available where an ILEC retires copper in fiber loop overbuilds.”<sup>13</sup>
- **Category 4:** “All remaining 47 U.S.C. § 214(e) obligations, where a price cap carrier does not receive high cost universal service support, including 47 C.F.R. § 54.201(d); [t]he Commission’s determination that an Eligible Telecommunications Carrier is required to provide the ‘supported’ services throughout its service area regardless of whether such services are actually ‘supported’ with high-cost funding throughout that area.”<sup>14</sup>
- **Category 5:** “All remaining obligations under 47 C.F.R. § 64.702; all remaining obligations, including structural separation requirements, imposed by the Commission’s *Computer II Orders*; all remaining obligations, including Comparable Efficient Interconnection (CEI) and Open Network Architecture (ONA), and other requirements as set forth in the Commission’s *Computer III Orders*.”<sup>15</sup>
- **Category 6:** “47 U.S.C. § 224, as to the obligation to provide access to newly deployed entrance conduit at regulated rates; 47 U.S.C. § 251(b)(4), as to the obligation to provide access to newly deployed entrance conduit at regulated rates.”<sup>16</sup>

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<sup>9</sup> *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, Order, DA 15-1059 (WCB rel. Sept. 25, 2015).

<sup>10</sup> See 2014 USTelecom Forbearance Petition at App. A, A-1 (citing *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related requirements*, WC Docket No. 02-112, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (*Section 272 Sunset Order*)).

<sup>11</sup> Petition at App. A, A-1 (citing *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7627).

<sup>12</sup> See *Petition for Partial Withdrawal Approval Order*.

<sup>13</sup> Petition at App. A, A-1 (citing *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), vacated in part on other grounds sub nom. *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); 47 C.F.R. § 51.319(a)(3)(iii)(C)).

<sup>14</sup> *Id.* at A-2 (citing *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at 8883-84, para. 192 (1997), rev’d in part on other grounds sub nom. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *High-Cost Universal Service Support*, CETC Interim Cap Order, 23 FCC Rcd 8834, para. 29 (2008)).

<sup>15</sup> See *id.* at A-2 to A-3 (citing *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Computer II)*, 77 FCC 2d 384, 474-75, para. 231 (1980) (*Computer II Final Decision*) and subsequent decisions).

<sup>16</sup> *Id.* at A-3 (citing 47 U.S.C. §§ 224, 251(b)(4)).

- **Category 7:** “Prohibition against using contract tariffs for business data services in all regions.”<sup>17</sup>

5. USTelecom states that the requirements from which it seeks forbearance are no longer necessary in a marketplace in which residential and business customers now choose service from wireless, Voice over Internet Protocol (VoIP), cable, and other providers offering bundled, multi-functional, broadband offerings that “render voice service just one application among many.”<sup>18</sup> USTelecom asserts that incumbent LEC voice market shares have fallen significantly, that only one quarter of U.S. households still rely on traditional switched service from an incumbent LEC, and that cable and competitive LEC providers are gaining an increasing share of the enterprise market.<sup>19</sup> It maintains that the regulations impose compliance costs and force incumbent LECs to dedicate additional resources to legacy telephone networks rather than broadband services.<sup>20</sup> Several commenters agree with USTelecom that the “legacy” regulations, particularly those associated with access to narrowband facilities, force incumbent LECs to incur costs that other competitive providers do not, provide minimal consumer benefit as the demand for narrowband services declines, and discourage investment in broadband facilities.<sup>21</sup> In contrast, COMPTTEL and other commenters assert that USTelecom has failed to meet its burden to demonstrate that the regulations are no longer necessary and that it has not provided sufficiently granular evidence addressing the availability of competitive alternatives, nor has it explained how the requirements have imposed unreasonable costs or served as a barrier to investment.<sup>22</sup>

6. In reviewing the Petition, we are cognizant of the broad market trends associated with the services at issue. For example, we recently pointed out in the *Emerging Wireline Order* that 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services.<sup>23</sup> We noted that 44 percent of households were “wireless-only” during January-June of 2014.<sup>24</sup> That number increased to 45.4 percent by the end of December 2014,

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<sup>17</sup> *Id.* at A-3-4 (citing 47 C.F.R. §§ 61.3(o), 61.55(a), 69.709(b), 69.711(b), “portion of rule 69.727(a), requiring satisfaction of the Phase I triggers specified in rules 69.709(b), 69.711(b), and 69.713(b) for an MSA or non-MSA portion of the study area in order to be granted Phase I relief for the service specified in rules 69.709(a) (dedicated transport and special access services other than channel terminations between ILEC end offices and customer premises), and 69.711(a)(channel terminations between ILEC end offices and customer premises), *but not the portion of rule 69.727(a) providing such relief (which includes contract tariff authority)*; rule 69.705, 47 C.F.R. § 69.705, requiring price cap ILECs to follow the procedures in rule 1.774 to obtain Phase I pricing flexibility relief; if necessary, the requirement that packet-switched or optical transmission services must be subject to price cap regulation in order to be eligible for pricing flexibility” (emphasis in original)).

<sup>18</sup> 2014 USTelecom Forbearance Petition at 8.

<sup>19</sup> *Id.* at 9-16; 2014 USTelecom Reply at 8-9.

<sup>20</sup> *See* 2014 USTelecom Forbearance Petition at 5, 16.

<sup>21</sup> *See, e.g.*, Verizon Comments at 4-9; ACS Comments at 2-6; CenturyLink Comments at 2-6; PRTC Comments at 2-8.

<sup>22</sup> *See, e.g.*, COMPTTEL Opposition at 3-5, 19-22, 25-28; XO Comments at 16-18; Birch et al. Opposition at 2-4; ACA Comments at 2-4; Pennsylvania PUC Reply at 2-3, 7-8. COMPTTEL, a trade association representing competitive carriers, changed its name to INCOMPAS on October 19, 2015. We refer its filings in this record under the COMPTTEL name if they were filed before that date.

<sup>23</sup> *Technology Transitions et al.*, GN Docket No. 13-5 et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97, 30 FCC Rcd 9372, 9379, at para. 9 (2015) (*Emerging Wireline Order and FNPRM*).

<sup>24</sup> *Id.* (citing *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601, 5637, para. 90 (2015) (*Open Internet Order*), *pets. for review pending sub nom USTA v. FCC*, No. 15-1063 (D.C. Cir. filed May 22, 2015) (citing Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey*, January-

such that more than two in every five households did not have a landline telephone.<sup>25</sup> We have stated that, overall, almost 75 percent of U.S. residential customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities.<sup>26</sup> Similarly, USTelecom asserts in its Petition that barely one-quarter of U.S. households rely on traditional switched service from an incumbent LEC.<sup>27</sup> We further note that, according to our most recent data, 53.5 percent of connections to businesses are currently provisioned over incumbent LEC switched facilities.<sup>28</sup>

## B. Forbearance Standard

7. Section 10 of the Act provides that the Commission “shall” forbear from applying any regulation or provision of the Communications Act to telecommunications carriers or telecommunications services if the Commission determines 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;
- (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>29</sup>

8. In evaluating whether a rule is “necessary” under the first two prongs of the three-part section 10 forbearance test, the Commission considers whether a current need exists for a rule.<sup>30</sup> In

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June 2014 at 5, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (2014), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf>); *see* Petition at 11-12.

<sup>25</sup> Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2014* at 2, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (2014), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201506.pdf>.

<sup>26</sup> *Emerging Wireline Order*, 30 FCC Rcd at 9379, para. 9 (citing Verizon Comments, GN Docket No. 13-5, at 1-2, 4 and USTelecom, *Research Brief: Voice Competition Data Support Regulatory Modernization* at 1 (2014), [http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014\\_0.pdf](http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf)).

<sup>27</sup> 2014 USTelecom Forbearance Petition at 13 (citing Patrick Brogan, *USTelecom, Growing Voice Competition Spotlights Urgency of IP Transition*, *Research Brief*, at 1-3 (Nov. 22, 2013)).

<sup>28</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2013*, at Figure 4 (WCB Oct. 2014) (*2014 Local Telephone Competition Report*).

<sup>29</sup> 47 U.S.C. § 160(a). “In making the determination under subsection (a)(3) [that forbearance is in 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 providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.” *Id.* § 160(b). In addition, “[a] State commission may not continue to apply or enforce any provision” from which the Commission has granted forbearance under section 10. 47 U.S.C. § 160(e).

<sup>30</sup> *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7314, para. 20 (2008) (*AT&T Cost Assignment Forbearance Order*) (concluding that a rule is not “necessary” under section 10(a)(1) where there is not a current need); *Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (*Cellular Telecomms v. FCC*) interpreting the term “necessary” in the context of section 10(a)(2); *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7657, para. 58 (stating that the Commission considers whether there is a current need for a regulation under the necessary standard).

particular, the current need analysis assists in interpreting the word “necessary” in sections 10(a)(1) and 10(a)(2). For those portions of our forbearance analysis that require us to assess whether a rule is necessary, the D.C. Circuit concluded that “it is reasonable to construe ‘necessary’ as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation.”<sup>31</sup> Section 10(a)(3) requires the Commission to consider whether forbearance is consistent with the public interest, an inquiry that also may include other considerations.<sup>32</sup> Forbearance is warranted under section 10(a) only if all three elements of the forbearance criteria are satisfied.<sup>33</sup> USTelecom, as the petitioner, has the burden of proof to support its request for forbearance, including both the burden of production and the burden of persuasion.<sup>34</sup> This means that we apply the forbearance standard to the arguments and evidence in the petition; we are under no obligation to consider other arguments that might support forbearance,<sup>35</sup> and our determination that certain portions of the petition do not satisfy the forbearance standard does not prejudice determinations we might make under section 10 in other contexts.

9. We reject arguments suggesting that persuasive evidence of competition is a necessary prerequisite to granting forbearance under section 10 even if the section 10 criteria are otherwise met.<sup>36</sup> For instance, on numerous occasions the Commission has granted forbearance from particular provisions of the Act or regulations where it found the application of other requirements (rather than marketplace competition) adequate to satisfy the section 10(a) criteria,<sup>37</sup> and the Commission has found that nothing in

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<sup>31</sup> *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314, para. 20 (citing *Cellular Telecomms v. FCC*, 330 F.3d at 512 (evaluating the Commission’s interpretation of section 10(a)(2) under “*Chevron* step 2,” finding that the meaning of “necessary” in section 10 is not plain from the statutory language and that the Commission’s interpretation of the term is reasonable)); see also *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984).

<sup>32</sup> *Id.* at 7321, para. 32 (forbearing “because there is no current, federal need for the [rules in question] in these circumstances, and the section 10 criteria otherwise are met”) (emphasis added).

<sup>33</sup> *Cellular Telecomms v. FCC*, 330 F.3d at 509 (explaining that the three prongs of § 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

<sup>34</sup> *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543 (2009) (*Forbearance Procedures Order*). Thus, in addition to the burden of production of stating a *prima facie* case in the petition, “the petitioner’s evidence and analysis must withstand the evidence and analysis propounded by those opposing the petition for forbearance” (i.e., the burden of persuasion). *Id.* at 9556, para. 21. As stated herein, we analyze USTelecom’s petition pursuant to section 10 of the Act. Cf. Letter from James C. Falvey, Counsel for Full Service Network, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 1-4 (filed Dec. 11, 2015) (FSN/AICC Dec. 11, 2015 *Ex Parte* Letter) (asserting that the Commission must consider competitive factors and “cannot contrive a new standard every time a new forbearance petition is filed”).

<sup>35</sup> See *Verizon v. FCC*, 770 F.3d 961, 968 (D.C. Cir. 2014) (“[T]he FCC is not obliged to consider late-filed proposals. And although the Commission has, on occasion, *sua sponte* ordered partial forbearance, there is surely no obligation for the Commission to do so.” (internal citations omitted)).

<sup>36</sup> See COMPTTEL Comments at 19-20; Birch et al. Opposition at 5-16. Granite Comments at 14-15; Granite Comments at 14-15; Letter from Nicholas G. Alexander, Level 3, to Marlene H. Dortch, WC Docket no. 14-192 (filed Dec. 10, 2015); see also *Open Internet Order*, 30 FCC Rcd at 5807-08, para. 439.

<sup>37</sup> See, e.g., *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7675-76, paras. 107-08 (granting forbearance from certain cost assignment rules where conditions imposed on the forbearance and other still-applicable rules and requirements were adequate to meet the Commission’s needs); *id.* at 7668, paras. 86-87 (granting forbearance from property record requirements where the Commission’s needs could be met through compliance plans put in place as conditions of forbearance); *id.* at 7672, para. 98 (forbearing from requirements that interexchange carriers keep certain information in hard copy conditioned on that information being available on the carrier’s website); *id.* at 7675, para. 104-06 (granting forbearance from certain reporting requirements in light of other still-applicable regulatory requirements and conditions on forbearance); *id.* at 7678-79, paras. 113-15

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the language of section 10 precludes the Commission from proceeding on a basis other than the competitiveness of a market where warranted.<sup>38</sup> We note that the Commission's actions in the *Qwest Phoenix Forbearance Order* are not contrary to this conclusion.<sup>39</sup> In that proceeding, Qwest sought relief associated with distinct services in localized areas in the Phoenix market, claiming that it faced sufficient competition in those areas to render the applicable regulations unnecessary there.<sup>40</sup> The Commission conducted an analysis of competition for the relevant services and areas, and determined that no competitor provided meaningful wholesale services to support forbearance in those specific areas.<sup>41</sup> A key distinction between Qwest's request in that proceeding and USTelecom's request here is that Qwest did not attack the necessity of the underlying regulations — rather, it merely sought to distinguish the Phoenix market on the basis of competition.<sup>42</sup> In contrast, USTelecom argues that the provisions at issue here are *entirely* unnecessary in all geographic markets because the changing communications landscape throughout the country has rendered them outmoded and harmful *as a general matter*.<sup>43</sup> Accordingly, the analysis used in the *Qwest Phoenix* context is not the appropriate analysis for use in considering USTelecom's request.

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(forbearing from other reporting requirements where the information at issue still would be filed or otherwise available in light of other still-applicable regulatory requirements and conditions on forbearance); *id.* at 7691-92, paras. 142-48 (forbearing from separate affiliate requirements given other still-applicable regulatory requirements and conditions on forbearance); *id.* at 7705, para. 175 (forbearing from rules governing recording of conversations with the telephone company in light of other, still-applicable legal requirements); *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees*, IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832, 9841, para. 20 (2012) (incorporating section 310(b)(4) requirements in order to satisfy section 10(a)(3) forbearance standard for section 310(b)(3) in certain cases); *Petition for Forbearance of Iowa Telecommunications Services, Inc. d/b/a/ Iowa Telecom Pursuant to 47 U.S.C. § 160(c) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on The CALLS Order or a Forward Looking Cost Study*, CC Docket No. 01-331, Order, 17 FCC Rcd 24319, 24325-26, paras. 18-19 (2002) (granting forbearance from an interstate switched access rate regulation to allow rates to be re-set at a forward-looking cost level in light of the protections of the forward-looking cost approach to setting the rate and other, still-applicable legal requirements); *Petition for Forbearance from Application of the Communications Act of 1934, as Amended, to Previously Authorized Services*, Memorandum Opinion and Order, 12 FCC Rcd 8408, 8411-12, paras. 9-10 (Common Car. Bur. 1997) (granting forbearance from section 203 for purposes of providing a refund in light of other, still-applicable legal requirements)). *See also, e.g., Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1479, para. 176 (granting forbearance under section 332(c)(1)(A) from section 205 in light of other, still-applicable enforcement provisions) (*CMRS Title II Forbearance Order*).

<sup>38</sup> *Open Internet Order*, 30 FCC Rcd at 5807-08, para. 439 & n.1306 (also finding that forbearance was supported based on considerations found to be common nationwide and rejecting the suggestion that more geographically granular data or information or an otherwise more nuanced analysis are needed with respect to some or all of the forbearance granted in the order).

<sup>39</sup> *See, e.g.,* Granite Comments at 12; Birch et al. Opposition at 11-13 (citing *Qwest Corporation Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8646-47, para. 42 (2010) (*Qwest Phoenix Forbearance Order*)).

<sup>40</sup> *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8645, para. 41.

<sup>41</sup> *Id.* at 8673-76, paras. 95-109.

<sup>42</sup> *Id.* at 8633, para. 22 (“Qwest seeks forbearance from a variety of regulations based on the level of competition in its service territory within the Phoenix-Mesa-Scottsdale Arizona MSA.”).

<sup>43</sup> *See* 2014 USTelecom Forbearance Petition at 8-16.

10. Section 10(b) directs the Commission to consider whether forbearance will promote competitive market conditions as part of its public interest analysis under section 10(a)(3).<sup>44</sup> However, we recognize that section 10 does not compel us to treat a competitive analysis as determinative when we reasonably find, based on the record, that other considerations are more relevant to our statutory analysis.<sup>45</sup> We reach our decision as to each category of requirements for which USTelecom seeks forbearance based on the information we deem most relevant to the analysis prescribed by section 10(a). Consistent with section 10(b), this analysis entails considering, for example, the broad market trends and shifting demand that we have noted above, claims about competition that USTelecom specifically raised in its Petition, and other circumstances in which competition is particularly relevant. We also determine whether a requirement, when considered in conjunction with any other related or overlapping safeguards, is necessary to strike the right balance in our overall regulatory approach of protecting the customers who use the legacy services, while recognizing that the marketplace is evolving. Thus, while persuasive evidence of competition can be a sufficient basis to grant forbearance, it is not inherently necessary to grant forbearance.

### III. MEMORANDUM OPINION AND ORDER (WC DOCKET NO. 14-192)

11. We address each of USTelecom's remaining requests for relief by category and in accordance with section 10 of the Act and the forbearance standard we describe above.<sup>46</sup> We grant in large part and deny in part forbearance from the remaining section 271 requirements. We deny forbearance relief for the remaining section 272 requirements. We grant conditional relief for the remaining equal access requirements, requiring incumbent LECs to maintain equal access and dialing parity arrangements and capabilities for certain existing customers. We grant forbearance from enforcement of the obligation to make a 64 kbps channel available when an incumbent LEC retires copper in fiber-loop overbuilds, subject to a narrow, targeted "grandfathering" condition. We grant forbearance from the remaining *Computer Inquiry* requirements, subject to the condition that carriers must seek and obtain section 214 discontinuance authority prior to eliminating inputs provided pursuant to the *Computer Inquiry* requirements. We grant in part and deny in part forbearance from the requirements in sections 224 and 251(b)(4) to provide access to newly-deployed entrance conduit at regulated rates. We deny forbearance from the prohibition against using contract tariffs for business services. Finally, we deny forbearance from the portion of USTelecom's petition seeking relief for the section 214(e)(1) ETC requirements where a price cap carrier does not receive high-cost universal service support that remains pending.

#### A. Remaining Section 271 Requirements

12. USTelecom seeks forbearance from the remaining section 271 obligations, which are primarily contained in the section 271(c)(2)(B) competitive checklist.<sup>47</sup> As explained below, we forbear from the checklist items for which other section 251 safeguards already address and duplicate the narrowband obligations at issue. We retain the BOCs' checklist obligation and associated enforcement mechanism to provide access to poles, ducts, conduit, and rights-of-way under section 224, which we

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<sup>44</sup> 47 U.S.C. § 160(b).

<sup>45</sup> See 47 U.S.C. § 160; see also *Open Internet Order*, 30 FCC Rcd at 5808, para. 439 n.1306 ("Section 10(b) does direct the Commission to consider whether forbearance will promote competitive market conditions as part of the public interest analysis under section 10(a)(3). . . . However, while a finding that forbearance will promote competitive market conditions may provide sufficient grounds to find forbearance in the public interest under section 10(a)(3), . . . nothing in the text of section 10 makes such a finding a necessary prerequisite for forbearance where the Commission can make the required findings under section 10(a) for other reasons." (internal citations omitted)).

<sup>46</sup> The entirety of section III falls under WC Docket 14-192. Subsection III.H falls under additional dockets, as specified below.

<sup>47</sup> 47 U.S.C. § 271(c).

view as necessary to ensure deployment of a wide range of services. In addition, we grant relief from the non-duplicative, independent unbundling items on the competitive checklist.

## 1. Background

13. USTelecom requests forbearance on a nationwide basis from “all remaining obligations” of section 271.<sup>48</sup> It asserts that the section 271 process for BOC entry into the in-region long distance market was completed long ago, that the requirements “have lost their relevance” in a market in which consumers purchase local and long distance service as a bundle, and that the requirements are a “costly burden unnecessary in today’s marketplace.”<sup>49</sup>

14. Section 271 prohibited BOCs from providing in-region interLATA services without Commission authorization. To receive such authorization, a BOC had to demonstrate to the Commission that it satisfied the conditions of the fourteen-point competitive checklist; that authorization was in the public interest, convenience, and necessity; and that the BOC would carry out its in-region interLATA operations through a separate affiliate in accordance with section 272.<sup>50</sup> After a BOC obtained section 271 authority to offer in-region interLATA services, the threshold requirements became ongoing requirements subject to a fast-track complaint and enforcement process under section 271(d)(6).<sup>51</sup>

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<sup>48</sup> 2014 USTelecom Forbearance Petition at 16-28 and App. A.

<sup>49</sup> *Id.* at 16.

<sup>50</sup> 47 U.S.C. §§ 271(a)-(d), 272(a)(2). The checklist contains access, interconnection, and other threshold requirements that a BOC had to demonstrate that it satisfied before that BOC could be authorized to provide in-region, interLATA services. The checklist items are: (i) “interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)”;

(ii) “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)”;

(iii) “nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224”;

(iv) “local loop transmission from the central office to the customer’s premises, unbundled from local switching or other services”;

(v) “local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services”;

(vi) “local switching unbundled from transport, local loop transmission, or other services”;

(vii) “nondiscriminatory access to 911 and E911 services; directory assistance services to allow the carrier’s customers to obtain telephone numbers; and operator call completion services”;

(viii) “white pages directory listings for customers of the other carrier’s telephone exchange service”;

(ix) “until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules”;

(x) “nondiscriminatory access to databases and associated signaling necessary for call routing and completion”;

(xi) “until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations”;

(xii) “nondiscriminatory access to such services or information as necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)”;

(xiii) “reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)”;

and (xiv) “telecommunications services are available for resale in accordance with the requirements of sections 251(b)(4) and 252(d)(3).” Pursuant to section 252(d)(1), the Commission has determined that prices for UNEs provided under section 251(c)(2) must be based on the total element long run incremental cost (TELRIC) of providing those elements. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*First Local Competition Order*); 47 C.F.R. §§ 51.501 *et seq.*

<sup>51</sup> Section 10(d) prohibits the Commission from forbearing from the requirements of section 271 until it determined that those requirements have been “fully implemented.” The Commission determined that the checklist portion of section 271(c) was “fully implemented” once a BOC obtained section 271 authority in a particular state. Accordingly, because the BOCs have obtained section 271 authority in all of their states, the Commission has found that the checklist requirements of section 271(c) are “fully implemented” for purposes of section 10(d) throughout the United States. *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*,

## 2. Discussion

15. We interpret USTelecom's request for forbearance relief from the remaining section 271 obligations as encompassing the section 271(c)(2)(B) competitive checklist as it applies to the provision of narrowband services, along with the associated enforcement provisions in section 271(d)(6). Because the Commission granted the last section 271 application to authorize BOC long distance entry in 2003,<sup>52</sup> the provisions in section 271(a) and (b), (c)(1), (c)(2)(A) and (d) that set forth the requirements for the Commission to review and approve each application as it was filed are no longer applicable.<sup>53</sup> The *Section 271 Broadband Forbearance Order* granted the BOCs forbearance from the section 271 checklist unbundling obligations for the broadband elements that the Commission, on a national basis, removed from section 251(c)(3) unbundling requirements in the *Triennial Review Order*, and subsequent reconsideration orders.<sup>54</sup> Therefore, the remaining section 271 requirements are limited to ongoing obligations imposed by the section 271(c)(2)(B) checklist items for narrowband services and the associated 271(d)(6) complaint and enforcement process. For our analysis, we group the checklist requirements into the following three categories: (1) checklist items that duplicate requirements in section 251 of the Act; (2) checklist item 3, which addresses corresponding requirements in section 224 of the Act; and (3) independent unbundled network element (UNE) checklist items that do not duplicate section 251 requirements.

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WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21503, para. 15 (2004) (*Section 271 Broadband Forbearance Order*), *aff'd sub nom. EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006). Therefore, the prohibition in section 10(d) of the Act against forbearing from section 271 prior to such a determination is not applicable here.

<sup>52</sup> *Application by Qwest Commun. Int'l for Authority to Provide In-Region, InterLATA Service in Arizona*, WC Docket No. 03-194, Memorandum Opinion and Order, 18 FCC Rcd 25504 (2003) (*Arizona Section 271 Order*).

<sup>53</sup> *See, e.g.*, 47 U.S.C. § 271 (a) and (b) (describing the in-region, out-of-region, and incidental interLATA services a BOC could and could not provide without Commission approval); (c)(1) (describing the requirement that a BOC, at the time it filed a section 271 application, show the presence of a facilities-based competitor operating subject to an interconnection agreement or, in the absence of a facilities-based competitor, the availability of a statement of the terms and conditions under which the BOC would provide interconnection if it received such a request); (c)(2)(A) (requiring a BOC to be providing access and interconnection subject to an interconnection agreement or statement at the time of the filing of each 271 application); (d)(1)-(4) (setting forth administrative and procedural requirements regarding the filing and approval of section 271 applications). Section 271(c)(2)(B) contains the competitive checklist of access and interconnection requirements a BOC had to meet to receive section 271 approval. In making its determination as to whether to approve a BOC's section 271 application for each state, 271(d)(3)(B) required the Commission to determine that a BOC's "requested authorization will be carried out in accordance with the requirements of section 272." 47 U.S.C. § 271(d)(3)(B). Section 272(e) contained restrictions on BOC marketing of local and long distance service that were in effect "until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier . . ." 47 U.S.C. § 271(e). As explained below, we deny USTelecom's request to forebear from the remaining section 272 requirements, and BOCs remain subject to ongoing compliance with those substantive obligations. *See infra* paras. 40-45.

<sup>54</sup> *See Section 271 Broadband Forbearance Order*, 19 FCC Rcd at 21504, para. 19. These elements include FTTH loops, FTTC loops, the packetized functionality of hybrid loops, and packet switching. With one exception, the Commission has also forbore from application of section 271 to broadband Internet access service. *Open Internet Order*, 30 FCC Rcd at 5853-54, para. 518. The exception addressed provisions that do not depend upon classification of a BOCs' broadband Internet access service as a telecommunications service, including the requirement in section 271(c)(2)(B)(iii) requiring a BOC to provide nondiscriminatory access to poles, ducts, conduit and rights of way in accordance with section 224 of the Act. *Id.* (citing 47 U.S.C. §§ 271(c)(2)(B)(iii), 224).

**a. Checklist Items That Duplicate Section 251 Requirements —  
Checklist Items 1-2, 7-9, 11-14**

16. We forbear from enforcing checklist items 1-2 (interconnection and access to UNEs), 7-9 (directory listings, white pages, numbering), and 11-14 (number portability, local dialing parity, reciprocal compensation, and resale), which establish interconnection and access obligations that duplicate requirements that are mandated under section 251 and are codified in the Commission's rules implementing section 251.<sup>55</sup>

17. We find that, under sections 10(a)(1) and (a)(2) of the Act, these checklist items are not necessary to ensure just and reasonable rates, terms, and conditions, or to protect consumers. The BOCs completed the section 271 approval process to enter the long distance markets in 2003, and we do not find, nor did any party provide, a compelling reason for the Commission to continue to require duplicative compliance with these obligations under both section 251 and 271.<sup>56</sup> The Commission has emphasized that granting forbearance relief in light of other still-applicable regulatory requirements is reasonable and appropriate while both retaining necessary safeguards and reducing costs.<sup>57</sup> USTelecom has stated that the BOCs incur costs of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] each year associated with maintaining "performance assurance plans" (PAPs), which states put in place to assess BOC compliance with the checklist obligations after the BOCs entered the in-region long distance market.<sup>58</sup> We find USTelecom's argument about potential cost reductions in this

<sup>55</sup> 47 U.S.C. § 271(c)(2)(B)(i)-(ii), (vii)-(ix), (xi)-(xiv); 47 U.S.C. § 251; 47 C.F.R. § 51.1 *et seq.*

<sup>56</sup> The BOCs received approval to enter the in-region long distance market beginning in 1999 and ending in 2003. Since then, the Commission has not found it necessary under section 271(d)(6) to suspend or revoke its approval in any state. For interconnection required under section 271(c)(2)(B)(i), COMPTTEL asserts that, until the Commission determines LEC obligations associated with IP interconnection under section 251, a BOC cannot cease to offer TDM interconnection under the checklist without offering an alternative form of interconnection on just and reasonable terms. COMPTTEL Opposition at 8. Section 271(c)(2)(B)(i) specifically incorporates all of the interconnection obligations under section 251 in their entirety (a BOC must provide "interconnection in accordance with the requirements of sections 251(c)(3) and 252(d)(1)"), and BOCs remain obligated to comply with section 251 obligations as they evolve and regardless of the enforcement of this checklist item.

<sup>57</sup> 2013 USTelecom Forbearance Long Order, 28 FCC Rcd at 7675-76, paras. 107-08 (granting forbearance from certain cost assignment rules where conditions imposed on the forbearance and other still-applicable rules and requirements were adequate to meet the Commission's needs); *id.* at 7668, paras. 86-87 (granting forbearance from property record requirements where the Commission's needs could be met through compliance plans put in place as conditions of forbearance); *id.* at 7672, para. 98 (forbearing from requirements that interexchange carriers keep certain information in hard copy conditioned on that information being available on the carrier's website); *id.* at 7675, para. 104-06 (granting forbearance from certain reporting requirements in light of other still-applicable regulatory requirements and conditions on forbearance); *id.* at 7678-79, paras. 113-15 (forbearing from other reporting requirements where the information at issue still would be filed or otherwise available in light of other still-applicable regulatory requirements and conditions on forbearance); *id.* at 7691-93, paras. 142-48 (forbearing from separate affiliate requirements given other still-applicable regulatory requirements and conditions on forbearance); *id.* at 7705, para. 175 (forbearing from rules governing recording of conversations with the telephone company in light of other, still-applicable legal requirements).

<sup>58</sup> 2014 USTelecom Forbearance Petition at 27; *see also id.* at 24-28. In the 271 applications granted by the Commission, the applicant was subject to a performance assurance plan in the states designed to protect against backsliding from its section 271 obligations once the BOC entered the long distance market. The Commission did not require such compliance as part of its grant of section 271 approval. *See, e.g., Application by Bell Atlantic New York for Authority Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4164-65, paras. 429-30 (1999) (*Bell Atlantic New York 271 Order*) ("Although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval."). The Commission stated that, in addition to the performance assurance plans, the BOCs faced other consequences if they failed to sustain an

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context to be reasonable. USTelecom explains that it is not directly seeking forbearance from the PAPs, but that if the Commission grants relief from the duplicative checklist items, BOCs will have a basis for asking any states still requiring the plans to reduce or eliminate them.<sup>59</sup> USTelecom asserts that the Commission can continue to enforce the competitive safeguards fully established under section 251.<sup>60</sup> It has been 12 years since the Commission granted the last section 271 application, and it is within the states' authority to determine whether or not to modify the PAPs.

18. In addition, we expect that the substantive section 251 obligations will continue to be enforced through interconnection agreements and through complaints filed under section 208 of the Act.<sup>61</sup> We are not persuaded by the competitive LEC commenters that it is necessary to retain the duplicative checklist items only to enable competitors to bring enforcement actions to the Commission through the 90-day enforcement process in section 271(d)(6).<sup>62</sup> There are other enforcement mechanisms available, including the Commission's accelerated docket process, which provides for decisions within 60 days of formal complaints addressing competitive issues, and also allows for settlement discussions supervised by Commission staff prior to the filing of a complaint.<sup>63</sup> We also conclude, pursuant to section 10(a)(3) of the Act, that forbearance from enforcement of the duplicative section 271 checklist items is consistent with the public interest for the reasons stated above.

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acceptable level of service to competing carriers, including enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and remedies associated with other legal actions. *Id.* It has also stated that claims associated with discriminatory treatment can be filed under section 208 of the Act. *See, e.g., id.* at 4165, para. 430 ("We recognize that the Commission's enforcement authority under section 271(d)(6) already provides incentives for Bell Atlantic to ensure continuing compliance with its section 271 obligations. We also recognize that Bell Atlantic may be subject to payment of liquidated damages through many of its individual interconnection agreements with competitive carriers. Furthermore, Bell Atlantic risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner."); *Arizona Section 271 Order*, 18 FCC Rcd at 25534, para. 54, 25535, para. 57.

<sup>59</sup> 2014 USTelecom Forbearance Petition at 27.

<sup>60</sup> USTelecom points out that the Commission has clearly stated that the plans are administered by state commissions and derive from authority the states have under state law or under the Act. It is therefore within the states' authority to decide whether or not to modify or eliminate plans that are in effect. 2014 USTelecom Forbearance Petition at 27 (citing *Bell Atlantic New York 271 Order*, 15 FCC Rcd at 4164, para. 429 and n.1316). *See also* Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 1-2 (filed Dec. 9, 2015) (Public Knowledge Dec. 9, 2015 *Ex Parte* Letter); Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 1-2 (filed Dec. 8, 2015).

<sup>61</sup> 47 U.S.C. § 208.

<sup>62</sup> COMPTTEL Opposition at 15-16; Joint CLEC Opposition at 8. Section 271(d)(6) has not been a frequent enforcement mechanism for competitive LECs at the Commission. The Commission released a decision in 2002 addressing a section 271(d)(6) complaint. *WorldCom, Inc. v. Verizon New England, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 15115 (2002). It dismissed a section 271(d)(6) complaint in 2006 after the parties settled the issue. *Momentum Telecom, Inc./k/a Momentum Business Solutions, Inc. v. BellSouth Telecommunications, Inc.*, Order of Dismissal, 21 FCC Rcd 2247 (Enf. Bur. 2006). Granite states that, in 2009, it talked to the Enforcement Bureau about the possibility of filing a section 271(d)(6) complaint against AT&T, which it states provided an incentive for Granite and AT&T to settle their issue prior to any formal filing. Letter from Eric J. Branfman, Counsel for Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2-3 (filed Sept. 22, 2015) (Granite Sept. 22, 2015 *Ex Parte* Letter).

<sup>63</sup> *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report and Order, 13 FCC Rcd 17018, 17019, para. 4 (1998); 47 C.F.R. §§ 1.721(f); 1.730(b). We also expect that competitors would seek to enforce section 251-related access obligations pursuant to the cost-based or TELRIC standard, as opposed to the just and reasonable standard associated with checklist obligations. *See infra* para 32.

**b. Access to Poles, Ducts, Conduit, and Rights-of-Way — Checklist Item 3**

19. We deny USTelecom’s request to forbear from enforcement of checklist item 3, which requires BOCs to provide nondiscriminatory access to poles, ducts, conduit, and rights-of-way in accordance with the requirements of section 224 of the Act. We find that enforcement of this item remains necessary under section 10(a)(1) and (2), and that forbearance would not be in the public interest under section 10(a)(3). Section 271(c)(2)(B)(iii) requires BOCs to provide “nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned by the BOC at just and reasonable rates in accordance with the requirements of section 224.”<sup>64</sup> Although checklist item 3 references the concurrent obligations in section 224 in the same manner that checklist items 1-2, 7-9, and 11-14 reference section 251, we find that, because of the nature and continued importance of section 224, it is necessary to retain checklist item 3 as an additional enforcement mechanism for the concurrent section 224 obligations.

20. Section 224 differs from section 251 in important respects. In particular, section 251 allows incumbent LECs to reduce their wholesale access obligations based on whether competitors are impaired without access to network elements.<sup>65</sup> Section 224, on the other hand, contains no such limitation and is necessary to the viability of facilities-based competition. Section 224 grants continued access to LEC infrastructure for all providers, including wireline, wireless, and broadband providers, without a required finding of impairment. Section 251 recognizes the concept that competitors may build their own networks or have access to alternatives such that they no longer require access to UNEs to promote competitive market conditions. In contrast, section 224 facilitates ongoing access because factors related to environmental concerns, zoning, and cost foreclose alternatives for competitive network deployment. Competitors often have no choice except to utilize available space on existing poles.<sup>66</sup> The Commission has recognized Congress’s insistence that, by virtue of their size and exclusive control over access to poles, incumbent LECs and public utilities are “unquestionably in a position to extract monopoly rents,” and that Congress granted the Commission full authority to ensure that pole attachments are provided on just and reasonable rates, terms, and conditions.<sup>67</sup>

21. Our action is consistent with Congress’s intent for section 224 to promote competition by ensuring the availability of access to new telecommunications entrants. In the *Open Internet Order*, we also noted the breadth of section 224, and declined to forbear from checklist item 3 for broadband Internet

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<sup>64</sup> 47 U.S.C. § 271(c)(2)(B)(iii). Section 224(f)(1) of the Act imposes upon all utilities, including LECs, the duty to “provide ... any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.” 47 U.S.C. § 224(f)(1). Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.” 47 U.S.C. § 224(f)(2). Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for “pole attachments.” 47 U.S.C. §§ 224(b)(1), (c)(1). Section 251(b)(4) provides that all LECs have the “duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.” 47 U.S.C. § 251(b)(4).

<sup>65</sup> 47 U.S.C. § 252(d)(2)(B).

<sup>66</sup> See *Open Internet Order*, 30 FCC Rcd at 5831, para. 478 (citing *Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5242, para. 4 (2011) (*Pole Attachments Order*)). Because access to poles is so significant, the Commission has stated that, where the parties concerned have a competitive relationship, it will very carefully scrutinize even the most substantial exceptions to granting access, such as claims involving capacity, safety, reliability, and engineering, *First Local Competition Order*, 11 FCC Rcd at 16081, para. 1177.

<sup>67</sup> *Pole Attachments Order*, 26 FCC Rcd at 5242, para. 4 (citing S. Rep. No. 580, 95th Congress, 1st Sess. at 13 (1977), reprinted in 1978 U.S.C.C.A.N. 109).

access service because it acts as an additional mechanism to enforce section 224 against the BOCs.<sup>68</sup> We also declined to forbear because we stated that the Commission has repeatedly recognized the importance of pole attachments to the deployment of all communications networks by ensuring just and reasonable rates and limiting input costs that broadband and other providers incur.<sup>69</sup>

22. USTelecom has not addressed checklist item 3 in any detail or submitted evidence that we find sufficient to show why this provision is no longer necessary to ensure that the BOCs' charges and practices for access to poles, ducts, conduits, and rights of way are just, reasonable, and nondiscriminatory, or that this provision is unnecessary for the protection of consumers. Rather, USTelecom asserts generally that the checklist is unnecessary because the local market is fully open to competition, but the underlying section 224 access obligation in checklist item 3 is not dependent on whether or not there is competition. It functions as an incentive to the BOCs to continue to provide non-discriminatory access to poles and the other infrastructure even as the BOCs continue to compete and deploy new facilities. In light of the particularly significant obligations of section 224, we find that checklist item 3 is necessary as an additional enforcement mechanism to ensure just, reasonable, and non-discriminatory access to the BOCs' poles, ducts, conduit, and rights-of-way.

23. In addition, we find that forbearance from enforcement of this item would not be consistent with the public interest under section 10(a)(3). Access to poles, in particular, has broad ramifications, including for broadband deployment. Unlike the section 251 duplicative checklist items, checklist item 3 benefits all providers and allows deployment of all types of facilities-based networks. The Commission has never granted forbearance from requirements to make existing poles, ducts, conduits and rights of way available under sections 224 or 271. It has stated that the requirements of checklist item 3 remain necessary, even where it has otherwise forbore from section 251 access obligations in a specific area,<sup>70</sup> and USTelecom has not demonstrated that it is consistent with the public interest to forbear here.

**c. Independent Network Elements that Do Not Reference Section 251  
— Checklist Items 4-6, 10**

24. USTelecom also seeks forbearance from the BOCs' obligation to comply with the independent network element checklist items that do not reference associated section 251 obligations. These items include access to local loops, local transport, local switching, and access to databases as required under sections 271(c)(2)(B)(iv), (v),(vi), and (x) (hereinafter, independent checklist items). Like the rest of the checklist, implementation of these obligations tied the BOCs' entry into the in-region long distance market with increasing the presence of competitors in the local market. For the reasons discussed below, we conclude that USTelecom has demonstrated that enforcement of the independent checklist items is no longer necessary under section 10(a)(1) to maintain just and reasonable and non-discriminatory wholesale access for competitors. We also find that enforcement of the independent checklist items is not necessary to protect consumers under section 10(a)(2), and that forbearance is in the

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<sup>68</sup> *Open Internet Order*, 30 FCC Rcd at 5854 n.1593. We stated that checklist item 3 does not depend on the classification of the BOCs' broadband Internet access service and that, in combination with section 271(d)(6), acts as an additional mechanism to enforce section 224 against the BOCs. *Id.*

<sup>69</sup> *Open Internet Order*, 30 FCC Rcd at 5831, para. 478 (citing *Implementation of Section 224 of the Act, A National Broadband Plan For Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5241-43, at paras. 1-6 (2011)).

<sup>70</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19463-64, paras. 97-99 (2005) (*Qwest Omaha Forbearance Order*).

public interest under section 10(a)(3). Accordingly, we grant USTelecom's requested forbearance from enforcement of the independent checklist items.<sup>71</sup>

25. As an initial matter, we emphasize that the scope of the independent checklist items is different from the section 251 unbundling requirements. While the independent checklist items create obligations for BOCs that are broader than the obligations imposed by section 251(c)(3) because the former do not hinge on a finding of impairment,<sup>72</sup> the BOCs are not required to provide access to the independent items under the cost-based standard in 252(d)(1) as they must for section 251 UNEs. They must instead provide access at a rate governed by the "just and reasonable" standard established under sections 201 and 202, which applies to all telecommunications services for which forbearance has not been granted.<sup>73</sup>

26. As we stated above, in evaluating whether a rule is "necessary" under section 10(a)(1) and (a)(2), the Commission considers whether a current need exists for a rule. Our evaluation of the current need for enforcement of the independent checklist items is informed by the Commission's long-standing findings about whether competitors require access to the independent UNEs, specifically local switching, which remains available under the checklist but not under section 251.<sup>74</sup> In 2004, the Commission stated that, based on the competitive market for switching, "we determine not only that competitive LECs are not impaired in the deployment of switches, but that it is feasible for competitive LECs to use competitively-deployed switches to serve mass market customers throughout the nation."<sup>75</sup> We need not undertake a granular market analysis to re-confirm this finding. There is no evidence in the record that the circumstances since 2004 have changed such that BOCs are the only providers of local switching, or that competitors are currently stranded without access to it on a regulated basis under the checklist. In fact, the competitive LECs do not indicate on the record that they ever use unbundled switching as a physically separate input in any geographic location.

27. More broadly, there is also no evidence in the record that competitors are providing services through unbundled loops, transport, or databases and signaling *specifically available under the*

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<sup>71</sup> With the relief we grant herein, BOCs are now wholly relieved of their unbundling obligations under sections 271(c)(2)(B)(iv), (v), (vi), and (x), including all obligations that remained following the Commission's adoption of the *Section 271 Broadband Forbearance Order*.

<sup>72</sup> *Triennial Review Order*, 18 FCC Rcd at 17382-91, paras. 649-67, corrected by *Triennial Review Errata*, 19 FCC Rcd at 19022, paras. 30-33.

<sup>73</sup> *Id.* at 17386-89, paras 656-64, corrected by *Triennial Review Order Errata*, 18 FCC Rcd at 19022, paras. 32-33. The Commission stated that this interpretation of the stand-alone items allowed it to reconcile the interrelated terms of the Act so that one provision (section 271) does not "gratuitously reimpose the very same requirements that another provision (section 251) has eliminated." *Triennial Review Order*, 18 FCC Rcd at 17387, para. 659. The Commission has stated that a BOC might satisfy the just and reasonable standard by demonstrating, on a case-by-case basis, that the rate for a stand-alone section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly-situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, it has stated that a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly-situated purchasing carriers to provide the element at that rate. *Id.* at 17389, para. 664.

<sup>74</sup> The elements required by checklist items 4-6 and 10 are local circuit switching; transport in wire centers in cases in which the impairment measurements set forth in the *Triennial Review Remand Order* are not satisfied; and loops and transport in any service areas where the Commission forbore from applying the section 251(c)(3) unbundling obligations. See *Triennial Review Order*, 18 FCC Rcd at 17382-91, paras. 649-67; *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19466, para. 102.

<sup>75</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 FCC Rcd 2533, 2644, at para. 204 (2004) (*Triennial Review Remand Order*). It also found that continued availability of unbundled local switching would impose costs on the LECs in the form of decreased investment incentives. *Id.* at 2641, para. 199.

*independent checklist obligations.* The competitive LECs commenting on this issue do not assert that they purchase loops under the checklist in the instances where they are not available under section 251. They claim instead that they generally do not have access to last mile transmission facilities to reach voice customers in all locations, and that we must therefore continue to enforce the checklist obligations to ensure access to BOC facilities.<sup>76</sup> We disagree that the independent checklist items serve to provide unbundled access to all customer locations. To the extent any competitor seeks wholesale transmission access to reach voice customers, we agree, as USTelecom acknowledges, that BOCs must continue to comply with section 251 by providing UNE loops at cost-based rates in required circumstances.<sup>77</sup> With respect to transport, also referred to as interoffice transmission facilities, the Commission required incumbent LECs to provide requesting telecommunications carriers with access to both dedicated and shared interoffice transmission facilities on an unbundled basis.<sup>78</sup> The Commission has explained that competitive LECs would use unbundled shared transport, signaling, and call-related databases mostly in conjunction with the unbundling of local circuit switching.<sup>79</sup> As stated above, there is no evidence in the record that competitors use unbundled switching available under the checklist to serve voice customers, and similarly there is no evidence that they are using unbundled shared transport, signaling, and call related databases as discrete elements. There is also no evidence that competitors are using unbundled dedicated transport available as an independent checklist item.

28. We agree with USTelecom that the developing nature of the market should also lead us to conclude that the contribution of the independent checklist items to ensuring just and reasonable charges and practices for competitors is minimal at this point in time.<sup>80</sup> The communications market has undergone transformative changes since the last BOC obtained interLATA authority under section 271, and competitors offer many different services that do not depend on BOC compliance with the checklist obligations. Incumbent LEC provisioning of switched access lines has declined, and many customers now purchase service from alternative platforms, including facilities-based and over-the-top VoIP providers as well as from competitive LECs.<sup>81</sup> For these reasons, we find that it is no longer necessary to enforce the independent obligations, particularly because it is not apparent that they are being used at all by narrowband competitors, who, as we note below, retain broad wholesale access options under section 251 unbundling, resale, and through commercial arrangements.

29. We also reject the argument that the independent checklist obligations remain necessary to protect competition through commercial wholesale platform service — sometimes referred to as “UNE-P replacement service,” a wholesale voice service that comprises a DS0 loop, switching, and shared transport.<sup>82</sup> Several competitive LECs explain that they have entered into commercial agreements

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<sup>76</sup> See, e.g., COMPTTEL Opposition at 14 (“Where COMPTTEL members can serve customers on-net, they do so. But in most cases, it is not economical for competitors to replicate last mile facilities.”).

<sup>77</sup> 2014 USTelecom Forbearance Petition at 26; 2014 USTelecom Reply at 10 (stating that BOCs remain obligated to comply with all sections of the Act, including sections 224, 251, 252, and with the general obligation to provide service at just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act).

<sup>78</sup> Transport connects an incumbent LEC’s wire centers and end offices. *First Local Competition Order*, 11 FCC Rcd at 15718, para. 440; 47 C.F.R. § 51.319(d)(2).

<sup>79</sup> *Triennial Review Remand Order*, 20 FCC Rcd at 2642, n.529 (citing *Triennial Review Order*, 18 FCC Rcd at 17319-20, 17323-34, paras. 533-34, 542-60 (explaining that the availability of shared transport, signaling, and call-related databases on an unbundled basis continued to “rise or fall with the availability of local circuit switching)).

<sup>80</sup> See 2014 USTelecom Forbearance Petition at 16-24.

<sup>81</sup> 2014 USTelecom Forbearance Petition at 10, 16-19; 2014 USTelecom Reply at 13.

<sup>82</sup> See, e.g., Granite Opposition at 7; Access Point et al. Comments at 2. A UNE-Platform consisted of a 2-wire analog loop, an analog switch port, an analog loop-to-switch port cross-connect, and shared transport. As stated above, in 2004, the Commission concluded that incumbent LECs are not obligated to unbundle mass market local

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with BOCs to obtain commercial wholesale platform service. COMPTTEL asserts that these agreements are negotiated against the “backstop” of a BOC’s obligations to unbundle the elements that comprise the UNE-P replacement service and to combine them with one another in a manner that permits a wholesale customer to provide an “end-to-end” service to retail end users.<sup>83</sup> We agree with USTelecom that this argument misconstrues the regulatory background against which these commercial negotiations take place.<sup>84</sup> Two contiguous pieces of the UNE-P replacement service — local switching and shared transport — are available as unbundled elements only under section 271, and the Commission has stated that “BOCs are not required to combine section 271 checklist items with one another.”<sup>85</sup> A BOC could thus reasonably infer that it lacks any obligation to provide a service that combines a DS0 loop made available under section 251 with switching and shared transport made available under the section 271 checklist. Even if section 201(b) or 202(a) might operate independently to require a BOC to provide a service of this kind,<sup>86</sup> the Commission has never suggested that it construes either provision as operating in this fashion.

30. Granite asserts, based on its experience in commercial negotiations, that, when faced with the possibility of a section 271(d)(6) complaint, BOCs interpret the independent checklist items as requiring them to provide UNE replacement services at just and reasonable rates.<sup>87</sup> Specifically, Granite describes how in 2009 it had raised the possibility of filing a section 271(d)(6) complaint against AT&T and had “numerous telephone calls” with the Commission’s Enforcement Bureau and AT&T to discuss a dispute involving the rates and terms in the parties’ commercial UNE-P agreement.<sup>88</sup> It asserts that “thereafter, AT&T agreed to extend the April 30, 2009 deadline [to re-negotiate an agreement prior to a service termination] and began, in Granite’s view, to negotiate in good faith the terms of a new

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circuit switching, the key element used to complete the platform. *Triennial Review Remand Order*, 20 FCC Rcd at 2644, para. 204. It also found that UNE-P had been designed as a tool to enable a transition to facilities-based competition, but because it relied exclusively on the use of the incumbents’ facilities, the Commission found that it created disincentives to investment. *Id.* at 2652-53, para. 218. It therefore eliminated UNE-P as a wholesale access option for competitors. *See id.* To avoid disruption in the marketplace, the Commission ordered a 12-month transition period to allow competitors to move their preexisting UNE-P customers to alternative arrangements. The transition period ended on March 11, 2006. *Id.* at 2659-61, paras. 226-28. The Commission stated that the transition mechanism did not replace or supersede commercial arrangements carriers may have reached for the continued provision of UNE-P. *Id.* at 2661, para. 228.

<sup>83</sup> See COMPTTEL Opposition at 11-12. *See also* Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-192, 15-114 (filed Dec. 3, 2015) (Granite Dec. 3, 2015 *Ex Parte* Letter); Letter from Paula Foley, regulatory Counsel, Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192 (filed Dec. 7, 2015) (Granite Dec. 7, 2015 *Ex Parte* Letter).

<sup>84</sup> *See* 2014 USTelecom Reply at 10-12; Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 1-3 (filed Nov. 17, 2015) (USTelecom Nov. 17, 2015 *Ex Parte* Letter)

<sup>85</sup> USTelecom Nov. 17, 2015 *Ex Parte* Letter at 3 (citing Brief for Amicus Curiae Federal Communications Commission in Support of Defendants-Appellants, Cross-Appellees and Partial Reversal of the District Court, Bell South Telecomms., Inc. v. Kentucky Pub. Serv. Comm’n, Case Nos. 10-5310 & 10-5311, at 17 (6th Cir. filed Dec. 6, 2011) (citing *Triennial Review Order*, 18 FCC Rcd at 17386, para. 655 n.1990).

<sup>86</sup> *See generally* *Petition of Granite Telecommunications, LLC for Declaratory Ruling Regarding the Separation, Combination and Commingling of Section 271 Unbundled Network Elements*, WC Docket No. 15-114, at 8-15 (filed May 4, 2015).

<sup>87</sup> Granite Sept. 22, 2015 *Ex Parte* Letter at 2-4.

<sup>88</sup> *Id.* at 3-4. Access Point also states that it referred to section 271 enforcement when renegotiating commercial UNE-P agreements with AT&T. Letter from Richard Brown, CEO and Chairman, Access Point, Inc., to Marlene H. Dortch, FCC, WC Docket No. 14-192, at 1-2 (filed Oct. 15, 2015).

commercial voice line agreement.”<sup>89</sup> Granite further states that it has had several more renegotiations of its commercial voice agreements with AT&T since 2009 and raised the possibility of filing a complaint under section 271 unless the parties could come to an agreement.<sup>90</sup>

31. We do not find Granite’s experience to provide persuasive evidence that the section 271 checklist was the reason that the parties entered into a commercially satisfactory agreement.<sup>91</sup> Granite does not indicate that it ever filed a complaint with the Commission or entered into a mediation under the Commission’s rules. Commercial negotiations can take many forms and be based on many different considerations between the parties. The forbearance record here does not contain any evidence of the substance of the negotiations between Granite and AT&T. And, the record does not conclusively establish what, if any, role the section 271 checklist items had in the eventual outcome of the commercial negotiations between AT&T and Granite. Granite also does not explain why the section 271 obligation is any more likely to serve as a backstop than the ability to bring a complaint under sections 201 and/or 202, which is a remedy that will remain available to narrowband competitors, as USTelecom expressly acknowledges.<sup>92</sup>

32. As further evidence that the BOCs do not link a section 271 obligation to their offering of commercial agreements, we find it persuasive that Verizon states that it does not report information associated with its wholesale replacement product in its section 271 PAPs filed with the state commissions.<sup>93</sup> The Commission has explained that the state utility commissions structured the PAPs to include performance measurements and standards to ensure compliance with the 271 checklist items after the BOCs entered the in-region long distance market<sup>94</sup> The fact that the PAPs in Verizon’s territories do not include information about wholesale replacement offerings implies a lack of a regulatory connection between the section 271 checklist and such agreements. Because we do not find evidence that the availability of the UNE-P replacement agreements is linked to a section 271 checklist obligation, we do not find it necessary to continue to enforce the checklist based on this consideration. Furthermore, we reject Granite’s blanket assertions that forbearing from section 271 would result in a loss of all wholesale access options under the Act. We are not convinced that granting forbearance will lead to an abatement of the availability of commercial agreements.<sup>95</sup> As stated above, competitive LECs will continue to have

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<sup>89</sup> Granite Sept. 22, 2015 *Ex Parte* Letter at 3-4.

<sup>90</sup> *Id.* at 3-4.

<sup>91</sup> Granite also supports its position that the commercial agreements are linked to section 271 by stating that the 2009 UNE-P replacement agreement referenced sections 201, 202 and 271. *Id.* at 2. While it is not clear whether that general reference is contained in any other commercial agreements since then, there is no information as to which enumerated provision applies to which portion of the commercial agreements.

<sup>92</sup> *See, e.g.*, USTelecom Nov. 17, 2015 *Ex Parte* Letter at 4 n.14.

<sup>93</sup> Letter from Maggie McCready, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene F. Dortch, Secretary, FCC, WC Docket No. 14-192 et al., at 2 n.4 (filed Nov. 9, 2015) (Verizon Nov. 9, 2015 *Ex Parte* Letter).

<sup>94</sup> *See Bell Atlantic New York 271 Order*, 15 FCC Rcd at 4166-73, paras. 433-43.

<sup>95</sup> Granite also states that its costs to provide service to business customers would increase 159 percent if it was required to convert from purchasing UNE-P replacement services to purchasing incumbent LEC resold voice lines for which it obtained a resale discount. Letter from Michael B. Galvin, General Counsel, Granite, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-192, 15-114, GN Docket No. 12-353, at 1-2, Attach. (Decl. of Jorge DeJesus in Support of Filing of Granite Telecommunications, LLC) at 3 (filed Oct. 23, 2015) (Granite Oct. 23, 2015 *Ex Parte* Letter). It estimates the “loss of consumer welfare of not requiring ILECs to provide any form of access to competitive LECs as ranging from \$4 billion to \$10 billion per year, and that 60 percent of that would result if competitive LECs were no longer able to reach commercially negotiated agreements for UNE-P replacement services. Granite Sept. 22, 2015 *Ex Parte* Letter at 2 and Exh. B (Letter from Charles River Associates).

broad access to the LECs' network facilities under a combination of options, including cost-based rates available under section 251 and through resale under section 251(b)(4).<sup>96</sup>

33. In light of the lack of persuasive evidence concerning the role of the independent checklist as an independent "regulatory backstop," we view with skepticism Granite's prediction that BOCs will "impose enormous price increases" for these services or cease offering them altogether if the Commission removes the section 271 checklist.<sup>97</sup> At any rate, our forbearance analysis does not turn on the willingness of BOCs to offer UNE-P replacement services or any other particular form of wholesale service arrangement that is not mandated by the Act. Rather, the relevant inquiry is whether the independent checklist obligations remain necessary to guard against unreasonable or unreasonably discriminatory rates and practices or protect consumers. Overall, we find that these obligations do not serve a viable competitive purpose, whether as a source of unbundled elements or as a "backstop" for the negotiation of voluntary agreements, and we find that their continued enforcement is no longer necessary per section 10(a)(1).

34. We do not find it necessary to enforce the independent checklist obligations in order to protect consumers under section 10(a)(2). We agree with USTelecom that narrowband competitors may use multiple alternatives to provide service to customers, none of which are directly provisioned pursuant to the checklist.<sup>98</sup> Granite argues that the existence of a regulatory backstop under section 271 maintains consumer benefits provided by competition through the use of UNE-P replacement services and that no competitor can sustain a business using entirely resold services.<sup>99</sup> As explained above, we do not find

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<sup>96</sup> The *Emerging Wireline Order* ensured continued availability of commercial wholesale platform services in the near-term by requiring provision of reasonably comparable wholesale access if an incumbent LEC discontinues a TDM-based commercial wholesale platform services in favor of an IP substitute during the interim time period established. We found the interim rule adopted in that proceeding warranted as to commercial wholesale platform services in part "to provide certainty and clarity during these stages of the technology transitions, in which the perceived, looming sunset of TDM service raises questions as to whether end-user customers will continue to receive competitive options for their multi-location, low-bandwidth businesses" and in response to a record demonstrating customer "concern about the lack of competitive options if competitive LECs lose access to commercial wholesale platform service" as a result of the transition to IP. *Emerging Wireline Order*, 30 FCC Rcd at 9454, para. 147, 9456, para. 149. Here, in contrast, we conclude that there is not a current need for the section 271 independent unbundling obligations as a means to foster ongoing TDM-based voice competition. Unlike a transition to IP, forbearance from the checklist items does not physically change the availability or functioning of TDM network inputs, which continue to remain available subject to other wholesale access arrangements.

<sup>97</sup> Granite Oct. 23, 2015 *Ex Parte* Letter, Attach. at 3. Access Point and Xchange Telecom assert that, if the Commission grants forbearance, we should preserve existing commercial agreements by expressly grandfathering them, Letter from Eric J. Branfman, Counsel to Access Point, Inc. and Xchange Telecom, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (filed Dec. 9, 2015) (Access Point Dec. 10, 2015 *Ex Parte* Letter). FSN/AICC also assert that the Commission should grandfather existing carrier agreements. FSN/AICC Dec. 11, 2015 *Ex Parte* Letter at 6. We find that these requests concerning privately-negotiated commercial agreements is outside the scope of this proceeding. To the extent that FSN/AICC are asserting that regulated agreements should be grandfathered, FSN/AICC does not elaborate on how they are specifically using section 271 independent checklist items, or whether they are subject to agreements regulated by the Commission. *Id.* at 5. Access Point, Xchange Telecom, and FSN/AICC further assert that we should apply the 90 day complaint process available under section 271(d)(6)(B) to "complaints under section 208 regarding commercial agreements for wholesale voice platform service." Access Point Dec. 10, 2015 *Ex Parte* Letter at 2; FSN/AICC *Ex Parte* Letter at 6. We deny that request. As explained above, the Commission's accelerated docket process, as subject to its rules, provides for decisions within 60 days of formal complaints addressing competitive issues. *See supra* at para. 18.

<sup>98</sup> *See* 2014 USTelecom Forbearance Petition at 16-23.

<sup>99</sup> Granite Oct. 23, 2015 *Ex Parte* Letter at 1. While incumbent LECs remain obligated under section 251(b)(4) of the Act to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail, certain competitors have stated in this record that the resale option is not viable in the absence of UNE-P replacement services. Access Point Dec. 10, 2015 *Ex Parte* Letter at 2 (stating that the carriers use resale only to fill

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persuasive Granite's argument that BOCs would never offer UNE-P replacement services but for the section 271 "backstop." At any rate, while Granite and others may have a business model that relies primarily on UNE-P replacement agreements to provide services, Granite has also pointed out that "other CLECs provision lines with those commercial agreements, resale, Unbundled Network Elements ('UNEs'), their own facilities or a mix of the four."<sup>100</sup> Granting forbearance relief from the independent obligations will not eliminate all wholesale access obligations for the BOCs or force competitors to use one competitive entry method to serve narrowband customers. Moreover, as USTelecom acknowledges, "statutory restrictions against providers acting in an unjust, unreasonable, or discriminatory manner (under the threat of enforcement action) provide additional assurances" to narrowband competitors such as Granite.<sup>101</sup>

35. We also are not persuaded that we must deny relief because the Commission concluded in a past proceeding that the independent checklist items provided a regulatory safeguard in the areas in which it had forborne from the section 251 unbundling obligations in Qwest's Omaha Metropolitan Statistical Area.<sup>102</sup> That situation is distinguishable from the current proceeding for two reasons. First, the Omaha proceeding involved a specific and distinct geographic area in which the Commission determined retail competition was often based on the use of Qwest's facilities, and that eliminating the checklist requirement to provide wholesale access to Qwest's network elements could reduce the competition that Qwest relied on to support its section 251 forbearance request.<sup>103</sup> In this proceeding, USTelecom is seeking national relief based on the necessity of the underlying regulations, and is not distinguishing a specific geographic area on the basis of competition. On a related note, the competitive LECs do not assert that they cannot compete in the Omaha territory or in any specific geographic area absent enforcement of the independent checklist items. Second, more than a decade has passed since the Commission's findings about the use of Qwest's facilities in that proceeding, and there is no evidence in this record that competitive LECs are currently provisioning service through the section 271 independent unbundling obligations. As we stated above, the communications market has undergone transformative changes, competitors offer many different services that do not depend on BOC compliance with the checklist obligations, and many customers now purchase service from alternative platforms. We therefore do not find it necessary to enforce the independent checklist items to preserve a singular finding in the *Qwest Omaha Forbearance Order*. COMPTTEL also raises the Commission's reliance on the section 271 checklist as one of several safeguards associated with the section 272 framework that allows the BOCs to provide in-region long distance service either directly or through affiliates subject to nondominant carrier regulation.<sup>104</sup> Section 251 and its cost-based pricing requirements remain the primary unbundling requirement for the BOCs, and we find that it is not necessary to retain the checklist obligations. In addition, as we explain below, BOCs will remain subject to the section 272 safeguards regarding imputation and non-discrimination requirements associated with the provision of long distance services.

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in for services that are not available through a wholesale voice platform agreement); Letter from Karen Reidy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at n.6 (filed Dec. 10, 2015) (INCOMPAS Dec. 10, 2015 *Ex Parte* Letter); Letter from John R. Liskey, Executive Director, and Mark Iannuzzi, President, Michigan Internet and Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 1-2 (Dec. 10, 2015) (Michigan Internet and Telecommunications Alliance *Ex Parte* Letter).

<sup>100</sup> Letter from Michael B. Galvin, General Counsel, Granite, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, et al., Attach. (Letter from Charles River Associates) at 3 (filed June 12, 2015).

<sup>101</sup> See USTelecom Nov. 17, 2015 *Ex Parte* Letter at 4 n.14.

<sup>102</sup> COMPTTEL Opposition at 13 (citing *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19466-70, paras. 103-10).

<sup>103</sup> See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19470, para. 110.

<sup>104</sup> COMPTTEL Opposition at 13-14 (citing *Section 272 Sunset Order*, 22 FCC Rcd at 16484-87, paras. 90-94).

36. We also find that forbearance from the independent checklist obligations is in the public interest under section 10(a)(3). As we stated above, forbearing from all checklist items as described could reduce costs to the extent that it reduces PAP obligations in the states. Based on the lack of evidence in the record that competitors are using the independent checklist UNEs to provide any retail service, we find that any potential cost savings are likely to outweigh the benefits of continued enforcement. Although USTelecom has not provided enough evidence for us to conclude that such a cost reduction would directly relate to new facilities investment, we find that that eliminating the unnecessary rules could reduce overall costs, which is in the public interest.<sup>105</sup> We also find it compelling that forbearing from the independent checklist items will subject BOCs to the same regulatory requirements with regard to wholesale access to their networks as other incumbent LECs under section 251. More than 12 years after the BOCs entered the in-region long distance market, we find this to be reasonable and conclude that it will allow the BOCs to compete to serve customers seeking arrangements from other platform providers, which is in the public interest. Therefore, we find that forbearance from the independent checklist obligations is consistent with the public interest and grant USTelecom's request on this issue.

## **B. Remaining Section 272 Obligations**

37. USTelecom requests forbearance relief from "the remaining section 272 obligations"<sup>106</sup> for all BOCs in all regions. These statutory and regulatory safeguards were adopted to prevent BOCs from exercising their control over local exchange networks to place competing long distance providers at an unfair disadvantage.<sup>107</sup> While USTelecom argues that the decline of the residential long distance market has removed the need for these safeguards, it does not refute arguments from competitive LEC commenters that section 272 obligations continue to play an important role in protecting competition in *enterprise* long distance markets. Therefore, as further discussed below, we deny the request.<sup>108</sup>

### **1. Background**

38. A BOC authorized under section 271 to provide in-region long distance services must do so in accordance with section 272.<sup>109</sup> This section requires BOCs to provide long distance services initially through a separate affiliate,<sup>110</sup> but as of 2006, this requirement has sunset for all BOCs in all

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<sup>105</sup> See *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7650-51, para. 41. On May 4, 2015, Granite filed a petition seeking a declaratory ruling that BOCs have an obligation not to separate UNEs that they are required to make available under section 271(c)(2)(B)(iv)-(vi), to combine such UNEs, and to commingle such UNEs with other wholesale services. *Petition Filed by Granite Telecommunications, LLC for Declaratory Ruling*, WC Docket No. 15-114, Public Notice, 30 FCC Rcd 4811 (WCB 2015). Because we are relieving BOCs of any obligation to unbundle the network elements made available under section 271(c)(2)(B)(iv)-(vi), a ruling that addressed whether and to what extent BOCs must combine such unbundled elements with one another or with other wholesale services would not "terminat[e] a controversy or remov[e] an uncertainty" of any practical relevance. See 47 C.F.R. § 1.2. We therefore dismiss Granite's petition as moot.

<sup>106</sup> See 2014 USTelecom Forbearance Petition at 28, 30-31; see also *id.* at Appx. A (identifying as requirements from which USTelecom seeks forbearance "[a]ll remaining Section 272 obligations" and "[t]he nondiscrimination and imputation requirements set out in the *Section 272 Sunset Order*").

<sup>107</sup> See *Section 272 Sunset Order*, 22 FCC Rcd at 16487-92, paras. 95-105.

<sup>108</sup> We also find no basis in the record for considering a grant of forbearance narrower than that which USTelecom requests, such as forbearance from remaining section 272 obligations solely as to BOC access services used in the provision of "stand-alone" or other mass market long distance services. See 47 C.F.R. § 1.54(a)(5) (placing the burden on petitioners to specify any "factor, condition or limitation relevant to determining the scope of requested relief" in a forbearance petition); see also *Verizon v. FCC*, 770 F.3d 961, 968 (D.C. Cir. 2014) ("[A]lthough the Commission has, on occasion, *sua sponte* ordered partial forbearance, there is surely no obligation for the Commission to do so.").

<sup>109</sup> See 47 U.S.C. § 271(d)(3)(B); see also *id.* § 272.

<sup>110</sup> See *id.* § 272(a)(2)(B).

regions.<sup>111</sup> The only remaining section 272 requirements are those of subsection (e), which govern BOCs' treatment of unaffiliated providers that seek access to their local networks. Section 272(e)(1) directs a BOC to "fulfill any requests from an unaffiliated entity" for such access "within a period no longer than the period in which it provides" such access to itself.<sup>112</sup> BOCs must also report to the Commission quarterly on performance metrics related to their "order taking, provisioning, and maintenance and repair" of DS0, DS1, DS3, and OCn special access services.<sup>113</sup> Section 272(e)(3) requires a BOC to impute to itself an amount for access to its local network "that is no less than the amount charged to any unaffiliated interexchange carriers for such service."<sup>114</sup> BOCs are also subject to additional imputation obligations,<sup>115</sup> including the requirement that they impute to themselves their "highest tariffed rate for access, including access provided over joint-use facilities."<sup>116</sup>

39. USTelecom asserts that the remaining section 272 obligations "only address" the provision of "stand-alone long distance service"<sup>117</sup> and that the decline of this service and the rise of intermodal competition has eliminated the need for these safeguards.<sup>118</sup> In support of these assertions, USTelecom points to the Commission's own observation from as early as 2005 that "long distance service purchased on a stand-alone basis is becoming a fringe market."<sup>119</sup>

## 2. Discussion

40. USTelecom has not demonstrated that the forbearance it requests from the remaining section 272 obligations is warranted. The Commission shall exercise forbearance only where it determines that enforcement of a requirement "is not necessary to ensure that" a carrier's charges and

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<sup>111</sup> See *id.* § 272(f)(1); see also *Section 272 Sunset Order*, 22 FCC Rcd at 16447, para. 12 ("The Commission granted its final interLATA authority for a BOC for an in-region state on December 3, 2003.").

<sup>112</sup> See 47 U.S.C. § 272(e)(1).

<sup>113</sup> See *Section 272 Sunset Order*, 22 FCC Rcd at 16487-88, paras. 96-97. The Commission explained that this reporting would "provide the Commission and other interested parties with reasonable tools to monitor each BOC's performance in providing these special access services to itself and its competitors." *Id.* at 16488, para. 97.

<sup>114</sup> See 47 U.S.C. § 272(e)(3). Section 272 also contains two subsections not addressed in USTelecom's petition, see 47 U.S.C. § 272(e)(2), (e)(4), that apply to BOCs' provision of interLATA services through a separate affiliate but otherwise have no practical effect. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22035-36, 270 (1996) (*Non-Accounting Safeguards Order*). Because USTelecom does not address either of these provisions, to the extent they are "remaining Section 272 obligations" within the scope of USTelecom's petition, see 2014 USTelecom Forbearance Petition at App. A-1, we deny the petition.

<sup>115</sup> See *Section 272 Sunset Order*, 22 FCC Rcd at 16490-92, paras. 100-105. BOCs are also subject to compliance plans, filed as a condition of forbearance relief from "cost assignment" rules, that address section 272(e)(3) and other regulatory obligations. See *Wireline Competition Bureau Approves Compliance Plans*, WC Docket Nos. 07-21, 07-204, 07-273, Public Notice, 23 FCC Rcd 18417 (2008); see also *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7651 n.125 ("We note that the BOCs are to continue complying with their existing imputation requirements under section 272(e)(3) and their compliance plans.").

<sup>116</sup> *Section 272 Sunset Order*, 22 FCC Rcd at 16490, para. 100.

<sup>117</sup> See 2014 USTelecom Forbearance Petition at 32 (quoting *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7637, para. 16).

<sup>118</sup> 2014 USTelecom Forbearance Petition at 28-29; see also ITTA Comments at 7; Verizon Comments at 6-7; Verizon Nov. 9, 2015 *Ex Parte* Letter at 1.

<sup>119</sup> See 2014 USTelecom Forbearance Petition at 28 (citing *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18342, at para. 91 (2005) (*SBC/AT&T Order*)).

practices “are just and reasonable and are not unjustly or unreasonably discriminatory.”<sup>120</sup> There is an insufficient basis in the record for making such a finding here. Sections 272(e)(1) and (e)(3) function as safeguards that are intended both to protect subscribers to BOC services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to provide long distance services, and to protect competition in those markets from the BOCs’ ability to use any existing market power in local exchange services to obtain an anticompetitive advantage.<sup>121</sup> Continued enforcement of these remaining safeguards is necessary protect consumers of BOC access services and of their competitors’ long distance services, while recognizing that the marketplace is evolving.

41. As an initial matter, USTelecom only partially addresses the relevance of the Commission’s observation that stand-alone long distance service has become a “fringe market.” This observation regarding the *mass market*<sup>122</sup> does not illustrate how enterprise customers purchase long distance service such that the requirements of section 272(e) and related protections are no longer warranted. Indeed, the Commission’s “fringe market” observation predates the order in which it adopted many of these protections.<sup>123</sup> As the *Section 272 Sunset Order* makes clear, section 272 governs BOC activities in various distinct long distance product markets, including enterprise markets.<sup>124</sup> The Commission has observed that “retail enterprise customers purchase a variety of different communications services” including an array of long distance services.<sup>125</sup>

42. We thus agree with commenters Birch et al. that USTelecom’s failure to “differentiate [business] markets from the markets for residential services” prevents it from offering a complete picture of the long distance marketplace in which section 272 operates.<sup>126</sup> The record in this proceeding contains little data on the size or composition of long distance markets that serve business customers, but competitive LEC commenters assert that section 272 obligations remain necessary to protect them from unreasonable and unreasonably discriminatory treatment from their BOC competitors in these markets. Commenters argue that removal of these safeguards would compromise their access to wholesale inputs, including special access services, that they rely on to compete with incumbents in the provision of “downstream long-haul services” to business customers.<sup>127</sup> USTelecom’s conclusory assertion that “intense competition in every segment of the marketplace precludes such discrimination”<sup>128</sup> is not sufficient to meet its burden in establishing that the remaining section 272 obligations are no longer necessary to guard unjust or unreasonable charges or practices for reasons such as those commenters

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<sup>120</sup> 47 U.S.C. § 160(a)(1).

<sup>121</sup> See *Section 272 Sunset Order*, 22 FCC Rcd at 16492 para. 105.

<sup>122</sup> See *Section 272 Sunset Order*, 22 FCC Rcd at 16452, para. 13 (making the “fringe market” observation in the context of a market analysis of “mass market services”).

<sup>123</sup> See *SBC/AT&T Order*, 20 FCC Rcd at 18342, para. 91 (making the “fringe market” observation two years prior to the establishment of “section 272 obligations” in the *Section 272 Sunset Order*).

<sup>124</sup> See *Section 272 Sunset Order*, 22 FCC Rcd at 16456-58, paras. 28-31 (performing a competitive analysis of “enterprise services” distinct from an analysis of “mass market services” under the general heading “domestic, in-region, interstate long distance services”).

<sup>125</sup> *Id.* at 16456-57, para. 28.

<sup>126</sup> See Birch et al. Opposition at 14; see also *id.* at 13 (“In today’s business market, competitive carriers regularly purchase local transmission facilities from the BOCs, such as UNEs and special access services, as inputs for the sale of long-haul data services to retail customers.”).

<sup>127</sup> Birch et al. Opposition at 3; see also *id.* at 8-10; COMPTTEL Opposition at 16-17 (arguing that “BOCs have powerful incentives to abuse their market power over upstream inputs,” and that a BOC can act on these incentives by “slow-rolling the critical functionalities that it performs for wholesale customers” or “charging its competitors more than it charges itself for inputs”); Michigan PSC Comments at 4; XO Comments at 16-17.

<sup>128</sup> 2014 USTelecom Forbearance Petition at 31; see also 2014 USTelecom Reply at 16.

articulate. While the record in this proceeding does not contain granular data that could yield conclusions as to the state of competition in any geographic or product market<sup>129</sup> — let alone in “every segment of the marketplace” — it suggests that section 272 obligations remain important as safeguards that preserve fair competition in enterprise long distance markets. USTelecom has not offered evidence or analysis that refutes competitive LEC commenters’ arguments on this point.<sup>130</sup> We accordingly cannot find that any observed decline in demand for mass market long distance services alone renders these obligations unnecessary.

43. Nor has USTelecom established that the continued application of sections 201, 202 and 251 of the Act presents a sufficient basis for forbearance from the remaining section 272 obligations.<sup>131</sup> While other provisions of the Act certainly complement, and may partially overlap, with the remaining section 272 obligations, we agree with Birch et al. that section 272 establishes protections that are not wholly replicated by any other Act provision or Commission requirement.<sup>132</sup> USTelecom has not offered any basis for concluding that these heightened protections are unnecessary to ensure that BOCs act reasonably and without unreasonable discrimination in their provision of access services, including special access services, to long distance competitors. We are thus unable to find on such basis that USTelecom’s requested forbearance from the remaining section 272 obligations is consistent with section 10(a)(1).

44. For similar reasons, we cannot find that application of the remaining section 272 obligations is “not necessary to protect consumers” per section 10(a)(2). To the extent these obligations remain necessary to guard against unreasonable or unreasonably discriminatory rates or practices in the provision of access services to long distance competitors, they are also necessary to protect consumers of long distance services.

45. Finally, USTelecom has failed to establish that its requested forbearance from the remaining section 272 obligations would serve the public interest. We find no basis in the record for concluding that such forbearance would “promote competitive market conditions.” Indeed, as discussed above, the record indicates that such forbearance may have a negative impact on competition in enterprise long distance markets.<sup>133</sup> In addition, the retention of section 272 obligations was cited as an important safeguard in the Commission’s previous orders granting the BOCs forbearance relief from “cost assignment” rules and other regulatory requirements.<sup>134</sup> We find no basis for concluding that this safeguard is no longer warranted. Nor does USTelecom’s bare assertion that carriers spend “hundreds of thousands of dollars each year” on compliance with section 272 obligations establish that these obligations impose costs that outweigh their benefits.<sup>135</sup> Accordingly, we find that grant of the requested forbearance would not serve the public interest. Because USTelecom’s request for forbearance relief

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<sup>129</sup> We clarify that our actions in this proceeding do not in any way prejudice the outcome of the Commission’s ongoing special access rulemaking proceeding. *See, e.g., Wireline Competition Bureau Further Extends Deadline in Special Access Proceeding*, WC Docket 05-25; RM-10593, Public Notice, DA 15-1037 (WCB Sept. 17, 2015).

<sup>130</sup> Nor do Verizon’s general arguments that there is “rampant competition to provide voice service to business and residential customers” or that switched access rates will move to bill-and-keep over time establish that Section 272(e)(3) and related imputation obligations are no longer relevant as competitive safeguards in enterprise long distance markets. *Cf. Verizon Dec. 10, 2015 Ex Parte Letter*.

<sup>131</sup> *See* 2014 USTelecom Forbearance Petition at 32.

<sup>132</sup> *See* Birch et al. Opposition at 16.

<sup>133</sup> *See* COMPTTEL Opposition at 16-17; Birch et al. Opposition at 8-10.

<sup>134</sup> *See, e.g., AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7318-19, paras. 28-29 (2008).

<sup>135</sup> *See* 2014 USTelecom Forbearance Petition at 33; *see also Verizon Dec. 10, 2015 Ex Parte Letter* at 2 (discussing at a general level Verizon’s section 272(e)(3) imputation costs).

from the remaining section 272 obligations does not meet the section 10(a) criteria for forbearance, we deny the request.

### C. Equal Access Obligations

46. We grant USTelecom's request for forbearance from application to incumbent LECs of all remaining equal access and dialing parity requirements for interexchange services, including those under section 251(g) and section 251(b)(3) of the Act.<sup>136</sup> As described in detail below, we find that this relief is warranted by the dramatic changes in the wireline voice market since these requirements were established, the regulatory disparity between incumbent LECs and their wireline competitors, and the costs associated with compliance.<sup>137</sup> To avoid disrupting customers' existing services, we adopt a "grandfathering" condition that will allow incumbent LEC customers who presubscribe to third-party long distance services as of the date of the Order to retain equal access and dialing parity services, as explained further below.

#### 1. Background

47. Equal access requirements ensure that stand-alone long distance service providers receive exchange access equivalent to that available to the incumbent LECs' long distance offerings or long

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<sup>136</sup> Appendix A to USTelecom's Petition states that it seeks forbearance from "[a]ll remaining legacy equal access obligations carried forward via 47 U.S.C. § 251(g)" for all incumbent LECs. 2014 USTelecom Forbearance Petition at App. A. However, the text of its Petition suggests that it also seeks relief from additional sources of equal access obligations and specifies that USTelecom seeks forbearance relief only as to interexchange services. *See* Petition at 35 ("This Petition does not request any forbearance from the requirement that LECs provide dialing parity for local calls."). In response to criticism by COMPTTEL that USTelecom failed to enumerate in its petition the specific equal access obligations from which it seeks forbearance, USTelecom's Reply clarifies that it seeks forbearance for incumbent LECs as to interexchange services from the equal access and dialing parity obligations arising from (1) the 1982 Modification of Final Judgment (MFJ) in the federal antitrust case against AT&T to the extent it initially imposed equal access obligations upon BOCs; (2) a separate consent decree and FCC orders, respectively, to the extent they imposed similar equal access requirements on GTW companies and (to a more limited extent) independent LECs; (3) section 251(g) of the Act "to the extent it imported 'the obligations of the [MFJ] . . . as well as Commission equal access requirements' 'imposed on LECs prior to the passage of the 1996 Act'"; and (4) section 251(b)(3)'s dialing parity requirement, which is implemented in 47 C.F.R. §§ 51.205, 51.209, 51.213, 51.215, "to the extent it codifies the equal access obligations for interexchange service." 2014 USTelecom Reply at 17-18; *cf.* COMPTTEL Opposition at 23-25; NTCA et al. Reply at 2-3 (asserting "[a]bsent any clarification, it is uncertain whether the [equal access] relief requested . . . would, for example, require consumers to 'dial around' to place calls through other long distance providers (e.g., presubscription and dialing parity)"). Although we agree with COMPTTEL that USTelecom's Petition should have been clearer, its text identifies the relief sought and in this case we find that to effectuate the substantive relief that we determine is warranted, it is necessary to grant the scope of relief as clarified in USTelecom's Reply. We emphasize that we forbear from the four requirements identified above only insofar as they impose equal access and dialing parity obligations on incumbent LECs as to interexchange services. For instance, we do not forbear from any equal access or dialing parity obligations as to local exchange services, nor do we forbear from any non-equal access obligations. We do not address rights or obligations other than equal access as to interexchange service for incumbent LECs; however, under section 10 we thoroughly evaluate the implications of forbearance on consumers to ensure their protection. *Cf.* NTCA et al. Reply at 3 (arguing that eliminating specific equal access requirements might also have consequences on interconnection and traffic exchange, call completion objectives, and consumer bills and intercarrier compensation arrangements and it should "be made more clear whether and to what degree the relief sought might cause significant confusion for consumers"). Additionally, NTCA et al. fails to specifically address how forbearance from equal access obligations would implicate the issues it lists, i.e., these requests are too vague to provide any basis for denying forbearance where we have otherwise found that forbearance is warranted. *Id.*

<sup>137</sup> 2013 USTelecom Forbearance Long Order, 28 FCC Rcd at 7636-37, para. 14; *see also* Section 272 Sunset Order, 22 FCC Rcd at 16452-54, para. 23, 16499, para. 121; *supra* para. 41.

distance affiliates.<sup>138</sup> Equal access includes the nondiscriminatory provision of exchange access services, dialing parity, and presubscription of interexchange carriers.<sup>139</sup> Prior to the implementation of equal access, competitive long distance carriers could not provide mass market long distance service that was comparable in quality to that provided by AT&T.<sup>140</sup> These requirements permit competitive stand-alone long distance providers to offer customers long distance service on an equal footing with the local exchange carrier or its long distance affiliate.<sup>141</sup> Equal access requirements also allow customers to select a stand-alone long distance carrier other than the independent LEC or provider affiliated with the

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<sup>138</sup> See *Petition of Puerto Rico Tel. Co., Inc. & Puerto Rico Tel. Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules*, WC Docket No. 10-52, Memorandum Opinion and Order, 25 FCC Rcd. 17704, 17717-18, para. 31 (2010) (*Puerto Rico Tel. Waiver*) (citing *MTS and WATS Market Structure, Phase III*, Report and Order, 100 FCC 2d 860 (1985) (subsequent history omitted); *Investigation into the Quality of Equal Access Services TDX Petition for Rulemaking*, Memorandum Opinion and Order, RM-5196, 60 Rad. Reg. 2d (P&F) 417, 419, (1986)); see also *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22025, para. 251 n.625, 22035, para. 271 (noting "equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis"); *United States v. American Telephone & Telegraph, Co.*, 552 F. Supp. 131, 195-200, 227-29 (D.C. Cir. 1982) (*MFJ*) (the equal access requirements originated from this antitrust case); *aff'd sub nom, Maryland v. United States*, 460 U.S. 1001 (1983) (describes the equal access obligations imposed on BOCs in greater detail). Equal access was a response to concerns regarding significant discrimination that had been "designed into the integrated telecommunications network." *MFJ*, 552 F. Supp. at 195. Under the 1982 *MFJ*, the BOCs were required to "provide to all interexchange carriers and information service providers exchange access, information access and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates." *Id.* at 227.

<sup>139</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22025, para. 251 n.625; see also *Puerto Rico Tel. Waiver*, 25 FCC Rcd. at 17717-18, para. 31; *272 Sunset Order*, 22 FCC Rcd at 16485-86, para. 92; *MFJ*, 552 F. Supp. at 228, 233. Exchange access services include, but are not limited to the "provision of network control signaling, answer supervision, automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities, and the provision of information necessary to bill customers." *MFJ*, 552 F. Supp. at 228; see also *Non-Accounting Safeguards Order* at 21965, para 122 n.280, 22025, para. 251 n.625; 47 U.S.C. § 61.26(a)(3). Dialing parity is the capability (usually implemented in the local exchange switch) that permits customers to presubscribe to the long distance provider of their choice by simply dialing "1" plus the ten digit telephone number they want to reach, without having to dial a substantial number of extra digits or experience significant dialing delays to have that call routed over that LEC's network. See *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19401, para. 4, 19405-06, para. 22 (1996) (*Second Local Competition Order*). Equal access allows customers to select a long distance carrier. Thereafter, all of the customer's long distance calls are routed to the carrier that the customer has chosen and the customer is said to be "presubscribed" to the carrier selected. See James Eisner and Katie Rangos, Industry Analysis Division, Common Carrier Bureau, FCC, *Distribution of Equal Access Lines and Presubscribed Lines* at 2 (Nov. 1997), [https://transition.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/eqacc-97.pdf](https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/eqacc-97.pdf).

<sup>140</sup> See *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7635, para. 12 n.32; see also *MFJ*, 552 F. Supp. at 195-97.

<sup>141</sup> See *272 Sunset Order*, 22 FCC Rcd at 16485-86, para. 92; see also *MFJ*, 552 F. Supp. at 195-97. Equal access rules were intended to ensure that the BOCs could not discriminate in favor of AT&T in the provision of exchange access (i.e., prevent BOCs from leveraging their dominance over a new entrant). See *2014 USTelecom Forbearance Petition* at 34. The divestiture opened up opportunities for stand-alone long distance providers, other than AT&T, to offer long distance service comparable in quality to AT&T and compete effectively for presubscribed long distance customers. See *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7635, para. 12; see also *MFJ*, 552 F. Supp. at 195-200. Subsequently, similar equal access requirements were imposed on the GTE local exchange companies pursuant to a separate consent decree and (to a slightly more limited extent) on independent LECs pursuant to FCC orders. See *Allnet Comm'ns Servs., Inc.*, Memorandum Opinion and Order on Reconsideration, 11 FCC Rcd 8519, 8526-27, para. 14 (1996); see also *United States v. GTE Corp.*, 603 F. Supp. 730, 743-46 (D.C. Cir. 1984). Thus, equal access requirements ultimately applied to all incumbent LECs, whether or not they were subject to a particular consent decree.

independent LEC as their presubscribed long distance carrier.<sup>142</sup> Section 251(g) preserves the equal access requirements in place prior to the passage of the Telecommunications Act of 1996 (1996 Act) until those requirements are explicitly superseded by subsequent Commission action.<sup>143</sup>

48. The 1996 Act also added section 251(b)(3), requiring that all LECs “provide dialing parity to competing providers of telephone exchange service and telephone toll service, and . . . permit such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”<sup>144</sup> As defined in the 1996 Act, dialing parity means “that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among two or more telecommunications services providers (including such local exchange carrier.)”<sup>145</sup> The long distance dialing parity requirements of section 251(b)(3) are very similar to those in the MFJ, although the requirements in the MFJ cover information services as well as telephone toll service, while section 251(b)(3) covers local exchange and telephone toll service.<sup>146</sup>

## 2. Discussion

49. USTelecom has demonstrated that the remaining equal access and dialing parity requirements are unnecessary to ensure just and reasonable long distance charges and practices or to protect consumers under sections 10(a)(1) and (a)(2).<sup>147</sup> As the Commission has previously found, the

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<sup>142</sup> See *2013 USTelecom Forbearance Long Order*, 28 FCC Rcd at 7635, para. 12 n.32.

<sup>143</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56; 47 U.S.C. § 251(g); see also *Section 272 Sunset Order*, 22 FCC Rcd at 16484, para. 90 n.261 (noting that equal access obligations arise “under longstanding Commission precedent and section 251(g) of the Act,” citing 47 U.S.C. § 251(g)); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, 15 FCC Rcd 385, 407, para. 47 (1999) (The Commission has interpreted this provision as a “continuation of the equal access and nondiscrimination provisions of the MFJ until superseded by subsequent regulations of the Commission.”); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22025, para. 251; *WorldCom v. FCC*, 288 F.3d 429, 432-33 (D.C. Cir. 2002) (finding that the pre-existing restrictions and obligations referenced in section 251(g) are not limited to MFJ obligations); *Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015, 4016, paras. 3-4 (2002). The Commission has made clear that continuing equal access obligations under longstanding Commission precedent and section 251(g) of the Act should protect against anticompetitive discrimination in connection with areas such as dialing parity, network control signaling, and automatic calling number identification. *Puerto Rico Tel. Waiver*, 25 FCC Rcd. at 17717-18, para. 31.

<sup>144</sup> 47 U.S.C. § 251(b)(3). “[S]ection 251(b)(3) creates a duty to provide dialing parity to competing providers of telephone exchange service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services. . . . [S]ection 251(b)(3) does not limit the types of traffic or services for which dialing parity must be provided to competing providers of telephone exchange and telephone toll service. The reference to these types of providers clearly shows that dialing parity must be provided for exchange service and toll service. Nothing in the statutory language limits the scope of the dialing parity obligation to exchange and toll services or distinguishes among the various types of telecommunications services in imposing the dialing parity obligations.” *Second Local Competition Order*, 11 FCC Rcd. at 19409, para. 29.

<sup>145</sup> 47 U.S.C. § 153(17).

<sup>146</sup> See *MFJ*, 552 F. Supp. at 227; see also *Second Local Competition Order*, 11 FCC Rcd at 19409, para. 29 (finding that section 251(g) preserves the equal access obligations that the BOCs and GTE had in their consent decrees, “but does not exempt them or other LECs from the toll dialing parity requirements” of section 251(b)(3)).

<sup>147</sup> USTelecom argues that, due to the development of intermodal competition with cable and mobile voice all-distance services and the “dwindling” stand-alone long distance market, forbearance from the remaining equal access requirements carried forward under section 251(g) and the 251(b)(3) requirement that LECs provide dialing parity for interexchange services is warranted. 2014 USTelecom Forbearance Petition at 23, 33-34, 36.

(continued . . .)

stand-alone long distance market has dramatically changed in the decades since the equal access requirements were established.<sup>148</sup> Today, customers for wireline voice services have increasingly popular choices that did not exist when the equal access requirements were established, such as interconnected VoIP from facilities-based and over-the-top providers.<sup>149</sup> Almost a decade ago, the Commission identified stand-alone long-distance as a “fringe” market for mass market services.<sup>150</sup> The record reflects that the trend toward all-distance voice services has continued since that time.<sup>151</sup> More specifically, no party disputes that demand for stand-alone long distance service for mass market or business customers has declined, nor has any commenter presented evidence that new customers are subscribing to the service with any frequency.<sup>152</sup> Therefore, we find that equal access obligations do not play the important role that they once did to safeguard interexchange competition.<sup>153</sup>

50. We also agree with USTelecom that the requirements were originally imposed to avoid the BOCs provisioning preferential access arrangements to AT&T immediately after the break-up of the Bell System and thereby discriminating against nascent competitors offering stand-alone long distance service.<sup>154</sup> It is not clear from the record that this concern, which was specific to the interoperability of

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Specifically, USTelecom asserts that equal access obligations are based on the outdated assumptions that stand-alone long distance services provided over traditional landlines constitute the primary forum for competition, and that these long distance services are dependent upon gaining direct, equitable access to independent LEC facilities in order to compete. *Id.* at 33-34; *see also* ITTA Comments at 7 (asserting “equal access requirements are not necessary to protect long distance competition in an environment in which wireless, VoIP, and traditional wireline providers aggressively compete through all-distance calling plans.”); Verizon Comments at 7 (stating “VoIP, and other service options have displaced traditional long-distance service, rendering obsolete equal access obligations...”).

<sup>148</sup> 2013 USTelecom Forbearance Long Order, 28 FCC Rcd at 7636-37, para. 14; *see also* Section 272 Sunset Order, 22 FCC Rcd at 16452-54, para. 23, 16499, para. 121; *see also supra* para. 41.

<sup>149</sup> 2013 USTelecom Forbearance Long Order, 28 FCC Rcd at 7637, para. 14 (noting equal access requirements do not reflect options involving bundled offerings, the availability of over-the-top VoIP services, dial-around long distance services, and calling cards). In the most recent *Local Competition Report*, the Commission found that, between December 2010 and December 2013, interconnected VoIP subscriptions increased at a compound growth rate of 15% and retail switched access lines declined at 10% a year. 2014 *Local Telephone Competition Report* at 1-2.

<sup>150</sup> Section 272 Sunset Order, 22 FCC Rcd at 16452-54, para. 23, 16499, para. 121; *see also supra* para. 41; *infra*. para. 52 (stating that although there are a number of retail customers that currently presubscribe to a stand-alone long distance service, these consumers are still a substantial minority in the grand scheme of voice service customers, even of independent LEC customers).

<sup>151</sup> 2014 USTelecom Forbearance Petition at 10 (citing FCC data that “as of June 30, 2013, there were 45 million interconnected VoIP subscriptions, including more than 36 million residential interconnected VoIP subscriptions”), 23, 28-36.

<sup>152</sup> *Cf.* 2014 USTelecom Forbearance Petition at 28-29, 32-34 (asserting that “consumers do not demand stand-alone long distance service today; and that “the equal access obligations rely on the outdated assumptions that stand-alone long distance services provided over traditional landlines constitutes the primary forum for long distance competition”). Nor does any commenter assert that equal access obligations have any broader relevance as competitive safeguards in enterprise long distance markets. By contrast, some commenters assert that section 272 and related obligations remain necessary to prevent BOCs from using their control over local bottleneck facilities to unfairly disadvantage competitors that rely on BOC access services, including special access, to compete in enterprise long distance markets. *See supra* Section III.B; *see also* Birch, et al. Opposition at 8-10, 14; COMPTTEL Opposition at 16-17.

<sup>153</sup> *Cf.* NASUCA Comments at 16-17 (asserting that “withdrawal of the equal access requirement — a protection for the vestiges of competition in the ‘fringe’ long distance market — will allow the largest carriers to extend their domination in this market, harming competition.”).

<sup>154</sup> 2014 USTelecom Forbearance Petition at 34.

interconnected public switched telephone network carriers immediately after the break-up of the Bell System, is still present in today's marketplace. Furthermore, we recognize that substantial disparity in dialing convenience negatively impacts consumers, but we find that the current popularity of all-distance service and bundling options results in the vast majority of customers not utilizing separate providers for local and long-distance service.<sup>155</sup> This development in communications service purchasing sharply mitigates our prior concerns about dialing convenience. Since the decline of the stand-alone long-distance market limits the relevance and utility of equal access obligations for competitive providers and their customers, we conclude, pursuant to sections 10(a)(1) and (2) of the Act, that enforcement of the remaining equal access and interexchange dialing parity requirements is no longer necessary to ensure just and reasonable mass market long distance charges and practices or to protect consumers.<sup>156</sup>

51. We further conclude that forbearance from the remaining equal access and dialing parity requirements is consistent with the public interest under sections 10(a)(3) and 10(b) of our rules. As stated above, equal access requirements for interexchange services provide highly limited and declining benefits in today's marketplace. Countervailing these benefits, we agree with USTelecom that these requirements impose meaningful costs.<sup>157</sup> First, we recognize that the interexchange equal access requirements are asymmetric and place incumbent LECs at a disadvantage compared to their competitors, even as the pro-competitive rationale for the requirements has dwindled. For example, incumbent LEC competitors such as cable and over-the-top VoIP providers do not have to provide equal access or face the costs associated with these obligations. Second, USTelecom has asserted that complying with equal access obligations imposes significant third-party verification and other processing costs when customers switch services.<sup>158</sup> We recognize the importance of reducing regulatory burdens where warranted, and we note that the Commission has already acted to reduce equal access compliance costs by forbearing from the equal access scripting requirement for all LECs.<sup>159</sup> The equal access scripting requirement obligated independent LECs to advise new consumers of the availability of stand-alone long distance service, and the Commission forbore from this requirement primarily because it found that the stand-alone long distance market was becoming a fringe market and consumers could obtain information on options to satisfy their voice communication needs in ways that did not exist when the Commission imposed this requirement.<sup>160</sup> We find that a similar rationale warrants taking this additional step to reduce regulatory burdens and reduce regulatory asymmetry where it no longer promotes our core values or is warranted by

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<sup>155</sup> See *Second Local Competition Order*, 11 FCC Rcd. at 19406, para. 22, 19440, para. 93 (finding that the dialing parity obligation would ensure “that each customer has the freedom and flexibility to choose among different carriers for different services without the burden of dialing access codes” and that “customer inconvenience [resulting from the dialing of extra digits] represents the barrier to effective competition Congress intend[ed] to eliminate”); *Puerto Rico Tel. Co. Petition for Temp. Waiver of the Four-Digit Carrier Identification Code Implementation Schedule*, DA 98-1159, 13 FCC Rcd 16695, 16696, para. 11 (1998) (concluding that implementation of dialing parity “is an expansion of the consumers’ choice of IXCs”); see also *MFJ*, 552 F. Supp. at 197 (noting that “substantial disparity in dialing convenience [] had a significant negative impact on competition”).

<sup>156</sup> We reiterate that USTelecom did not request, nor do we grant, any forbearance from the requirements for all LECs to provide dialing parity for local calls as required by section 251(b)(3), and we expect that safeguard to continue to ensure equivalent access to competitors offering bundled services without any degradation in dialing.

<sup>157</sup> 2014 USTelecom Forbearance Petition at 36. USTelecom claims that “the costs of [the equal access] requirements far outweigh the benefits.” *Id.* at 37.

<sup>158</sup> *Id.* at 36. USTelecom states that AT&T, Verizon, and CenturyLink estimate that they spend more than [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] annually “on third-party validation activities, in addition to considerable sums on processing presubscription changes.” *Id.*

<sup>159</sup> 2013 USTelecom Forbearance Long Order, 28 FCC Rcd at 7637-38, paras. 14-17.

<sup>160</sup> *Id.* at 7635, para. 12 & n.37, 7636-37, para. 14. Independent LEC customer service representatives were required to advise customers that they can obtain stand-alone long distance service and read lists of carriers that could provide such service if customers request this. *Id.* at 7638, para.17.

market conditions. Given the limited competitive benefits generated by these requirements at this point for new customers, we conclude that forbearance would also promote competitive market conditions by removing regulatory requirements and any resulting costs that affect only incumbent LECs still subject to the legacy requirements and not their competitors.<sup>161</sup> Accordingly, we find that forbearance from the remaining equal access and dialing parity obligations meets the requirements of section 10(a), with one exception, as discussed in the next paragraph.<sup>162</sup>

52. Because there are still a significant number of retail customers that presubscribe to a stand-alone long distance carrier, we conclude that the public interest and protection of consumers require that we condition this grant of forbearance to protect these existing customers.<sup>163</sup> According to USTelecom, customers presubscribing to a stand-alone long distance carrier made up approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of all BOC local exchange lines in 2013.<sup>164</sup> It is worth noting that these requirements apply to all incumbent LECs and USTelecom has only submitted numbers for BOCs.<sup>165</sup> USTelecom states because “ILEC lines accounted for only about 18 percent of voice connections in 2013, the overall share of voice connections that were ILEC lines presubscribed to stand-alone long distance carriers can be estimated at approximately. . . [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.”<sup>166</sup> We note that regardless of the appropriate percentage, the absolute number of BOC customers who presubscribe to a third-party long distance provider and therefore rely on equal access safeguards is approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL],<sup>167</sup> and it is reasonable to expect that a roughly proportionate number of independent incumbent LEC customers do the same.

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<sup>161</sup> 47 U.S.C. § 160(b).

<sup>162</sup> *Id.* § 160(a).

<sup>163</sup> 2014 USTelecom Forbearance Petition at 21, 35-36. USTelecom states that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of BOC lines were presubscribed to a long distance carrier, and among those presubscribed lines, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent were presubscribed to an independent long distance provider. *Id.* at 21.

<sup>164</sup> *Id.* at 21.

<sup>165</sup> *Id.* USTelecom has also not indicated whether this BOC data includes exchanges that were spun off into other entities since the implementation of equal access.

<sup>166</sup> *Id.* It includes within “voice connections” not only incumbent LEC and non-incumbent LEC switched access lines and interconnected VoIP but also mobile wireless. *Id.* at Appendix B, Decl. of Kevin W. Caves, at paras. 9-18, 92; *see also id.* at 21.

<sup>167</sup> To estimate the total number of BOC lines presubscribed to stand-alone long distance provider, we first calculate the percentage of customers presubscribing to a stand-alone long distance carriers by multiplying (1) the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] “percent of RBOC lines were presubscribed to a long distance provider” as of 2013, according to USTelecom; and (2) “among those presubscribed lines,” the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] “percent [that] were presubscribed to an independent long distance provider.” 2014 USTelecom Forbearance Petition at 21. Therefore, USTelecom data indicates that customers presubscribing to a stand-alone long distance carrier made up [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of all BOC local exchange lines in 2013. We then must identify the number of BOC local exchange lines by which to multiply this figure. To estimate the number of RBOC local exchange lines we turn to Form 477 data as of December 31, 2014, the most recent data available, and identify approximately 41.9 million BOC lines. We then multiply this line count by the percentage above, yielding an estimate of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] BOC lines presubscribed to a third-party long distance provider. We are limited in these calculations by relying on the best available data. The Commission permits incumbent LECs to file aggregated data for all of their operations within a state. Thus, in order to disaggregate the post-merger RBOC lines from the combined RBOC and independent LEC lines we assume that the relative size of the RBOC and incumbent LEC components of the combined entities have remained relatively constant overtime. We use the most recent data available in which the line counts for the entities were separate. See

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53. Without equal access requirements, the customers who have chosen a separate long distance provider could be forced to abandon their preferred long-distance service — presumably an involuntary move from their preferred provider to the incumbent LEC. Pursuant to the statutory directive of section 258 of the Act, the Commission has rules in place — rules that it vigorously enforces — to prevent the unauthorized switching of a customer’s selection of a provider of telephone service without that subscriber’s knowledge or permission (i.e., slamming).<sup>168</sup> USTelecom has not sought forbearance from section 258 or the Commission’s implementing rules, so it is a plausible reading of its forbearance petition that it did not intend to seek forbearance from supporting equal access for these legacy customers. In any event, USTelecom has not explained how the elimination of equal access for existing customers presubscribed to a stand-alone long distance provider would occur in a manner that provides fair notice and opportunity for choice to these customers. We recognize that few, if any, new customers would choose to presubscribe to stand-alone long distance service, but we find that the public interest requires that we avoid upsetting established customer expectations, consistent with our statutory duty to ensure there is not widespread slamming of such a large number of customers.<sup>169</sup>

54. Accordingly, we find that it is important to protect customers who previously chose to presubscribe to stand-alone long distance service and still want and expect to use that service. We find that the public interest necessitates requiring, as a condition for forbearance, that incumbent LECs must maintain equal access and dialing parity for existing customers presubscribed to a stand-alone long distance provider as of the effective date of this Order. This conditional relief will apply to the aforementioned existing customers until they terminate their current stand-alone long distance service (e.g., by subscribing to an all-distance voice service or by terminating voice service entirely), or until further forbearance is granted based on a more-developed record concerning existing customers.<sup>170</sup> We find that conditioning relief in this manner best balances established customer choice and expectations against the benefits of removing obsolete regulatory requirements by providing a glide-path to

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Table 7.3 in 2010 Trends in Telephone Service, and DL070\_CAT\_13 Loops as reported in USF2009LC13 at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/Monitor/usf13r08.zip](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/usf13r08.zip). Table 7.3 is based upon 2008 data. More specifically, we assume that (1) the relative size of Qwest compared to CenturyLink has remained relatively constant since 2008; (2) the relative size of Verizon West Virginia to Frontier has remained relatively constant since 2008; and (3) the relative size of Verizon’s operations in Maine, New Hampshire and Vermont that were acquired by Fairpoint have remained relatively constant since 2008.

<sup>168</sup> 47 U.S.C § 258; 47 C.F.R. §§ 64.1100-64.1195; *see, e.g., GPSPS, Inc., Forfeiture Order*, 30 FCC Rcd 7814 (2015) (issuing a monetary forfeiture in the amount of \$9,065,000 against GPSPS, Inc. for, *inter alia*, switching consumers’ preferred long distance carrier without authorization); *Verizon Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 9319 (Consumer and Gov’t Affairs Bur. 2014) (granting the complaint regarding the unauthorized change of subscriber’s telecommunications carrier); *LCR Telecommunications, LLC Verification of Orders for Telecommunications Service*, Order, 19 FCC Rcd 23163 (Enforcement Bur. 2004) (entering into a \$500,000 consent decree concerning apparent slamming violations); *America’s Tele-Network Corporation Apparent Liability for Forfeiture*, Order of Forfeiture, 16 FCC Rcd 22350 (Enforcement Bur. 2001) (fining America’s Tele-Network Corporation \$1,020,000 for slamming); *Business Discount Plan, Inc. Apparent Liability for Forfeiture*, Order of Forfeiture, 15 FCC Rcd 14461 (Enforcement Bur. 2000) (assessing a forfeiture of \$2,400,000 for repeated violations of slamming rules).

<sup>169</sup> While we can envision circumstances in which it would be appropriate to altogether eliminate equal access (i.e., even for existing customers), USTelecom has not provided any explanation of how this would occur in a manner that is consistent with the public interest. For instance, a customer may be presubscribed to a carrier offering a particularly favorable international calling plan because she makes frequent calls to foreign countries. If this customer were abruptly switched to the incumbent LEC’s general all-distance domestic plan with higher international rates, the customer would find herself subject to an unexpectedly high bill from the incumbent LEC.

<sup>170</sup> We clarify that incumbent LECs need not maintain equal access and dialing parity protections for “grandfathered” customers if those customers seek long-distance voice service from a third-party provider other than the provider from which they receive service on the date of this Order.

termination of interexchange equal access requirements for incumbent LECs. To the extent that an incumbent LEC seeks to end equal access for customers presubscribed to a stand-alone long distance provider as of the effective date of this Order, it may seek forbearance from the appropriate statutory and regulatory provisions, presumably with a fact-specific showing as to how these customers would be provided with adequate notice and not otherwise treated in a manner that triggers the concerns animating the Act's and the Commission's anti-slamming policies. In the meanwhile, we expect that the relief from having to support equal access as to any customer not already presubscribed to a standalone long-distance provider will afford substantial relief to incumbent LECs, as requested by USTelecom in its forbearance petition.

#### **D. Unbundling of 64 Kbps Narrowband Voice Channels in Fiber Loop Overbuilds**

55. USTelecom requests forbearance on a nationwide basis for all incumbent LECs from application of section 51.319(a)(3)(iii)(C) of the Commission's rules,<sup>171</sup> which requires unbundling of a 64 kbps voice-grade channel to provide narrowband services over fiber where an incumbent LEC retires a copper loop it has overbuilt with a fiber-to-the-home or fiber-to-the-curb loop.<sup>172</sup> The record indicates that the 64 kbps unbundling requirement imposes a burden on fiber deployment that is disproportionate to the "very limited" and decreasingly relevant purpose the requirement serves. Accordingly, as explained in detail below, we grant forbearance relief from the requirement, subject to a narrow, targeted "grandfathering" condition.<sup>173</sup>

##### **1. Background**

56. The 1996 Act imposes a number of duties on incumbent LECs designed to open local telephone markets to competition. Among these is the duty under section 251(c)(3) of the Act to provide competing telecommunications carriers "nondiscriminatory access to network elements on an unbundled basis" at cost-based rates.<sup>174</sup> The Commission is charged with determining which network elements must be provided on this basis, taking into account, "at minimum," whether "failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."<sup>175</sup> The unbundling rules adopted under section 251(c)(3) generally do

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<sup>171</sup> While USTelecom mistakenly cites to "47 C.F.R. § 51.219(a)(3)(iii)(c)," *see* 2014 USTelecom Forbearance Petition at Appx. A, the substantive requirement from which it seeks relief is clear from the context of its Petition. *See generally id.* at 51-60; *see also* COMPTTEL Opposition at 25 (correctly identifying "Section 51.319(a)(3)(iii)(C)" as the provision from which USTelecom seeks relief); Granite Opposition at 10 (same). We thus find that USTelecom has adequately identified the "requirement" from which it seeks relief. *See* 47 C.F.R. § 1.54(a)(1).

<sup>172</sup> 2014 USTelecom Forbearance Petition at 51-60. *See also* 47 C.F.R. § 51.319(a)(3)(iii)(C). We hereinafter refer to this provision as "the 64 kbps unbundling requirement" or "64 kbps requirement." Also, for purposes of this proceeding, the terms "fiber-to-the-home loops" and "fiber-to-the-curb loops" are referred to collectively as "fiber loops."

<sup>173</sup> Because the Commission "shall" grant forbearance where, as is the case here, the section 10(a) criteria are met, *see* 47 U.S.C. § 160(a), we decline to defer consideration of this issue to a separate rulemaking proceeding as Pennsylvania PUC requests. *See* Pennsylvania PUC Reply at 8; *see also* *Verizon v. FCC*, 770 F.3d at 969 ("We have held that the Commission cannot defend against [a] forbearance petition by pointing to an upcoming rulemaking.").

<sup>174</sup> *See* 47 U.S.C. § 251(c)(3); *see also id.* § 252(d)(1) (directing State commissions to set rates for unbundled network elements "based on the cost" of providing the element). Commission rules establish a forward-looking "total element long run incremental cost" (TELRIC) methodology for States to use in setting these rates. *See* 47 C.F.R. §§ 51.501-51.515.

<sup>175</sup> *See* 47 U.S.C. § 251(d)(2); *see also* *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 FCC Rcd 2533, 2545-49, paras. 20-28 (*Triennial Review Remand Order*) (clarifying the impairment standard used by the Commission in its unbundling analysis).

not require unbundling of fiber loops to serve mass market customers.<sup>176</sup> However, an incumbent LEC must provide unbundled access to a 64 kbps voice-grade channel over fiber where it has overbuilt a copper loop with a fiber loop and retired the copper.<sup>177</sup> The Commission has found that lack of access to an incumbent LEC fiber loop in these limited circumstances would impair a competitive carrier in its provision of narrowband voice services it had been providing over the unbundled copper loop.<sup>178</sup> In essence, this “very limited” requirement is intended to prevent incumbents from exercising their “sole control” over the disposition of copper loops to disrupt competitors’ provision of narrowband services that employ these loops.<sup>179</sup> No similar requirement applies for “greenfield” fiber builds, i.e., deployments of fiber loops to locations not previously served by a loop facility.

## 2. Discussion

57. The Commission adopted the 64 kbps fiber unbundling requirement more than decade ago to protect competition for narrowband services in what was then the “largely theoretical” scenario of a copper loop being replaced with fiber.<sup>180</sup> Now that the transition from copper to fiber is well underway, the Commission is better positioned to evaluate the need for the 64 kbps unbundling requirement as a competitive safeguard. The record indicates that this requirement imposes costs that may impede the retirement of copper loops and the overall transition from copper to fiber. In light of this record, and of our duty under section 706 of the 1996 Act to promote broadband deployment, we forbear from enforcement of the 64 kbps unbundling requirement. In particular, we grant relief from the requirement as to future requests for access to unbundled channels under the condition that incumbents maintain access to those channels that are already in use.

58. As noted above, the 64 kbps unbundling requirement was intended as a “very limited” safeguard to protect narrowband voice competition as networks transition from copper to fiber. More than a decade later, it has become clear that this requirement in fact imposes costs on fiber deployment that are far disproportionate to its narrow role. Verizon asserts that the physical equipment it uses in its wire centers to provision these channels costs approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per wire center.<sup>181</sup> Assuming other incumbents would face similar costs, collectively incumbents would incur [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in equipment costs alone to carry out this required unbundling if they were to replace significant amounts of copper in their networks with fiber. Verizon further explains that “one vendor has discontinued [the unbundling] equipment” and that “in the face of declining demand for narrowband services, there’s no guarantee that equipment will be available in the future.”<sup>182</sup> A lapse in the availability of equipment that enables the required unbundling of 64 kbps channels could impose significant additional compliance costs on Verizon and other incumbents, to a degree that may be difficult to quantify.

59. Notwithstanding these costs, we must consider whether the 64 kbps unbundling requirement remains necessary to guard against unreasonable rates for voice services or to protect consumers of these services. We find that it is necessary for neither purpose. The 64 kbps unbundling

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<sup>176</sup> See 47 C.F.R. § 51.319(a)(3)(ii), (iii).

<sup>177</sup> See *id.* § 51.319(a)(3)(iii)(C).

<sup>178</sup> See *Triennial Review Order*, 18 FCC Rcd at 17144, para. 277.

<sup>179</sup> *Id.* at 17145, para. 277.

<sup>180</sup> *Id.* at 17144, para. 276.

<sup>181</sup> Letter from Maggie McCready, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene F. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (filed Oct. 22, 2015) (Verizon Oct. 22, 2015 *Ex Parte* Letter); see also 2014 USTelecom Reply at 24.

<sup>182</sup> Verizon Oct. 22, 2015 *Ex Parte* Letter at 2.

requirement is intended to preserve competitors' access to an unbundled loop element — a UNE — to provide narrowband services when an incumbent replaces a copper loop with fiber.<sup>183</sup> Some of the advantages of UNEs as a mode of competitive entry into local telecommunications markets are that incumbents must provide UNEs at cost-based rates<sup>184</sup> and must combine them with each other and with purchased wholesale inputs upon request.<sup>185</sup> UNE-based entry therefore “can be accomplished at a lower initial capital investment than full facilities ownership and provides greater flexibility to develop services than does resale.”<sup>186</sup> That said, competitive LEC commenters do not argue that the 64 kbps unbundling requirement is necessary chiefly to preserve their access to UNEs. While there may be some demand for these 64 kbps channels, commenters argue that the 64 kbps unbundling requirement remains necessary primarily because it is “part of the regulatory backstop” that enables competitors to obtain commercial wholesale platform services, also called “UNE-P replacement services,” from incumbents on favorable terms.<sup>187</sup> COMPTTEL contends that 64 kbps unbundling requirement “backstop” enables competitive LECs “to obtain negotiated rates for voice-grade connections” to serve customers at locations where copper loops have been replaced with fiber.<sup>188</sup> Access Point et al. cites as further support for this view the Commission's observation in the *Qwest Phoenix Forbearance Order* that “there is little evidence . . . that the BOCs or incumbent LECs have voluntarily offered wholesale services at competitive prices once regulatory requirements governing wholesale prices were eliminated.”<sup>189</sup> From this statement, Access Point et al concludes that “absent the section 271 [unbundling] obligations and the 64 kbps [requirement], ILECs are unlikely to offer any competitively priced wholesale substitutes.”<sup>190</sup> We find this line of argument unavailing for several reasons. The relief from section 251(c)(3) unbundling we grant today is far narrower in scope than that granted with respect to particular geographic markets in the earlier forbearance proceedings discussed in the *Qwest Phoenix Forbearance Order*.<sup>191</sup> In the *Qwest Omaha Forbearance Order*, for instance, the Commission relieved Qwest from a wide range of section 251(c)(3)-based loop and transport unbundling obligations in wire centers in the Omaha area where “sufficient facilities-based competition” was demonstrated.<sup>192</sup> Here we forbear only from the “limited” 64 kbps unbundling requirement, leaving intact the much broader local competition safeguards of section 251 and its implementing rules.

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<sup>183</sup> See *Triennial Review Order*, 18 FCC Rcd at 17144-45, para. 277. The term “UNEs” refers throughout this section exclusively to network elements made available under section 251(c)(3) and its implementing rules.

<sup>184</sup> See 47 C.F.R. Part 51 Subpart F.

<sup>185</sup> See 47 C.F.R. §§ 51.315 (combining UNEs), 51.309(e)-(f) (commingling UNEs with wholesale inputs).

<sup>186</sup> See *Triennial Review Order*, 18 FCC Rcd at 17008, para. 36.

<sup>187</sup> See COMPTTEL Opposition at 28; see also Letter from Eric J. Branfman, Partner, Morgan Lewis & Bockius LLP, to Marlene H. Dortch, Secretary, Federal Communication Commission, WC Docket No. 14-192, at 5 (dated June 11, 2015) (Xchange et al. *Ex Parte* Letter); NASUCA Comments at 18; Pennsylvania PUC Reply at 7-8; Michigan Internet and Telecommunications Alliance *Ex Parte* Letter at 1-2; Granite Dec. 7, 2015 *Ex Parte* Letter; INCOMPAS Dec. 10, 2015 *Ex Parte* Letter at 2.

<sup>188</sup> COMPTTEL Opposition at 26.

<sup>189</sup> Access Point et al. Comments at 7 (citing *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8640, para. 34, n.105).

<sup>190</sup> Access Point et al. Comments at 7-8; see also Granite Oct. 23, 2015 *Ex Parte* Letter.

<sup>191</sup> See *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8640, para. 34.

<sup>192</sup> See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19443, para. 57, n.149; see also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) (granting similar relief to ACS of Anchorage with respect to wire centers in the Anchorage area).

60. Moreover, there are a number of additional statutory and regulatory safeguards in place to guard against any unreasonable or unreasonably discriminatory charges or practices that could potentially arise in the absence of the 64 kbps unbundling requirement. First, section 251(c)(4) requires an incumbent LEC to offer on a wholesale basis — at a statutorily prescribed wholesale rate — any telecommunications service it offers at retail.<sup>193</sup> This requirement effectively caps the prices that incumbents can charge for wholesale voice services, and we agree with USTelecom that it preserves competitive LECs’ ability “to provide voice services to customers without building their own network facilities.”<sup>194</sup> In addition, the discontinuance of either a wholesale or a retail telecommunications service that serves all or part of a community requires Commission approval.<sup>195</sup> More generally, both incumbent and competitive LECs remain subject to sections 201 and 202 of the Act, under which carriers are subject to penalty for conduct that is unjust, unreasonable or unjustly or unreasonably discriminatory.<sup>196</sup> Finally, intermodal competition from cable and other competing providers — while not demonstrated here to a degree that could provide a standalone basis for the requested forbearance — may operate as a constraint on incumbent rates and practices in at least some geographic and product markets.<sup>197</sup> In particular, we find it plausible that the threat of losing customers to intermodal competitors could provide a business incentive for incumbents to offer commercial wholesale arrangements to competitive LECs on attractive terms.<sup>198</sup> Taken together, these factors provide a sufficient “backstop” to ensure that incumbents continue offering wholesale voice services to competitors on terms that are not unreasonable or unreasonably discriminatory.

61. In addition, the record indicates that current and projected future demand for the UNEs the 64 kbps requirement makes available is extremely modest. Verizon explains that it has received few orders for unbundled 64 kbps channels over fiber where it has retired copper and that it “currently sells only approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] unbundled voice-grade loops across all of [its] wire centers (including those served by copper), representing a small, declining percentage of voice lines that [it] sell[s].”<sup>199</sup> This assertion accords with data USTelecom presents indicating that demand for analog UNE loops — which would include the copper loops the 64 kbps UNE is intended to replace upon their retirement — has sharply declined in recent years and continues to shrink.<sup>200</sup> This evidence suggests that demand for unbundled 64 kbps voice-grade channels is unlikely to increase significantly on a per-wire center basis as incumbents accelerate their deployment of fiber and retirement of overbuilt copper.

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<sup>193</sup> See 47 U.S.C. § 251(c)(4); see also *id.* § 252(d)(3).

<sup>194</sup> 2014 USTelecom Forbearance Petition at 59.

<sup>195</sup> See 47 U.S.C. § 214(a); see also *Emerging Wireline Order*, 30 FCC Rcd at 9427, para. 101 (clarifying that “a carrier must seek our approval if its elimination of a wholesale service results in the discontinuance, reduction or impairment of service to a community”). In the recent *Emerging Wireline Order*, the Commission established as a limited-term condition on the discontinuance of any TDM-based commercial wholesale platform service that occurs as part of a TDM-to-IP transition that the carrier replace the service with an IP-based alternative on reasonably comparable rates, terms and conditions. *Id.* at 9443, para. 132. This condition is an interim rule that “will remain in place only until the special access proceeding is resolved.” *Id.* at para. 131.

<sup>196</sup> See 47 U.S.C. §§ 201, 202.

<sup>197</sup> See *supra* para. 6 (acknowledging “broad market trends associated with the services at issue” in USTelecom’s petition).

<sup>198</sup> See 2014 USTelecom Reply at 23; Verizon Nov. 9, 2015 *Ex Parte* Letter at 2-3.

<sup>199</sup> Verizon Oct. 22, 2015 *Ex Parte* Letter at 1-2.

<sup>200</sup> See 2014 USTelecom Forbearance Petition at 57 (stating that the number of BOC analog UNE loops in service “declined by approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] percent from 2003-2013” and that such loops “represented only about [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of the 135 million access lines in service as of 2013”).

62. Consistent with evidence that the need for voice-grade UNE loops are in decline, competitive LEC commenters attempt to justify retention of the 64 kbps requirement primarily as a “regulatory backstop” rather than as a source of UNEs. One such commenter in fact admits that it “has not ordered a stand-alone 64 kbps voice channel” pursuant to the rule.<sup>201</sup> Based on the foregoing evidence of limited demand for unbundled 64 kbps channels over fiber, we find that the availability of these UNEs does not constrain the rates and practices of incumbents beyond the extent to which these rates and practices are already constrained by the various competitive and regulatory safeguards discussed above. Accordingly, we find that continued enforcement of the 64 kbps requirement is not “necessary” per section 10(a)(1).

63. For similar reasons, we find that the 64 kbps requirement is not necessary to protect consumers per section 10(a)(2). Commenters assert that this requirement is necessary largely to protect business customers such as chains of convenience stores or gas stations that operate at numerous locations, often geographically dispersed, that require only a handful of telephone lines at each location.<sup>202</sup> Access Point et al. argues that the 64 kbps requirement “backstop” is necessary to enable their members to obtain “reasonably priced” wholesale platforms to serve to these customers, particularly at their more remote locations where competitive alternatives are less likely to be viable.<sup>203</sup> As explained above, we find that there remains an adequate “backstop” of competitive and regulatory safeguards in the absence of the 64 kbps requirement to ensure that incumbents continue to provide wholesale voice services on terms that are not unreasonable. These safeguards are also sufficient to protect consumers, including the business customers that competitive LEC commenters identify as the primary beneficiaries of the 64 kbps requirement. Furthermore, Granite observes that many of these customers’ locations “are not candidates for deployment of fiber facilities, including [by] the ILEC.”<sup>204</sup> Because the 64 kbps requirement comes into play only where an incumbent LEC has deployed a fiber loop, it is difficult to see how the requirement could provide any benefit for customers at such locations.

64. We also find that, as a general matter, forbearance from the 64 kbps requirement would serve the public interest per section 10(a)(3). As discussed above, we find the 64 kbps requirement imposes costs on incumbents that are disproportionate to the limited purpose the requirement serves. While competitive LEC commenters argue that incumbents exaggerate these costs,<sup>205</sup> we have found that the 64 kbps requirement is not serving a current need that could outweigh the true costs of provisioning these voice-grade channels over fiber.

65. Moreover, granting relief from the 64 kbps unbundling requirement would further the goals of section 706 of the 1996 Act,<sup>206</sup> which “explicitly directs the FCC to ‘utiliz[e]’ forbearance to ‘encourage the timely deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.’”<sup>207</sup> The unbundling rules the Commission adopted for mass market fiber

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<sup>201</sup> Granite Oct. 23 *Ex Parte* Letter at 2; *see also* USTelecom Nov. 17, 2015 *Ex Parte* Letter at 3 (“As a practical matter concerning leverage, note that Granite has never ordered a 64 kbps channel, and nothing in the record suggests that it has invested in network facilities to be able to add the switching and transport necessary to provide voice service.”).

<sup>202</sup> *See* Granite Opposition at 7; COMPTTEL Opposition at 26; Xchange et al. *Ex Parte* Letter at 1-2.

<sup>203</sup> Access Point et al. Comments at 5.

<sup>204</sup> Granite Opposition at 3; *see also id.* at 16 (“Even the RBOCs are unable to justify the massive investment necessary to extend fiber facilities to the bulk of the small business locations in their respective ILEC markets.”).

<sup>205</sup> *See* COMPTTEL Opposition at 27; Granite Opposition at 21.

<sup>206</sup> *See* 47 U.S.C. § 1302.

<sup>207</sup> *See Earthlink v. FCC*, 462 F.3d 1, 8-9 (D.C. Cir. 2006) (alteration in original); *see also Open Internet Order*, 30 FCC Rcd at 5806, para. 437.

loops in 2003 are also informed by section 706.<sup>208</sup> In substantially relieving incumbents of the obligation to unbundle these loops, the Commission reasoned that permitting incumbents to enjoy the full revenue potential of mass market fiber loops they deploy creates a deployment incentive that outweighs the competitive benefits of unbundling.<sup>209</sup> The 64 kbps unbundling requirement is a “very limited” exception to this approach, one which is intended only to preserve access to narrowband UNEs where fiber replaces copper.<sup>210</sup> The record suggests, however, that this requirement has come to impose a burden on fiber loop deployment to a degree that the Commission was unable to anticipate when it adopted the requirement. In light of this record evidence, we find it appropriate to rebalance the competition policy goals that underlie the 64 kbps unbundling requirement with the broadband deployment objectives of section 706. Based on the record, we find that, while the 64 kbps unbundling requirement has not foreclosed the deployment of overbuild fiber loops,<sup>211</sup> it dampens incentives for incumbents to deploy these loops by making it considerably more costly to retire the overbuilt copper.<sup>212</sup> Accordingly, we find that any minimal competitive benefits the requirement may continue to provide are not sufficient to outweigh the potential for this unbundling obligation to impede the transition to next-generation fiber networks capable of delivering enormous benefits for consumers.<sup>213</sup>

66. In light of the above, we find that USTelecom’s petition satisfies the section 10(a) criteria and that relief from the 64 kbps unbundling requirement is therefore warranted. Accordingly, we forbear from enforcement of the requirement as to any future request for access to an unbundled 64 kbps channel. We condition this relief, however, on incumbents continuing to provide access to unbundled 64 kbps channels that are already in use. In this scenario, the incumbent has already incurred the equipment costs and related costs of provisioning the channel, which appear to be the most significant costs associated with the unbundling obligation.<sup>214</sup> Meanwhile, a competitive LEC that has already requested and obtained access to an unbundled 64 kbps channel will have reasonably incurred costs in putting the channel to use, such as connecting the channel to a self-provisioned switch. Relieving an incumbent of its unbundling obligation in these circumstances would risk stranding the competitor’s investment with no clear offsetting benefit to the incumbent. Accordingly, we find it is appropriate to require incumbents to maintain access to channels made available under the 64 kbps unbundling requirement that are in use as of the adopted date of this order.

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<sup>208</sup> See *Triennial Review Order*, 18 FCC Rcd at 17145, para. 278.

<sup>209</sup> See *id.* at 17141, para. 272.

<sup>210</sup> See *id.* at 17145, para 277.

<sup>211</sup> Cf. COMPTTEL Opposition at 27 (observing that “Verizon deployed its FiOS network to 18 million homes despite having to comply with the 64 kbps channel requirement”).

<sup>212</sup> See Verizon Oct. 22, 2015 *Ex Parte* Letter; 2014 USTelecom Forbearance Petition at 58-59; see also *Emerging Wireline Order*, 30 FCC Rcd at 9381, para. 12 (acknowledging the “highly beneficial planned network changes” involved in copper retirement), n.42 (“Verizon, for instance, estimates that the costs of maintaining parallel copper facilities and the consumer welfare benefits from its existing fiber deployment each run in the hundreds of millions of dollars.”). FSN/AICC speculates that forbearing from the 64 kbps unbundling requirement will encourage “Verizon to continue to rip out and degrade existing copper, knowing that it will be leaving no alternative means for competitors to compete.” FSN/AICC Dec. 11, 2015 *Ex Parte* Letter at 4-5. The Commission recently updated its network change notification rules to prevent copper facilities from being “de facto retired” without adequate notice to affected persons. *Emerging Wireline Order*, 30 FCC Rcd at 9421-23, paras. 89-92. The Commission reiterated that pursuant to section 251(c)(5) of the Act, the network change notification process is “based on notice” rather than “based on approval.” *Id.* at 9382, para. 14 (citing 47 U.S.C. § 251(c)(5)).

<sup>213</sup> See, e.g., *Emerging Wireline Order*, 30 FCC Rcd at 9373-74, para. 2 (discussing some of the many benefits being delivered to consumers with the deployment of “new networks and services”).

<sup>214</sup> See Verizon Oct. 22, 2015 *Ex Parte* Letter at 2.

## E. Computer Inquiry Requirements

67. To the extent described below, we find that enforcement of the remaining *Computer Inquiry* requirements is no longer necessary under sections 10(a)(1) and (2) of the Act, and that forbearance is in the public interest under section 10(a)(3). We grant USTelecom's request for relief subject to a discontinuance process to ensure that competitive providers that may still use the legacy inputs have adequate notice and an opportunity to transition to other service arrangements. The *Computer Inquiry* requirements that remain applicable to the BOCs as of the filing of the petition encompass comparably efficient interconnection (CEI) and open network architecture (ONA) requirements that competitive enhanced service providers (ESPs) use to provide narrowband or other enhanced services. USTelecom requests immediate relief from these requirements, or, as an alternative, it requests forbearance from requiring the BOCs to unbundle any new narrowband elements while allowing them the ability to retire CEI/ONA elements subject to the section 214 discontinuance process.<sup>215</sup> For similar reasons, we also forbear from application of the requirement that facilities-based carriers provide network access for narrowband or other services offered by ESPs.<sup>216</sup>

### 1. Background

68. In its *Computer II* proceedings, the Commission required AT&T (and later the BOCs) to offer enhanced services through structurally separate subsidiaries.<sup>217</sup> In the subsequent *Computer III* proceedings, the Commission determined that the benefits of structural separation were outweighed by the costs and that non-structural safeguards could protect competing ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies of structural separation.<sup>218</sup> The Commission

<sup>215</sup> See 2014 USTelecom Forbearance Petition at 73-84.

<sup>216</sup> See *infra* paras. 68-70 for description of requirements.

<sup>217</sup> *Computer II Final Decision*, 77 FCC 2d 384. The Commission required other facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs governed by Title II of the Act, referred to as the All-Carrier Rule. *Id.* at 474-75, para. 231. These carriers must offer the underlying basic service at the same prices, terms, and conditions to all ESPs, including their own enhanced services operations. The Commission ordered mandatory detariffing of interstate interexchange access services, and competitive LECs need not offer the basic transmission services underlying their enhanced services pursuant to tariff. *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (adopting mandatory detariffing of most domestic interstate, interexchange services); Order on Reconsideration, 12 FCC 15014 (1997); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999), *aff'd*, *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

<sup>218</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*Computer III FNPRM*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon.*, 14 FCC Rcd 21628 (1999)

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adopted CEI and ONA as non-structural safeguards that require the BOCs to offer nondiscriminatory interconnection to basic transmission services that competitors purchase to provide enhanced services, primarily to end users that use narrowband telephone technology.<sup>219</sup> The Commission has identified the following as examples of narrowband enhanced services: voice mail, store and forward services, fax, data processing, alarm monitoring, and dial-up gateways to on-line databases.<sup>220</sup>

69. The BOCs' CEI plans detail how they provide unaffiliated ESPs with interconnection to basic transmission services on the same terms and conditions that the BOCs use for their own enhanced services offerings.<sup>221</sup> The BOCs' ONA plans, based on the architecture of the BOCs' networks as they existed in the late 1980s, offer ESPs unbundled, tariffed access to basic transmission services regardless of whether the BOCs' affiliated enhanced services offerings use the same components. BOCs must comply with CEI and ONA requirements in order to offer enhanced services on an "integrated" basis (*i.e.*, through the regulated telephone company) instead of through a structurally separate affiliate as required by section 64.702 of the Commission's rules.<sup>222</sup> The Commission has modified or eliminated many of the *Computer III* non-structural separation requirements. In 1999, it streamlined the CEI requirements.<sup>223</sup> The Commission has also granted forbearance from application of *Computer Inquiry* requirements to the extent that the carriers offer broadband services.<sup>224</sup> The *Computer Inquiry* rules also required that non-

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(*Computer III Further Remand Reconsideration Order*); see also *Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, Public Notice, 16 FCC Rcd 5363 (2001) (collectively referred to as *Computer III*).

<sup>219</sup> The Commission defined basic services as the offering of "a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information." *Computer II Final Decision*, 77 FCC 2d at 415-16, para. 83, 420, para. 96. Enhanced services, in turn, were defined as services that "combine[] basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information." *Id.* at 387, para. 5. In other words, an "enhanced service is any offering over the telecommunications network which is more than a basic transmission service." *Id.* at 420, para. 97. The Commission has concluded that the services the Commission has considered "enhanced services" are "information services" as defined in the Communications Act. See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21955, para. 102; 47 U.S.C. § 153(24).

<sup>220</sup> *Computer III FNPRM*, 13 FCC Rcd at 6042, para. 1; *Computer III Further Remand Order*, 14 FCC Rcd at 4291-92, n.11 (listing examples of enhanced services); *Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13758, 13768-70, paras. 68-75 (1995) (*CEI Plan Order*) (discussing alarm monitoring services as enhanced services).

<sup>221</sup> *Review of Wireline Competition Bureau Data Practices, 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*, Notice of Proposed Rulemaking, WC Docket No. 10-132, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 26 FCC Rcd 1579, 1580, para. 3 & n.9 (2011) (*CEI/ONA Notice*) (listing nine CEI parameters); *Computer III Further Remand Order*, 14 FCC Rcd at 4291, para. 4; *Computer III Further Remand Reconsideration Order*, 14 FCC Rcd at 21629, para. 6; see *Computer III Phase I Order*, 104 FCC 2d at 1039-42, paras. 155-65.

<sup>222</sup> 47 C.F.R. § 64.702.

<sup>223</sup> *Computer III Further Remand Order*, 14 FCC Rcd at 4297, paras. 11-12.

<sup>224</sup> See, e.g., *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21318, para. 45 (2007); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd at 11729, 11760, para. 44 (2008) (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, 20 FCC Rcd 14853, 14875-76, para. 41 (2005), *aff'd*, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. 2007)); *Petition of AT&T, Inc. for Forbearance Under 47*

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BOCs facilities-based wireline carriers (a) offer as telecommunications services the basic transmission services underlying their own enhanced services offerings; and (b) offer those telecommunications services on a nondiscriminatory basis to all enhanced service providers, including their own enhanced services operations.<sup>225</sup>

70. USTelecom asserts that ESPs are not dependent on incumbent LEC transmission facilities for any narrowband service, and that the carriers cannot charge unreasonable rates for inputs that are mostly obsolete.<sup>226</sup> It also asserts that, although the CEI/ONA requirements no longer serve any meaningful purpose, the BOCs incur significant costs in order to comply with them.<sup>227</sup>

## 2. Discussion

71. We find that forbearance from the CEI/ONA requirements and the related *Computer Inquiry* transmission access requirements applicable to facilities-based carriers satisfies section 10(a)(1) and (2) and is consistent with the public interest under section 10(a)(3) subject to a reasonable discontinuance process. To the extent that consumers use enhanced services, such as voice mail and alarm monitoring, USTelecom maintains that ESPs can provide such services over cable and wireless platforms without access to traditional phone lines.<sup>228</sup> Indeed, there is no evidence in the record about demand, the need for specific CEI/ONA offerings, or quantities of arrangements that ESPs may still require from the LECs to serve customers other than a limited amount of use for voice mail and alarm monitoring functions, and commenters do not dispute that some functionalities that ESPs require for specific narrowband products are available on alternative platforms.<sup>229</sup> There is also no evidence indicating that the BOCs and facilities-based carriers continue to face any demand for their own

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*U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services; Petition of BellSouth Corporation for Forbearance 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18733-36, paras. 52-58 (2007); Verizon Telephone Companies' Petition for Forbearance from Title II and *Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law*, WC Docket No. 04-440, News Release (rel. Mar. 20, 2006); *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440, Order, 20 FCC Rcd 20037 (2004); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008).

<sup>225</sup> *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231; see *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198, 205 (D.C. Cir. 1982).

<sup>226</sup> 2014 USTelecom Forbearance Petition at 76-81.

<sup>227</sup> *Id.* at 82-83.

<sup>228</sup> *Id.* at 78; 2014 USTelecom Reply at 27.

<sup>229</sup> FSN/AICC Opposition at 5-6 (stating that FSN previously commented to the Commission in 2012 that FSN uses ONA elements such as stutter dial tone and ANI triggers and has over 10,000 customers that rely upon FSN's access to ONA elements in the Verizon service territory; further stating that the alarm industry is dependent upon narrowband services and facilities provided by the BOCs). The record does not contain any other specific evidence indicating that ESPs may use ONA offerings. FSN/AICC also assert that the Commission should include a list of conditions (e.g., surrogates like USTelecom cannot file petitions and carriers themselves must file; carriers must file on a service by service or element by element basis; carriers must provide 120 days' notice to all affected carriers and must indicate which of that carrier's end user customers/locations will be implicated; the Commission should grandfather any existing carrier agreements) if it establishes a process to allow incumbent LECs to withdraw services on a case-by-case basis. FSN/AICC Dec. 11, 2015 *Ex Parte* Letter at 5-6. FSN/AICC have not provided any support for this list of broad-based requirements or explained to which offerings they would apply or their relationship to the instant forbearance, and we do not adopt them here. As explained below, the discontinuance process on which we condition relief will ensure ESPs receive notice of any service changes.

narrowband or other enhanced services such that they have an incentive to discriminate against ESPs in favor of their own offerings. At the same time, USTelecom asserts that the requirements impose material costs, particularly in employee time to maintain the CEI/ONA processes in the event they receive a request for inputs.<sup>230</sup>

72. In light of the lack of record information on the extent to which the *Computer Inquiry* requirements still apply to any type of usable offering or that they provide value to any customer segment beyond certain limited functions, we find that the best course is to grant the relief that USTelecom seeks. Because the elimination of basic narrowband or other service elements currently available under the ONA plans and through the transmission access requirement applicable to facilities-based LECs could impact ESPs that have limited alternatives for these services, and their customers, we condition forbearance relief on the carriers following a process that is identical to the streamlined section 214 discontinuance process, pursuant to which a carrier that wishes to discontinue service must notify affected customers and file an application with the Commission, and pursuant to which the application is automatically granted after the period of time specified in 47 C.F.R. § 63.71 unless the Commission has notified the applicant that the grant will not automatically be effective.<sup>231</sup>

73. AICC states that 25 percent of the industry uses “non-POTS technology” to provide enhanced services to their customers.<sup>232</sup> It further states that the rest of the industry relies on both telephone and cable inputs to provide enhanced services, but does not provide more specific information about the extent to which wireline inputs are still the predominant service on which the alarm industry relies.<sup>233</sup> To the extent that alarm or other industry providers rely on ONA or LEC inputs to provide services, the discontinuance process will allow them to determine whether alternatives are available in particular circumstances, and will provide time for them to transition to other arrangements.

74. USTelecom states that the Commission “also should forbear from any requirements - beyond the standard section 214 discontinuance process, if and when applicable - that impede carriers from retiring ONA elements.”<sup>234</sup> USTelecom does not elaborate on the circumstances in which it thinks the section 214 discontinuance process would not apply, and we do not address its contention here. USTelecom also does not identify the requirements beyond the section 214 discontinuance process to which it is referring, and we emphasize that we do not grant forbearance beyond what we have affirmatively addressed here. As stated above, we condition our grant of forbearance from enforcement of the remaining *Computer Inquiry* requirements on carriers following a process that is identical to the section 214 discontinuance process established under our rules for all ONA inputs that BOCs seek to discontinue and for *Computer Inquiry* transmission inputs that non-BOCs seek to discontinue.<sup>235</sup> The

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<sup>230</sup> 2014 USTelecom Forbearance Petition at 82-83.

<sup>231</sup> See 47 U.S.C. § 214; 47 C.F.R. § 63.71. The procedure that we adopt is identical to the streamlined discontinuance process established under 47 C.F.R. § 63.71 and section 214 of the Act, but to be clear we adopt this process as a condition of forbearance and not under our authority pursuant to section 214. There is no evidence in the record that ESPs have a current need for CEI plans to serve customers. CEI arrangements were originally intended to be an interim measure used until the BOCs implemented ONA and are likely obsolete. See *Computer III FNPRM*, 13 FCC Rcd at 6077, para. 61. We therefore do not condition withdrawal of the CEI plans on the discontinuance process outlined above.

<sup>232</sup> AICC Reply at 2. We interpret POTS technology to refer to narrowband telephone service.

<sup>233</sup> *Id.*

<sup>234</sup> 2014 USTelecom Forbearance Petition at 84.

<sup>235</sup> In the *Computer Inquiry* proceedings, the Commission required non-BOC facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis and to offer the underlying basic service at the same prices, terms, and conditions to all ESPs, including their own enhanced services operations. *Computer II*, 77 FCC 2d at 474-75, para. 231. The condition that we adopt as to “transmission inputs” applies specifically to these *Computer II* non-BOC transmission inputs.

discontinuance process we adopt as a condition will allow for the orderly termination of transmission offerings that are offered pursuant to the *Computer Inquiry* requirements. This condition is necessary for the promotion of competition among providers of telecommunications services and furthers the public interest because it will allow ESPs and their customers that may still depend on narrowband service inputs time to transition to other arrangements. Although we find forbearance warranted as a blanket matter, this condition also ensures that we will have the opportunity to evaluate discontinuances of previously-mandated inputs on a granular basis to ensure that the public interest is protected. This action is consistent with our standard stated above to ensure an overall regulatory plan to protect consumers that may still rely on a narrowband service while the market progresses forward.<sup>236</sup>

## **F. Requirements to Provide Access to Newly-Deployed Entrance Conduit at Regulated Rates**

75. USTelecom seeks forbearance for all incumbent LECs from application of the requirements in sections 224 and 251(b)(4), but only as to the obligation to provide access to newly-deployed entrance conduit to competitive LECs at regulated rates.<sup>237</sup> For purposes of this request, USTelecom defines “entrance conduit” as “conduit from the property line to a commercial building.”<sup>238</sup> USTelecom seeks forbearance from this limited aspect of the section 251(b)(4) access requirement in both “greenfield” and “brownfield” situations.<sup>239</sup> As discussed below, we grant this request for greenfield (new developments) conduit access, but deny it for brownfield situations (existing developments). While incumbents and competitors are similarly situated with respect to construction of facilities in new developments, we find that incumbents’ pre-existing advantage in brownfield deployments merits different treatment.

### **1. Background**

76. Section 251(b)(4) imposes on each local exchange carrier an obligation to provide access “to the poles, ducts, conduits, and rights of way of such carrier to competing providers of telecommunications services” under the rates, terms, and conditions established in section 224.<sup>240</sup> Section 224 provides that access to poles, ducts, conduits, and rights of way must be given at rates, terms, and conditions, that are “just and reasonable,” and allows the Commission to take “such action as it deems appropriate and necessary” to enforce these rates.<sup>241</sup> The Commission has held that only competing providers are entitled to access under these provisions, and incumbent LECs “have no right of access” under section 224, though where an incumbent LEC already has access, “they are entitled to rates, terms and conditions that are ‘just and reasonable’ in accordance with section 224(b)(1).”<sup>242</sup> Although the terms

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<sup>236</sup> For purposes of clarity, we note that the forbearance relief we grant from the remaining *Computer Inquiry* requirements does not impact the regulatory treatment of services at issue in the Commission’s pending special access rulemaking proceeding. See generally *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05- 25, RM-10593, Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order and FNPRM*); Report and Order, 28 FCC Rcd 13189 (WCB 2013); Order on Reconsideration, 29 FCC Rcd 10899 (WCB 2014).

<sup>237</sup> 2014 USTelecom Forbearance Petition at 85-94. USTelecom notes that the relief sought in this section of the Petition “does not affect conduit access rights or obligations attaching to conduits that merely pass properties.” *Id.* at 86 n.264.

<sup>238</sup> 2014 USTelecom Reply at 28.

<sup>239</sup> 2014 USTelecom Forbearance Petition at 85.

<sup>240</sup> 47 U.S.C. § 251(b)(4).

<sup>241</sup> *Id.* § 224(b)(1).

<sup>242</sup> *Pole Attachments Order*, 26 FCC Rcd at 5328, para. 202.

of the statute impose this access obligation on an array of pole attachments,<sup>243</sup> USTelecom's request for relief as plead in the petition is narrowly circumscribed — limited solely to the access requirement as it extends to incumbents' newly-constructed conduit extending from the property line to a commercial building, rather than to *all* incumbent poles, ducts, conduits, and rights of way.<sup>244</sup>

77. Despite the limited nature of USTelecom's request, however, its arguments in support of the narrow request are aimed more broadly. USTelecom focuses primarily on the asymmetrical nature of the access obligation generally,<sup>245</sup> arguing that forbearance here would “improve competition” by eliminating the asymmetry and “correcting . . . competitive distortions.”<sup>246</sup> Competitors respond that the Commission has consistently rejected the “tilted playing field” argument when incumbents have raised it in efforts to make the entire access obligation reciprocal,<sup>247</sup> and note that incumbents are “subject to numerous regulatory requirements for which there is no reciprocal obligation for competitive carriers.”<sup>248</sup>

78. With respect to this conduit access issue, competitors also take issue with the sufficiency of the petition as plead, and the lack of supporting evidence USTelecom provided for its claims.<sup>249</sup> We agree that bald statements such as “experience shows” that competitors are on equal footing with incumbents in terms of the ability to deploy conduit,<sup>250</sup> or that “one would expect that” competitors would act to incumbents' financial disadvantage,<sup>251</sup> without more, are insufficient to support the truth of the notion asserted, much less a grant of forbearance. However, we find that the totality of the record in this proceeding is sufficient to support our findings here.

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<sup>243</sup> Section 224 defines “pole attachments” as “any attachment by a . . . provider of telecommunications service to a pole, duct, conduit, or right-of-way . . .” 47 U.S.C. § 224(a)(4).

<sup>244</sup> 2014 USTelecom Forbearance Petition at 86 n.264, 89-90, and App. A, A-3; 2014 USTelecom Reply at 28-29.

<sup>245</sup> 2014 USTelecom Forbearance Petition at 90-94. For example, USTelecom states that “Eliminating the current asymmetric unbundling obligation by forbearing from requiring ILECs to provide access to conduit would serve the public interest . . .” without narrowing that assertion to the specific situation for which it seeks relief in the petition. *Id.* at 90-91.

<sup>246</sup> *Id.* at 93. Similarly, some commenters' objections are phrased as if the relief sought were for *all* conduit access, rather than limited to *entrance* conduit. *See, e.g.*, INCOMPAS Dec. 10, 2015 *Ex Parte* Letter at 1 (“existing policies that provide access to conduit are a crucial factor in encouraging deployment”); Michigan Internet and Telecommunications Alliance *Ex Parte* Letter at 1 (“It is essential that CLECs continue to have access to conduit . . . . Access to conduit is [a] fundamental . . . requirement that should not be cast aside.”); Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 1 (filed Dec. 8, 2015) (Public Knowledge Dec. 8, 2015 *Ex Parte* Letter) (“access to conduits is a critical means of promoting competitive broadband deployment . . . . In light of the lack of specific evidence that conduit sharing impeded deployment, the Commission should not forbear” from these requirements).

<sup>247</sup> Birch et al. Opposition at 25-26; COMPTTEL Opposition at 34-35.

<sup>248</sup> Birch et al. Opposition at 26-27; COMPTTEL Opposition at 35.

<sup>249</sup> ACA Comments at 2-4; Birch et al. Opposition at 4, 25-27; COMPTTEL Opposition at iv-v, 34-36; XO Comments at 2-7; XO Reply at 1-2; *see also* Letter from Thomas Cohen, Counsel for XO Communications LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (filed Dec. 9, 2015) (XO Dec. 9, 2015 *Ex Parte* Letter); Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-92, at 2 (filed Dec. 10, 2015) (ACA Dec. 10, 2015 *Ex Parte* Letter).

<sup>250</sup> 2014 USTelecom Forbearance Petition at 89.

<sup>251</sup> 2014 USTelecom Reply at 31. At times, USTelecom also seems to contradict itself; for example, asserting both that “the overall imbalance between conduit infrastructure deployed by ILECS and . . . CLECS . . . has narrowed considerably” (Petition at 89), and that USTelecom views “information regarding CLECs' current conduit deployment as misleading . . .” (Reply at 30-31).

## 2. Discussion

79. We find that USTelecom has met the forbearance standard with respect to newly-constructed entrance conduit access in greenfield deployment situations.<sup>252</sup> Competitors contend that they are not on equal footing with incumbents when seeking to deploy conduit in both greenfield and brownfield areas, arguing that incumbents have “a more favorable environment in which to build entrance conduit than competitors in terms of costs as well as relationships with owners, prospective customers, and municipalities,” which gives incumbents “an overall advantage over competitive carriers.”<sup>253</sup> However, in the limited circumstance defined by USTelecom’s request for relief, we agree with USTelecom that both incumbents and competitive LECs are subject to the same permitting and legal requirements for the construction of entrance conduit in new developments, and that both have incentives to build out entrance conduit in greenfield areas when it is justified by new revenue opportunities.<sup>254</sup>

80. As the Commission previously found in the context of unbundling fiber loops, both incumbents and competitors ““must negotiate rights-of-way, respond to bid requests for new . . . developments, obtain fiber optic cabling and other materials, develop deployment plans, and implement construction programs”” in greenfield deployment situations.<sup>255</sup> In that context, the Commission determined that competitors were not impaired without access to greenfield deployments.<sup>256</sup> We find the same reasoning persuasive here, particularly given the limited nature of the relief USTelecom seeks, and equally convincing under the section 10 standard<sup>257</sup> — i.e., we find that there is no current need for the statute’s conduit access requirements in newly-deployed incumbent LEC entrance conduit in greenfield situations, either to ensure just and reasonable charges and practices or to protect consumers.<sup>258</sup> We also

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<sup>252</sup> By way of clarification, we understand “newly-deployed entrance conduit” in this context to mean new conduit that an incumbent LEC constructs, *after* adoption of this Order, from the property line to a commercial building located in a new development. As stated above, we grant the forbearance request for newly-deployed entrance conduit in greenfield situations, and deny the request for newly-deployed entrance conduit in brownfield situations.

<sup>253</sup> XO Comments at 10; *see also* Letter from Thomas Cohen, Counsel for XO Communications LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (filed Nov. 10, 2015) (XO Nov. 10, 2015 *Ex Parte* Letter); XO Dec. 9, 2015 *Ex Parte* Letter at 2-3; INCOMPAS Dec. 10, 2015 *Ex Parte* Letter at 1.

<sup>254</sup> 2014 USTelecom Forbearance Petition at 90; *see also* 2014 USTelecom Reply at 33 (“[Competitors’] arguments about [incumbents’] access to preexisting rights-of-way and longstanding relationships with local franchising authorities are inapt with respect to entrance conduit. Because entrance conduit is built on private, rather than public, property, franchise and right-of-way considerations do not apply.”).

<sup>255</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunication Capability*, CC Docket No. 98-147, Order on Reconsideration, 19 FCC Rcd 20293, 20298-99, at para. 12 (quoting the *Triennial Review Order*, 18 FCC Rcd at 17143, para. 275) (2004) (subsequent history omitted) (*Triennial Review FTTC Reconsideration Order*).

<sup>256</sup> *Id.* at 20299, para. 12.

<sup>257</sup> That is, we agree with CenturyLink that the reasoning that supports “the Commission’s previously nationwide limitations on [incumbent] sharing obligations, based on economic principles and its observation of industry trends” also supports a finding that USTelecom’s requested forbearance as to greenfields meets the section 10(a) forbearance standard, notwithstanding a lack of “market-by-market data and analysis.” *See* Letter From Craig J. Brown, Senior Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192 at 2 n.3 (filed Dec. 14, 2015) (CenturyLink Dec. 14, 2015 *Ex Parte* Letter) (citing the *Triennial Review Order* and *Triennial Review FTTC Reconsideration Order*). *Cf.* ACA Dec. 10, 2015 *Ex Parte* Letter at 1 (objecting to lack of market-specific data); XO Dec. 9, 2015 *Ex Parte* Letter at 2 (same); *see also supra* Section II.B (describing forbearance standard).

<sup>258</sup> Although we deny forbearance from incumbent LEC obligations related to poles, ducts, conduits, and rights-of-way under section 271 checklist item 3 elsewhere in this Order (*see* Section III.A.2.b, *supra*), the limited nature of the relief granted here, for one specific type of “pole attachment” as defined in section 224 (rather than all types of

(continued . . .)

find that the public interest will be served by removing cost barriers to additional facility deployment.<sup>259</sup> With regard to newly-deployed conduit to greenfields, as CenturyLink observes, incumbents “do[] not have a ubiquitous network in a greenfield development.<sup>260</sup> We find persuasive CenturyLink’s assertion that it “routinely faces multiple competitors to construct network in new commercial buildings, and [that it] frequently loses out to another broadband provider, such as Level 3, XO, or the local cable company.”<sup>261</sup> We therefore grant USTelecom’s request with respect to access to newly-deployed incumbent LEC entrance conduit, constructed from the property line to a commercial building, in greenfield deployments.<sup>262</sup>

81. We deny forbearance with respect to brownfields. USTelecom contends that incumbent LECs do not have an advantage associated with constructing new entrance conduit in existing brownfield developments in which incumbents already provide telephone service, claiming that the disparate access obligation is unwarranted in brownfields as well.<sup>263</sup> It argues that incumbents face the same hurdles as competitors in deploying new entrance conduit in brownfields: that both incumbents and competitors “must negotiate with the building owner (who may be reluctant to have its building grounds torn up to

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attachments), and the consistency of this outcome with the Commission’s prior findings on unbundling of fiber loops in greenfield areas, distinguishes the grant of forbearance here for new entrance conduit access obligations.

<sup>259</sup> This action is consistent with the goals of section 706 of the Telecommunications Act of 1996, which “explicitly directs the FCC to ‘utiliz[e]’ forbearance to ‘encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.’” *EarthLink v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006) (alteration in original); *see also* 47 U.S.C. § 1302.

<sup>260</sup> *See* CenturyLink Dec. 14, 2015 *Ex Parte* Letter at 3; *see also id.* at 3 (“Of course, it is no cheaper for an [incumbent] to dig a trench and lay conduit than for any other provider.”); *but cf.* INCOMPAS Dec. 10, 2015 *Ex Parte* Letter at 1 (arguing that “forbearance should be denied because “incumbents have tremendous advantages over new entrants, who are building their networks for the first time”); ACA Dec. 10, 2015 *Ex Parte* Letter at 3 (asserting that “incumbents have a ubiquitous presence in commercial buildings, serve most, if not all, customers in a building, usually have a long standing relationship with the building owner, and may even have access to the building at no charge”); XO Dec. 9, 2015 *Ex Parte* Letter at 2-3; Public Knowledge Dec. 8, 2015 *Ex Parte* Letter at 1; Michigan Internet and Telecommunications Alliance *Ex Parte* Letter at 1 (Dec. 10, 2015). As to brownfields, as discussed below we agree that incumbent advantages warrant denial of forbearance, but we do not find these arguments persuasive as to newly-deployed greenfield entrance conduit.

<sup>261</sup> CenturyLink Dec. 14, 2015 *Ex Parte* Letter at 3; *see also id.* at 2 (noting that “Level 3 is a larger provider of Ethernet services than CenturyLink or Verizon” and that “a number of cable companies and other CLECs (including XO) are major providers of such services as well”). Because of a lack of evidentiary support, we are not persuaded by arguments that competitors are less likely than incumbents to have sufficient demand in greenfield situations to justify entrance conduit construction, that incumbents’ access to capital warrants different regulatory treatment in this context, that building owners or developers with properties in both greenfield and brownfield areas will “mak[e] the incumbent their default choice,” or that incumbent LECs face less risk of a developer or building owner that decides to charge an unreasonable fee in new developments. *See* ACA Dec. 10, 2015 *Ex Parte* Letter at 2-4; XO Dec. 9, 2015 *Ex Parte* Letter at 3. We find assertions about incumbent LEC advantages in the transport market — although highly relevant to questions regarding regulation of the transport market itself — are insufficiently related to the instant issue to warrant denial of forbearance. *Cf.* XO Dec. 9, 2015 *Ex Parte* Letter at 3; Dec. 10, 2015 *Ex Parte* Letter at 3. Finally, we decline to adopt the request that if we forbear as to newly-deployed entrance conduit in greenfields, we should “require that an ILEC, before beginning the process of planning for and deploying new entrance conduit in these areas, provide direct notice to all telecommunications and cable providers offering service in the area with specific details about the project, including the contact information of the property developer and other persons overseeing the build” because ACA has not explained why such requirements are necessary or how they would work in practice. ACA Dec. 10, 2015 *Ex Parte* Letter at 4.

<sup>262</sup> We agree with USTelecom that “[b]ecause entrance conduit is built on private, rather than public, property, franchise and right-of-way considerations do not apply.” 2014 USTelecom Reply at 33.

<sup>263</sup> 2014 USTelecom Forbearance Petition at 85, 91.

place new conduit) . . . must engage in the same construction process . . . [and] must restore the property when the conduit construction is complete.”<sup>264</sup> Further, it argues “if an ILEC constructs this conduit, competitors . . . are immediately entitled to demand access to the conduit at regulated — generally below market — rates.”<sup>265</sup> It claims that the “asymmetric obligations reduce ILEC incentives to proactively deploy new infrastructure, given the considerable risk that competitors will be able to coopt much of the value of their capital investment.”<sup>266</sup> In contrast, competitors note that the Commission has rejected the argument that incumbents and competitors are similarly situated in terms of access to conduit and poles, and has not required competitive LECs to provide reciprocal access in their conduit space to incumbent carriers because of the incumbents’ pre-existing advantage.<sup>267</sup> One commenter further asserts that the fact that paying a conduit rental charge to an incumbent LEC may be more cost effective for a competitor than building its own conduit does not mean that the incumbent LEC will not recover its deployment costs.<sup>268</sup>

82. USTelecom essentially relies on the asymmetry of the conduit access requirement to justify the relief it seeks. But the asymmetrical nature of the access requirement in sections 251(b)(4) and 224 is not an unintended consequence, as evidenced by the fact that the Commission has consistently declined to extend this incumbent LEC obligation to competitors.<sup>269</sup> While the petition seeks to eliminate access requirements rather than recognizing a reciprocal obligation here, the implications of the Commission’s prior rejection of the “uneven playing field” argument still hold: imposing different obligations on different classes of providers is not inherently unfair, and can be justified in particular circumstances.<sup>270</sup>

83. As in the loop unbundling context, we find that access to brownfield entrance conduit “merit[s] slightly different treatment than greenfield[s].”<sup>271</sup> By the very nature of their incumbency, incumbent LECs have an advantage in brownfield deployments that justifies continued application of

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<sup>264</sup> 2014 USTelecom Reply at 32-33.

<sup>265</sup> 2014 USTelecom Forbearance Petition at 92. “Even providers that are well-positioned to construct their own entrance conduits . . . to previously unserved buildings . . . frequently choose instead to obtain access rights from the ILEC at artificially low regulated rates.” *Id.* at 90.

<sup>266</sup> *Id.* at 90.

<sup>267</sup> Birch et al. Opposition at 25-26; COMPTTEL Opposition at 34-35.

<sup>268</sup> XO Comments at 6-7; XO Nov. 15, 2015 *Ex Parte* Letter at 2-3. *See also* Birch et al. Opposition at 25, noting that “the formula for determining conduit access rates already takes into account the incumbent LEC’s level of investment” (citing 47 U.S.C. § 1.1409(e)(3)).

<sup>269</sup> *See, e.g., Applications Filed for the Transfer of Control of tw telecom inc. to Level 3 Communications, Inc.*, WC Docket No. 14-104, Memorandum Opinion and Order, 29 FCC Rcd 12842, 12850-51, paras. 21-22 (Wireline Comp. Bur. 2014) (declining CenturyLink’s request to impose a condition requiring Level 3 to grant “reciprocal” conduit access to incumbent LECs); *Pole Attachments Order*, 26 FCC Rcd at 5332-33, n.643 (declining to “grant incumbent LECs an access right under [S]ection 251(b)(4) that does not exist under [S]ection 224”); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 16103-04, para. 1231 (1996) (“We cannot infer that section 251(b)(4) restores to an incumbent LEC access rights expressly withheld by section 224. We give deference to the specific denial of access under section 224 over the more general access provisions of [S]ection 251(b)(4).”)

<sup>270</sup> *See* Birch et al. Opposition at 26 (taking issue with USTelecom’s claims that “experience shows” that competitors and incumbents have the same ability to deploy conduit: “The only justification for the Commission to alter this policy would be compelling evidence that incumbent LECs and competitors . . . are on an equal footing when seeking to deploy new conduit, but USTelecom has failed to proffer such evidence.”)

<sup>271</sup> *Triennial Review FTTC Reconsideration Order*, 19 FCC Rcd at 20298-99, para. 12 (quoting the *Triennial Review Order*, 18 FCC Rcd at 17143, para. 275).

these requirements.<sup>272</sup> Unlike greenfield areas, where no service provider has an established presence, incumbents already provide some services in brownfield areas. While USTelecom correctly notes that incumbents' "access to preexisting rights-of-way and longstanding relationships with local franchising authorities" in brownfield areas are irrelevant in the context of new entrance conduit, which is constructed on private property,<sup>273</sup> that does not mean that incumbents' preexisting presence and relationships with property owners in brownfield areas where they provide telephone or other services is completely irrelevant in the context of new entrance conduit. We agree with competitors that, in brownfields, incumbents have "a more favorable environment in which to build entrance conduit" due to existing relationships with property owners and prospective customers.<sup>274</sup> Thus, we cannot find that continued application of the entrance conduit access obligation in brownfield areas is "not necessary to ensure that charges, practices, classifications or regulations" are just and reasonable, and "not necessary to protect consumers," or that granting the requested forbearance in brownfield areas would serve the public interest.

84. The Commission has previously held that "the absence of a statutory right to nondiscriminatory . . . access for incumbent LECs under section [224] is not incompatible with the Commission's exercise of authority to ensure just and reasonable rates, terms and conditions in situations where incumbent LECs are able to obtain access . . . ."<sup>275</sup> USTelecom has not presented any reason to revisit this conclusion. We therefore deny USTelecom's request with respect to incumbent LECs' brownfield conduit access obligations under sections 251(b)(4) and 224.

#### **G. Prohibition Against Using Contract Tariffs for Business Data Services In All Regions**

85. USTelecom seeks forbearance from certain of the Commission's Part 61 and Part 69 rules, the operation of which has effectively been suspended for new petitioners, in order for price cap incumbent LECs to obtain Phase I pricing flexibility in all price cap service areas.<sup>276</sup> Through this forbearance, USTelecom requests that price cap incumbent LECs be allowed to offer business data services<sup>277</sup> via contract tariffs in all price cap LEC service territories not already subject to Phase I or II pricing flexibility without making the established showings the Commission has applied in the past.<sup>278</sup> For reasons discussed below, we conclude that USTelecom's forbearance request with respect to business data services fails to meet the requirements of section 10 of the Act. Accordingly, we deny this aspect of its Petition.

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<sup>272</sup> *Triennial Review Order*, 18 FCC Rcd at 17039-40, para 89 (noting that operational and entry barriers affect competitive LECs more so than incumbents because incumbent LECs have significant "[f]irst-mover advantages").

<sup>273</sup> 2014 USTelecom Reply at 33 (responding to COMPTTEL Opposition at 33, Birch et al. Opposition at 24; XO Comments-Kuzmanovski Declaration, at paras. 16-17).

<sup>274</sup> XO Comments at 10; XO Nov. 15, 2015 *Ex Parte* Letter at 2.

<sup>275</sup> *Pole Attachments Order*, 26 FCC Rcd at 5332-33, para. 212.

<sup>276</sup> Specifically, USTelecom seeks forbearance from provisions of Rules 61.3(o), 61.55(a), 69.709(b), 69.711(b), 69.727(a), and 69.705. See 2014 USTelecom Forbearance Petition at 99. Additionally, the Petition asks "[i]f necessary, [to forbear from] the requirement that packet-switched or optical transmission services must be subject to price cap regulation in order to be eligible for pricing flexibility." *Id.*

<sup>277</sup> USTelecom uses the term "business data services" to reference "tariffed TDM special access (DS0 and above) services and tariffed enterprise broadband services." 2014 USTelecom Forbearance Petition at 94, n.283. We note that the Bureau uses the term business data services in this order to refer to all TDM and packet-based dedicated business services.

<sup>278</sup> See *id.* at 94.

## 1. Background

86. The Commission originally premised the availability of Phase I pricing flexibility on a showing “that competitors have made irreversible investments in the facilities needed to provide the services at issue, thus discouraging incumbent LECs from successfully pursuing exclusionary strategies.”<sup>279</sup> Grant of Phase I pricing flexibility enabled a carrier to offer contract tariffs and volume and term discounts, but required the carrier to maintain its generally available price-cap constrained tariffed rates.<sup>280</sup> The Commission designed the pricing flexibility framework based on a competitive showing, concluding that if regulatory relief were granted prematurely, it “might enable price cap LECs to (1) exclude new entrants from their markets, or (2) increase rates to unreasonable levels.”<sup>281</sup>

87. In 2012, the Commission suspended further grants of pricing flexibility under its pricing flexibility rules on an interim basis, concluding that the rules have not worked as expected and were “likely resulting in both over- and under-regulation of special access in parts of the country.”<sup>282</sup> The Commission is currently in the process of evaluating the rules applicable to special access or business data services in the Business Data Services Rulemaking, utilizing a mandatory data collection, which will allow the Commission to conduct a multi-faceted market analysis of the business data services market that may be used to either modify the existing pricing flexibility rules or adopt a new set of pricing flexibility rules.<sup>283</sup> The analysis underway in the Business Data Services Rulemaking is based on a significantly larger data set than is before us in this proceeding. The decisions in this order are based on the record of this proceeding, which, as discussed below, is lacking in many respects. Our resolution of the forbearance request here cannot and does not prejudice the outcome of the Business Data Services Rulemaking.

## 2. Discussion

88. Below we evaluate whether USTelecom’s request meets each prong of the statutory forbearance test, and we find that it does not.

89. First, we conclude that USTelecom has failed to meet the requirements of section 10(a)(1) of the Act because it has not demonstrated that enforcement of the Phase I pricing flexibility rules is no longer necessary to ensure just and reasonable rates and nondiscriminatory charges and practices.<sup>284</sup> USTelecom argues that enforcement of these rules is not necessary to ensure just and reasonable rates and nondiscriminatory charges because price cap incumbent LEC business data services will remain generally available through current tariffs as carriers with Phase I pricing flexibility are required to continue to make such offerings.<sup>285</sup> USTelecom asserts further that this standard has been met because price cap incumbent LECs’ business data services will be available at reduced rates and on more flexible terms and conditions because the relief would allow and carriers will offer these services in both individually negotiated contract tariffs and under generally available rates, terms and conditions.<sup>286</sup> In

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<sup>279</sup> *Access Charge Reform et al.*, CC Docket No. 96-262 et al., Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14258, para. 69 (1999) (*Pricing Flexibility Order*), *petitions for review denied*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

<sup>280</sup> *See Pricing Flexibility Order*, 14 FCC Rcd at 14258, para. 69.

<sup>281</sup> *Pricing Flexibility Order*, 14 FCC Rcd at 14257, para. 68.

<sup>282</sup> *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, 27 FCC Rcd 10557, 10568 para. 22 (2012) (*Pricing Flexibility Suspension Order*).

<sup>283</sup> *Data Collection Order and FNPRM*, 27 FCC Rcd at 16352, para. 80.

<sup>284</sup> *See* 47 U.S.C. § 160(a)(1).

<sup>285</sup> *See* 2014 USTelecom Forbearance Petition at 101.

<sup>286</sup> *See id.* at 102.

response, Birch et al. assert that this contention is “plainly inconsistent with the Commission’s holding in the *Pricing Flexibility Order* that sufficient competition (and not just a tariff filing requirement) is needed to prevent incumbent LECs from using contract tariffs as a means of harming competition.”<sup>287</sup> Competitive providers have alleged in addition that the discounts and benefits that USTelecom cites are often conditioned on a customer agreeing to term and volume commitments, which encourage so-called “lock up” requirements and undermine competition.<sup>288</sup>

90. While persuasive evidence of competition is not inherently necessary to a grant of forbearance under section 10,<sup>289</sup> given the nature of the pricing rules in question and the fact that USTelecom’s main justifications for the requested relief are its various assertions that substantial competition in the relevant market exists and will consequently ensure that the requested relief will benefit customers through the availability of competitive alternatives, we are necessarily more reliant on a showing of competition in our analysis of this portion of USTelecom’s petition than we are in our consideration of USTelecom’s other requests. In particular, the substantive requirements from which USTelecom seeks relief were put in place specifically to ensure the existence of effective competition in individual markets — Metropolitan Statistical Areas (MSAs) or the non-MSA parts of a carrier’s study area — prior to grant of the regulatory relief that USTelecom’s Petition seeks to make available to all price cap carriers without further review.<sup>290</sup> While USTelecom appears to seek forbearance from this requirement of individual market analyses,<sup>291</sup> it does not expressly acknowledge this in the balance of its petition beyond its general characterization of the relief sought,<sup>292</sup> nor does it articulate a defensible rationale for abandoning this approach to measuring competition. Notwithstanding, it bears the burden of demonstrating that forbearance from the requirement of a local showing of competition meets the section 10 criteria, a burden it fails to meet.

91. USTelecom asserts that the Commission’s concerns with broad grants of pricing flexibility identified in the *Pricing Flexibility Order* can be addressed by demonstrating competitors’ irreversible investments in the facilities needed to provide the services at issue.<sup>293</sup> USTelecom’s evidence of competition is limited to broad generalizations about a “highly competitive,” “radically altered” national marketplace with “explosive growth,” associated with an “explosion” in wireless data traffic, and other general factors.<sup>294</sup> This is exemplified by the limitations of USTelecom’s evidence on cable companies’ provision of business data services.<sup>295</sup> USTelecom asserts that the business data services

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<sup>287</sup> See Birch et al. Opposition at 20 (citing *Pricing Flexibility Order*, 14 FCC Rcd at 14263-64, para. 79).

<sup>288</sup> See *id.* at 18-19; COMPTTEL Opposition at 39 (“By locking up customer demand, especially the demand of large customers, these so-called loyalty arrangements effectively diminish the addressable market for any carrier seeking to provide services in competition with the ILECs’ special access offerings.”).

<sup>289</sup> See *Open Internet Order*, 30 FCC Rcd at 5807-08, para. 439.

<sup>290</sup> 47 C.F.R. § 69.727(a).

<sup>291</sup> See 2014 USTelecom Forbearance Petition at 99.

<sup>292</sup> See, e.g., *id.* at 100 (“Forbearance from these rules will effectively provide blanket Phase I authority everywhere”); 2014 USTelecom Reply at 35 (“USTelecom seeks only to extend the existing Phase I contract tariff regime nationwide”).

<sup>293</sup> Letter from Jonathan Banks, Senior Vice President, Law and Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (USTelecom Oct. 30, 2015 *Ex Parte* Letter).

<sup>294</sup> 2014 USTelecom Forbearance Petition at 96, 102.

<sup>295</sup> See, e.g., USTelecom Oct. 30, 2015 *Ex Parte* Letter at 2 (stating that “[c]able facilities blanket the country,” “cable companies are using those facilities to compete very successfully,” and referencing “[t]he broad presence of cable facilities”). The data USTelecom includes in the record regarding cable competition provide some substance to support these general assertions but still only represent nationwide, non-market-specific statistics. See, e.g., USTelecom Forbearance Petition at 103-04 (“Cable companies already have one-quarter of the Ethernet service marketplace nationally, and that share will likely grow to approximately one-third in the next few years.”);

(continued . . .)

marketplace is continuing to become more competitive,<sup>296</sup> and this competition will help ensure just and reasonable and nondiscriminatory rates, terms, and conditions.<sup>297</sup> USTelecom simply fails to provide evidence that competition is in fact present on a market-by-market basis or that such competition would ensure just and reasonable rates and nondiscriminatory charges and practices, and therefore does not establish that the rules at issue are not necessary to ensure just and reasonable practices and nondiscriminatory charges and practices.<sup>298</sup> It therefore does not substantiate the underlying premise of its request for relief from Phase I requirements — that a showing of competition in local markets required by the pricing flexibility rules is unnecessary and should be forborne from.<sup>299</sup> Additionally, the long-term evidence of competition in the retail residential and business voice market that USTelecom also introduced did not include evidence specific to the services relevant to this request — i.e., business data services generally sold to businesses and other carriers. Similarly, evidence of market share loss of switched voice lines or competition from mobile wireless is not directly related to competitive conditions in the business data services market and is therefore an insufficient basis on which to make a decision to forbear from pricing rules predicated on specific competitive benchmarks.<sup>300</sup>

92. USTelecom's competition analysis is insufficient to support its request. For example, ACA asserts that the Petition "allegedly describes competition in the business market — but only at the national level, which is not the relevant geographic market according to the Commission's prior analysis of the special access market."<sup>301</sup> COMPTTEL contends that USTelecom has "failed to provide any

(Continued from previous page) \_\_\_\_\_

USTelecom Oct. 30, 2015 *Ex Parte* Letter at 2 n.6 ("Comcast recently reported that its business services delivered quarterly revenue growth of nearly 20%. Similarly, Charter recently reported that commercial customer growth is accelerating with 14% growth year-over-year.").

<sup>296</sup> See 2014 USTelecom Forbearance Petition at 103 ("At least 30 cable, wireless, CLEC and other fiber and Ethernet-over-copper providers now offer enterprise broadband services nationally or to large areas of the country. ILECs enjoy no advantages over other providers in deploying fiber to a wireless provider's cell sites or to any type of customer location.").

<sup>297</sup> See *id.* at 102.

<sup>298</sup> USTelecom's failure to provide sufficient data to support its forbearance request is evident when contrasted with the quantum of data submitted by its member companies in response to the Commission's business data services data collection. Those data submissions included detailed information on local market conditions, contract tariff pricing plans, and other relevant topics.

<sup>299</sup> See *supra* para. 89.

<sup>300</sup> See, e.g., 2014 USTelecom Forbearance Petition at 103 ("ILECs now command less than half of the total Ethernet marketplace."); *id.* at 102 (arguing that "[t]he high-capacity service marketplace is highly competitive and growing more as demand skyrockets. This increased demand is being driven in large part by an explosion in wireless data traffic.").

<sup>301</sup> ACA Comments at 3, n.7 (citing *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10557, 10569, paras. 26, 37). ("The Commission chose to grant pricing flexibility relief on an MSA basis, finding that, among the proposed alternatives 'MSAs best reflect the scope of competitive entry, and therefore are a logical basis for measuring the extent of competition.'"); COMPTTEL Opposition at 40 ("With no showing of the extent of competition any price cap ILEC faces in any geographic market it serves or for any of the services for which USTelecom seeks forbearance, the Commission cannot possibly determine that the contract tariffing prohibitions are unnecessary to ensure that price cap ILEC rates, terms and conditions for TDM based special access and enterprise broadband services are just, reasonable and not unjustly or unreasonably discriminatory."). With regard to the claim of sufficient competition, Birch also explains that "granting this request would, in effect, grant Phase I pricing flexibility to all incumbent LECs in all geographic markets without requiring them to demonstrate that they are subject to competition in those markets." Birch et al. Opposition at 16; see also COMPTTEL Opposition at 36 ("As USTelecom acknowledges, granting such forbearance 'would effectively extend nationwide the Phase I pricing flexibility that today exists in only limited geographic areas.' And it would do so without any showing whatsoever by the ILECs that even the Phase I competitive triggers have been satisfied for any service or any geographic area.").

evidence of the extent of competition in any of the discrete geographic markets in which it seeks relief, much less competition sufficient to discourage exclusionary pricing behavior.”<sup>302</sup> The Commission’s *Pricing Flexibility Order* “sought to define these geographic areas [that would receive relief] narrowly enough so that the competitive conditions within each area are reasonably similar.”<sup>303</sup> The Commission further specifically rejected granting pricing flexibility on a statewide basis in the *Pricing Flexibility Order*, stating its concern that “[g]ranteeing pricing flexibility over such a large geographic area would increase the likelihood of exclusionary behavior by incumbent LECs.”<sup>304</sup> USTelecom has simply not sufficiently addressed how its evidence overcomes the Commission’s previously articulated concerns with national pricing flexibility relief.<sup>305</sup>

93. In addition, even if we assume the appropriate analysis of competition is at the national level, USTelecom’s evidence of competition in the national market for business data services is unpersuasive. That is, while USTelecom cites support for its assertion that the Ethernet services market is competitive, it does not provide similar support for other portions of the market such as TDM-based DSn services. For example, USTelecom has not demonstrated that the competitive dynamics that characterize the wireless backhaul Ethernet services market that it cites<sup>306</sup> are representative of the competitive dynamics of the broader market for business data services. Such competitive dynamics may reflect the significantly greater bandwidth needs wireless carriers have experienced as they have deployed LTE service, but USTelecom does not address this distinction. The competitiveness of the national market for Ethernet services that USTelecom cites,<sup>307</sup> including evidence of cable companies’ provision of service,<sup>308</sup> does not speak to the state of competition for TDM-based business data services.<sup>309</sup> USTelecom does not provide evidence of the competitiveness of the TDM-based business data services market; it attempts to address this concern by minimizing the role TDM-based DSn services play in the market,<sup>310</sup> but USTelecom does not support such assertions with compelling evidence, while competitive carriers in the

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<sup>302</sup> COMPTTEL Opposition at 36; *see also* XO Comments at 14 (“The Petition fails to offer data or other evidence to extend pricing flexibility to those geographic areas where price cap LECs do not already enjoy it [and thus] fails to make a prima facie case in support of forbearance relief.”).

<sup>303</sup> *Pricing Flexibility Order*, 14 FCC Rcd at 14259, para. 71.

<sup>304</sup> *Id.* at 14260, para. 72.

<sup>305</sup> *See also Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10574, para. 36.

<sup>306</sup> 2014 USTelecom Forbearance Petition at 102-03.

<sup>307</sup> *Id.* at 103 (“At least 30 cable, wireless, CLEC and other fiber and Ethernet-over-copper providers now offer enterprise broadband [*i.e.*, Ethernet] services nationally . . . ILECs now command less than half of the total Ethernet marketplace.”).

<sup>308</sup> *See, e.g., id.* at 103-04; 2014 USTelecom Reply at 36-37 (citing Vertical Systems Group, “Mid-Year 2014 U.S. Carrier Ethernet LEADERBOARD”); USTelecom Oct. 30, 2015 *Ex Parte* at 2. Verizon also believes cable company competition is not ubiquitous even within such companies’ own territory. *See* Letter from Curtis L. Groves, Assistant General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al., at 2 (filed Oct. 29, 2015) (“[I]f a cable provider does not already have facilities at or near a particular building, that provider often is not willing to construct facilities to fulfill a wholesale Ethernet service order.”).

<sup>309</sup> Competitive providers additionally challenge the relevance of USTelcom’s reliance on cable competition by asserting that customers “that demand dedicated bandwidth and a high level of security generally do not view cable companies’ best efforts broadband Internet access services as substitutes for special access services.” Birch et al. Opposition at 21-22. We find that USTelecom’s anecdotal evidence submitted in response to this assertion falls short of establishing the presence of competition sufficient to protect end-users and competitors by cable companies for the business data services at issue here across the price cap areas. *See* 2014 USTelecom Reply at 37-38.

<sup>310</sup> 2014 USTelecom Forbearance Petition at 104 (citing declines in the proportion of the overall market that TDM services represent);

Business Data Services Rulemaking have provided evidence that TDM-based DSn services continue to play a significant role in the market.<sup>311</sup>

94. The Commission based the limitations of the Phase I pricing flexibility rules that USTelecom seeks forbearance from in part on a concern that, in the absence of a competitive business data services market, price cap incumbent LECs could engage in term and volume pricing practices that could have the effect of excluding competitors and restricting competition.<sup>312</sup> USTelecom has not provided convincing evidence in its Petition that the business data services market is sufficiently competitive to alleviate those concerns.<sup>313</sup> USTelecom generally claims that contract tariffs “do not lock up demand,” but instead “offer more choices to the customer.”<sup>314</sup> Birch et al. argues in response that marketplace evidence shows that incumbent LECs “have engaged in the very anticompetitive pricing practices that the Commission sought to prevent,” and notes that “exclusionary terms and conditions [imposed] on purchasers of special access services through both contract tariffs and ‘off-the-shelf’ tariff discount plans . . . [lock] up customers’ demand . . . effectively diminish[ing] the addressable market for any carrier that seeks to provide services in competition with the incumbent LECs’ special access offerings.”<sup>315</sup> USTelecom’s evidence and arguments do not sufficiently address concerns that many of the benefits of the alternative choices USTelecom claims it will offer could be diminished because of this lock up effect, which in turn, could further harm competition.<sup>316</sup>

95. In 2012, the Commission suspended, on an interim basis, its rules allowing for automatic grants of pricing flexibility for business data services because the rules were found not to be working as predicted.<sup>317</sup> In its Petition, USTelecom acknowledges the Commission’s suspension of its pricing flexibility framework but does not address the reasons for that suspension or establish why its request for further grants of Phase I pricing flexibility is reasonable despite those reasons.<sup>318</sup> Some commenters in this record expressed concerns about granting forbearance because USTelecom seeks “forbearance for services for which the Commission had established a deregulatory regime that has since been suspended

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<sup>311</sup> Some industry research groups, while forecasting growth in use of Carrier Ethernet services, nevertheless estimate that, on the basis of total actual bandwidth delivered, use of TDM-based business services will remain stable through 2017. See Vertical Systems Group *New Global Milestone For Carrier Ethernet: Ethernet Bandwidth Projected to Exceed 75% of Total Global Business Bandwidth by 2017* (October 23, 2013), <http://www.verticalsystems.com/vsgr/new-global-milestone-for-carrier-ethernet/> (estimating that on the basis of total actual bandwidth delivered, use of legacy business services will remain stable through 2017); Letter from John T. Nakahata, Counsel to Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25 and RM-10593 at 2 (filed Sept. 24, 2015) (Windstream Sept. 24, 2015 *Ex Parte* Letter) (citing TeleGeography Local Access Pricing Service, January-June 2014, <https://www.telegeography.com/research-services/local-access-pricing-service/index.html>) (“It is simply not true that TDM services are irrelevant. Many TDM special access circuits remain in use today. According to TeleGeography, T-1s, smaller legacy circuits, remain the most prominent access circuit type in the United States.”).

<sup>312</sup> See *Pricing Flexibility Order*, 14 FCC Rcd at 14261-62, para. 79.

<sup>313</sup> See USTelecom Forbearance Petition at 102-04; see also 2014 USTelecom Reply at 36-38; USTelecom Oct. 30, 2015 *Ex Parte* Letter at 2.

<sup>314</sup> See 2014 USTelecom Forbearance Petition at 106.

<sup>315</sup> Birch et al. Opposition at 18-19; XO Comments at 13 (“These special access volume commitment arrangements effectively stifle the emergence of robust competition and slow the technology transition by locking-in competitive carrier demand.”).

<sup>316</sup> See, e.g., COMPTEL Opposition at 41 (“[T]hese commitments lock up demand in the business services market and by doing so, diminish or discourage the prospect of competitive entry and downward pricing pressure flowing from competition.”).

<sup>317</sup> See *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10558, para. 1.

<sup>318</sup> See 2014 USTelecom Forbearance Petition at 95-97; see also USTelecom Oct. 30, 2015 *Ex Parte* Letter at 2.

and where the Commission is undertaking a comprehensive data collection to examine competitive conditions in those markets.”<sup>319</sup> Others assert that “[i]n effect, the Petition seeks to bypass the correction or updating of the competitive triggers with which the Commission found flaws in the *Pricing Flexibility Suspension Order* just two years ago.”<sup>320</sup> We agree that USTelecom’s failure to address the underlying reason for the suspension of the rules is an additional factor indicating that USTelecom’s Petition failed to establish that the first prong of the statutory forbearance test is satisfied.

96. We also conclude that USTelecom’s Petition fails to meet the requirements of section 10(a)(2) of the Act because it has not shown that our rules are no longer necessary to protect consumers.<sup>321</sup> As with our analysis under section 10(a)(1), our analysis here focuses on USTelecom’s failure to make any showing of market-specific competition. Absent such a showing, there is no evidence that end-users or competitors will be protected from price cap incumbent LECs engaging in exclusionary behavior. Such conduct could result in unjust, unreasonable, and unreasonably discriminatory practices and could undermine competition, which would in turn harm consumers. USTelecom asserts that the existing competition in the business data services marketplace will protect consumers by offering a variety of choices for business data services but provides only high-level assertions of nationwide competition to support its claim.<sup>322</sup> Such evidence is insufficient to establish that the rules at issue are no longer necessary to protect consumers.

97. USTelecom argues that purchasers of business data services are sophisticated customers, and preventing the requested relief will not benefit, and could actually harm, the consumers of high capacity business data services.<sup>323</sup> Commenters argue in response that “[p]urchasers of special access services are no more or less sophisticated today than they were at the time of the *Pricing Flexibility Order*, in which the FCC concluded that incumbent LECs could use contract tariffs to lock up the market in the absence of sufficient competition,” and that “[e]ven the most savvy customer cannot seek out a competitive alternative that does not exist.”<sup>324</sup> Although some purchasers of business data services may be sophisticated, we remain concerned that this sophistication does not mitigate the potential that the business data services offerings made by price cap incumbent LECs will harm consumers. If business data services customers lack competitive alternatives and thus can only obtain reasonable rates by agreeing to potentially unreasonable term and volume commitments, the contracting parties’ sophistication is irrelevant. Accordingly, we find that assertions about the sophistication of business data service customers do not establish that the rules at issue are no longer necessary to protect consumers.

98. We also reject USTelecom’s argument that the rules at issue are not necessary to protect consumers because the services affected by its forbearance request will still be available at price cap rates and terms and customers will thus still be able to choose the generally available tariffed rates and terms.<sup>325</sup> USTelecom contends that its request comports with section 10(a)(2) because permitting price cap incumbent LECs to offer business data services through contract tariffs “may benefit some customers,” and the current offerings would remain available.<sup>326</sup> We note that these facts are no different than those facing the Commission when it adopted the pricing flexibility rules and required an individual

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<sup>319</sup> ACA Comments at 9.

<sup>320</sup> XO Comments at 12.

<sup>321</sup> See 47 U.S.C. § 160(a)(2).

<sup>322</sup> See 2014 USTelecom Forbearance Petition at 108.

<sup>323</sup> See *id.* at 109-10.

<sup>324</sup> Birch et al. Opposition at 22.

<sup>325</sup> See 2014 USTelecom Forbearance Petition at 108.

<sup>326</sup> See *id.* at 109 (citing *Petition for Forbearance of the Independent Tel. & Tel. Alliance*, Sixth Memorandum Opinion and Order, 14 FCC Rcd 10840, 10847 para. 11 (1999)).

competitive showing prior to a grant of Phase I pricing flexibility, the requirement USTelecom seeks to eliminate here through forbearance. Similarly, we find that, although tariffed rates and terms would still be available, USTelecom has not established that this availability is sufficient to afford the type of consumer protection that would allow us to forbear from our rules.<sup>327</sup> The Commission's *Pricing Flexibility Order* designed the pricing flexibility triggers with a competitive showing requirement to limit "the possibility that price cap LECs could use Phase I relief, which enables them to offer contract tariffs to individual customers, to engage in exclusionary pricing behavior and thereby thwart the development of competition."<sup>328</sup> USTelecom's general assertion that nationwide competition has increased and will protect consumers does not address the concerns the Commission expressed in the *Pricing Flexibility Order* that in certain circumstances, including the absence of competitive constraints, incumbent LECs could use contract tariffs in a manner harmful to consumers, notwithstanding whether current offerings would still be available. Similarly, USTelecom's general assertions do not address concerns with the geographic distribution of competitive entry that the Commission identified in the *Pricing Flexibility Suspension Order*.<sup>329</sup> Accordingly, USTelecom's assertions and evidence are insufficient to establish that the rules at issue are no longer necessary to protect consumers.

99. Finally, USTelecom's Petition fails to meet the requirements of sections 10(a)(3) and 10(b) of the Act because it fails to demonstrate either that forbearance from the rules at issue would promote competitive market conditions or otherwise would be in the public interest.<sup>330</sup> In particular, as discussed in detail above, USTelecom has not established the presence of competition in price cap areas that would meet the standard required by the *Pricing Flexibility Order*, nor has it adequately addressed the competitive concerns the Commission identified in that Order as a basis for adopting the rules that USTelecom seeks forbearance from. USTelecom contends that forbearance would enable price cap incumbent LECs to compete more effectively with rivals.<sup>331</sup> However, absent sufficient evidence of the existence of competition in the applicable business data services markets, this argument fails.<sup>332</sup>

100. USTelecom claims that forbearance would benefit the public interest by allowing price discounting which would benefit consumers and increase competition. It claims that pricing flexibility regulations "forbid incumbent local exchange carriers . . . from discounting" through the use of contract tariffs or "explicitly ban offering lower prices to customers that want them."<sup>333</sup> This assertion ignores the fact that price cap carriers already have the ability to discount their rates. Price cap LECs are not forbidden from lowering prices. Price cap regulation by its nature allows price reductions. Accordingly, we find that USTelecom has not established here that forbearance from our rules would be in the public interest.

#### **H. Forbearance from ETC Designations and Obligations (WC Docket Nos. 14-192, 10-90, 11-42)**

101. In this section, we act on the fourth category of requirements from which USTelecom seeks forbearance: "All remaining 47 U.S.C. § 214(e) obligations, where a price cap carrier does not receive high cost universal service support, including 47 C.F.R. § 54.201(d); [t]he Commission's

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<sup>327</sup> See, e.g., Birch et al. Opposition at 20. ("USTelecom's position is contrary to marketplace evidence, which demonstrates that ILECs have in fact used contract tariffs in Phase I areas to lock up the market despite the existence of tariff filing requirements.").

<sup>328</sup> *Pricing Flexibility Order*, 14 FCC Rcd at 14263, para. 79.

<sup>329</sup> *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10574, para. 36.

<sup>330</sup> See 47 U.S.C. § 160(a)(3).

<sup>331</sup> See 2014 USTelecom Forbearance Petition at 111.

<sup>332</sup> See, e.g., ACA Comments at 1-2.

<sup>333</sup> See, e.g., USTelecom Oct. 30, 2015 *Ex Parte* Letter at 1, 3.

determination that an Eligible Telecommunications Carrier is required to provide the ‘supported’ services throughout its service area regardless of whether such services are actually ‘supported’ with high-cost funding throughout that area.”<sup>334</sup> As we transition from the elimination of our legacy high-cost support mechanisms and full implementation of our *USF/ICC Transformation Order* reforms,<sup>335</sup> we have an obligation to ensure that all consumers that are served by price cap carriers continue to have access to voice services at rates that are reasonably comparable to rates offered in urban areas.<sup>336</sup> We find that USTelecom has not met its burden under section 10 of the Act to demonstrate that these consumers would continue to have access to such service if the Commission bypasses the relinquishment process established by Congress in section 214(e)(4). Therefore, we deny the USTelecom Petition with respect to section 214(e) obligations and certain related matters concerning the designations of ETCs in areas where price cap carriers do not receive high-cost support,<sup>337</sup> beyond the partial forbearance granted in a decision issued subsequent to the filing of the USTelecom Petition.<sup>338</sup>

102. As a result, in the areas where we have not already otherwise granted forbearance, price cap carriers remain subject to the obligation to provide voice service pursuant to section 214(e)(1)(A) until they are replaced by an ETC that is required to provide voice and broadband services to fixed locations or they relinquish their ETC designations through the section 214(e)(4) process.<sup>339</sup> Further, price cap carriers remain ETCs subject to both Lifeline and state ETC obligations until they obtain relinquishment of their ETC designations through the section 214(e)(4) process.<sup>340</sup>

### 1. Background

103. As directed by Congress, the Commission has worked in a longstanding partnership with the states to advance and preserve universal service. As the Commission explained in the *USF/ICC Transformation FNPRM*,<sup>341</sup> states have primary authority for designating ETCs and defining their service areas except in cases where they lack jurisdiction over the entity seeking designation.<sup>342</sup> In such situations, the Act gives the Commission responsibility for designating the entity as an ETC.<sup>343</sup> Once an entity is designated as an ETC it must “throughout the service area for which the designation is received . . . offer the services that are supported by Federal universal service support mechanisms under section 254(c).”<sup>344</sup> The Commission defined the service supported by universal service support mechanisms under section 254(c)(1) to be “voice telephony” in the *USF/ICC Transformation Order*.<sup>345</sup> An ETC’s “service area” is defined to be the geographic area as established by the relevant state commission within

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<sup>334</sup> 47 U.S.C. § 214(e); 2014 USTelecom Forbearance Petition at App. A.

<sup>335</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18062, para. 1090 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>336</sup> 47 U.S.C. § 254(b)(3).

<sup>337</sup> *Id.* § 214(e); 2014 USTelecom Forbearance Petition at 60-73; 2014 USTelecom Forbearance Public Notice.

<sup>338</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

<sup>339</sup> 47 U.S.C. § 214(e)(1)(A), (e)(4).

<sup>340</sup> *Id.* Nothing in this Order affects the status or obligations of any rate-of-return carriers or any competitive carrier designated as an ETC.

<sup>341</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18062, para. 1090.

<sup>342</sup> 47 U.S.C. § 214(e)(2).

<sup>343</sup> *Id.* § 214(e)(6).

<sup>344</sup> 47 U.S.C. § 214(e)(1). *See also* 47 C.F.R. § 54.201(d)(1).

<sup>345</sup> *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17692, para. 77; 47 C.F.R. § 54.101.

which an ETC has universal service obligations and may receive universal service support.<sup>346</sup> Although the Act makes clear that ETCs must be “eligible” to receive universal service support in their service areas,<sup>347</sup> the Commission has found that nothing in the Act requires that all ETCs receive support.<sup>348</sup> This finding was upheld by the U.S. Court of Appeals for the Tenth Circuit (Tenth Circuit).<sup>349</sup>

104. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program.<sup>350</sup> For areas served by price cap carriers, the Commission adopted a two-phase approach for supporting the deployment of voice and broadband-capable networks. For Phase I, the Commission froze price cap carriers’ existing support and provided two rounds of incremental support to advance broadband in unserved areas.<sup>351</sup> For Phase II, the Commission provided that up to \$1.8 billion of the Connect America budget would be used annually to make voice and broadband-capable infrastructure available to as many unserved locations as possible within areas served by price cap carriers, while sustaining voice and broadband-capable infrastructure in high-cost areas that would not be served absent support.<sup>352</sup> The Commission concluded that Phase II support in price cap areas would be provided through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process.<sup>353</sup>

105. In the *USF/ICC Transformation FNPRM*, the Commission noted that ETC service obligations and funding should be “appropriately matched, while avoiding consumer disruption in access to communications services.”<sup>354</sup> It sought comment on how existing voice telephony service obligations for ETCs should change as funding shifts to new, more targeted mechanisms, including potentially via forbearance from the relevant requirements of section 214(e)(1).<sup>355</sup> In the *April 2014 Connect America FNPRM*, the Commission sought to develop the record further on how relieving incumbent LECs of their ETC obligations would comport with section 214 of the Act, and what specific obligations incumbent LECs would be relieved of in areas where they do not receive high-cost support.<sup>356</sup>

106. In October 2014, USTelecom submitted a petition seeking, among other things, forbearance from the enforcement of section 214(e) obligations where a price cap carrier receives no high-cost support.<sup>357</sup> In the *December 2014 Connect America Order*, the Commission granted partial forbearance and concluded that it was in the public interest to forbear from enforcing the federal high-cost ETC requirement that price cap carriers offer voice telephony service throughout their service areas

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<sup>346</sup> 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

<sup>347</sup> 47 U.S.C. § 214(e)(1), 254(e).

<sup>348</sup> *High-Cost Universal Service Support et al.*, WC Docket No. 05-337 et al., Order, 23 FCC Rcd. 8834, 8847, para. 29 (2008) (*CETC Interim Cap Order*). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8884-85, para. 192 (1997) (*Universal Service First Report and Order*) (noting that an ETC’s service area is the “area for which the carrier may receive support from federal universal service support mechanisms”) (emphasis added).

<sup>349</sup> *In re: FCC 11-161*, 753 F.3d 1015, 1067, 1088 (10th Cir. 2014).

<sup>350</sup> *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

<sup>351</sup> *Id.* at 17712-23, paras. 128-51.

<sup>352</sup> *Id.* at 17725, para. 158.

<sup>353</sup> *Id.* at 17725, para. 156.

<sup>354</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18062, para. 1089.

<sup>355</sup> See *id.* at 18062-66, paras. 1089-1102.

<sup>356</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7177, at paras. 195-98 (2014) (*April 2014 Connect America Order or FNPRM*).

<sup>357</sup> 2014 USTelecom Forbearance Petition.

pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) census blocks that are determined to be low-cost, (2) census blocks served by an unsubsidized competitor, as defined in our rules, offering voice and broadband at speeds of 10/1 Mbps or better to all eligible locations,<sup>358</sup> and (3) census blocks where a subsidized competitor — i.e., another ETC — is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations.<sup>359</sup> The Commission noted, however, that even in the areas where the Commission granted forbearance, price cap carriers remained obligated to maintain voice service until they received authority under section 214(a) to discontinue that service, and they remained ETCs subject to the obligation to offer Lifeline service to qualifying low-income households throughout their service territories and any state requirements.<sup>360</sup>

107. Subsequently, in June 2015, the Commission released a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on expansive reform for the Lifeline program, including proposals for ETC relief from Lifeline obligations, and incorporating the record from the Connect America and USTelecom forbearance petition proceedings into that docket.<sup>361</sup> In July 2015, the Wireline Competition Bureau (Bureau) sought comment to refresh the record on issues raised in various proceedings related to ETC designations and obligations in areas served by price cap carriers, against the backdrop of relief already granted by the *December 2014 Connect America Order*.<sup>362</sup>

## 2. Discussion

108. USTelecom seeks forbearance from ETC designations and their obligations in *all* census blocks where price cap carriers do not receive high-cost support. In this Order, we deny that broad request to fundamentally change ETC designations and obligations.<sup>363</sup> Granting forbearance from ETC designations in all census blocks where price cap carriers do not receive high-cost support would eliminate the obligations that flow from ETC designations, including that price cap carriers offer Lifeline service to qualifying households, any state ETC obligations, and the federal high-cost ETC voice obligation to provide voice service throughout their service areas. As noted above, we previously granted partial forbearance with respect to the federal high-cost ETC requirement that price cap carriers offer voice telephony service in three types of geographic areas.<sup>364</sup> As a result of this partial forbearance, price cap carriers not receiving high-cost support only remain subject to the federal high-cost ETC voice

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<sup>358</sup> 47 C.F.R. § 54.5.

<sup>359</sup> 47 C.F.R. § 54.201(d)(3); *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

<sup>360</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15663-64, para 51, 15670, para. 67.

<sup>361</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Second Further Notice of Proposed Rulemaking et al., 30 FCC Rcd 7818, 7864, paras. 125-26 (2015) (*Lifeline Second FNPRM*).

<sup>362</sup> *Wireline Competition Bureau Releases List of Census Blocks Where Price Cap Carriers Still Have Federal High-Cost Voice Obligations & Seeks to Refresh the Record on Pending Issues Regarding Eligible Telecommunications Carrier Designations and Obligations*, WC Docket Nos. 10-90 et al., Public Notice, 30 FCC Rcd 7417 (WCB 2015).

<sup>363</sup> *See, e.g.*, 2014 USTelecom Forbearance Petition at 60-73; ACS Comments at 7-9; AT&T Comments at 6-7; 2014 USTelecom Reply at 25-26. Prior to the filing of the USTelecom forbearance petition, several parties had urged the Commission to forbear from ETC obligations in their comments in the Connect America Fund rulemaking docket, WC Docket No. 10-90. *See, e.g.*, Comments of Verizon, WC Docket No. 10-90 et al., at 7-8 (filed Jan. 18, 2012) (Verizon Jan. 2012 Comments); Comments of Frontier Communications Corporation, WC Docket No. 10-90 et al., at 9 (filed Jan. 18, 2012) (Frontier Jan. 2012 Comments); Comments of AT&T, WC Docket No. 10-90 et al., at 14-15 (filed Jan. 18, 2012); Comments of AT&T, WC Docket No. 10-90 et al., at 24 (filed Aug. 8, 2014) (AT&T Aug. 2014 Comments); Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 15-17 (filed Mar. 14, 2014) (USTelecom Mar. 14, 2014 *Ex Parte* Letter). In our discussion, we address the record filed in response to the forbearance petition, while also acknowledging similar arguments raised in the rulemaking docket.

<sup>364</sup> 47 C.F.R. § 54.201(d)(3); *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

obligation in high-cost census blocks where they declined the offer of model-based support, certain high-cost census blocks excluded from the offer Phase II model-based support, and in all extremely high-cost census blocks that are unserved by an unsubsidized competitor, until they are replaced by another high-cost ETC that is required to provide voice and broadband service at reasonably comparable rates to fixed locations throughout the census block.<sup>365</sup> Since most of the price cap carriers have accepted most or nearly all of the offer of Phase II support,<sup>366</sup> we note that price cap carriers will be receiving Phase II support in a large portion of the high-cost census blocks that are located in their service areas.

109. Despite the partial forbearance that the Commission granted in December 2014, USTelecom maintains that the Commission should go further and relieve price cap carriers of ETC designations and obligations in all census blocks where they do not receive high-cost support.<sup>367</sup> This requested forbearance would result in the Commission extending the partial forbearance we had granted in December 2014 to all remaining high-cost and extremely high-cost blocks so that a price cap carrier would no longer have the federal high-cost ETC obligation to provide voice service in these remaining 385,000 census blocks. This requested forbearance would also relieve price cap carriers of their ETC designations and their associated Lifeline and state obligations in all census blocks where they do not receive high-cost support.

110. We conclude on the record here that USTelecom has not met its burden of proof to demonstrate that the forbearance statutory criteria have been met for the requested forbearance at issue here.<sup>368</sup> Because we have determined based on the record before us that USTelecom has not met its burden to demonstrate these statutory criteria have been met with respect to obligations associated with

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<sup>365</sup> Nationwide, price cap carriers retain the federal high-cost ETC obligation in areas for which they do not currently receive Phase II model-based support in just over 385,000 — or about six percent — high-cost and extremely high-cost census blocks out of over 6.3 million census blocks where the price cap carrier is the incumbent provider. In many of the census blocks where price cap carriers continue to have the federal high-cost ETC obligation to provide voice service, there is a process in place to adjust the support and associated obligations: in some cases, the price cap carrier may be a winning bidder and authorized to receive support through the Phase II auction, while in other cases, the price cap carrier will no longer have a federal high-cost ETC voice obligation once it is replaced by a Phase II auction recipient, pursuant to the partial forbearance we granted in December 2014. We note the model calculates support for both capital investment and operating costs for a voice and broadband network, so the operating costs associated with the continued provision of voice service for these remaining locations are far less than the amount estimated by the model for the interim period while we complete implementation of Phase II.

<sup>366</sup> Press Release, Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0827/DOC-335082A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0827/DOC-335082A1.pdf). (*Phase II Model-Based Support Acceptance Press Release*).

<sup>367</sup> 2014 USTelecom Reply at 25-26. To the extent that this request was not squarely presented in the 2014 USTelecom Forbearance Petition, it would not rise to the level of a request for forbearance subject to section 10(c), which requires compliance with certain procedural rules, and it would be in the Commission's discretion not to consider it. See, e.g., 47 C.F.R. § 1.54 (forbearance petitions must be complete as filed); *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19445, para. 61 n.161 (in the case of section 10(c) petitions for forbearance the Commission is "under no statutory obligation to evaluate [a] Petition other than as pled"). Here, even if this request was not presented in the 2014 USTelecom Forbearance Petition, we would analyze the issue because forbearance also was raised in pending rulemaking proceedings, and the same analysis underlies our resolution of the forbearance issues there. Cf. *Open Internet Order*, 30 FCC Rcd at 5806-07, para. 438 ("Because the Commission is forbearing on its own motion, it is not governed by its procedural rules insofar as they apply, by their terms, to section 10(c) petitions for forbearance.").

<sup>368</sup> *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd at 9554-57, paras. 20-23 (2009) (concluding "that the petitioner [in a forbearance proceeding] bears the burden of proof — that is, of providing convincing analysis and evidence to support its petition for forbearance").

ETC designations, this same analysis persuades us that the statutory criteria have not been met with respect to the request for forbearance from the ETC designation itself, which is the foundation for these obligations.

111. We are not persuaded by USTelecom's request for forbearance in the census blocks at issue because we conclude that it has not met its burden of proof to show that the obligations that accompany section 214(e), including the requirement to provide voice service throughout an ETC's service area, are no longer necessary to protect consumers.<sup>369</sup> Under the Commission's existing interpretation of the scope of ETCs' service obligations under section 214(e)(1), the outcome USTelecom seeks via forbearance is analogous to what an ETC would obtain by following the section 214(e)(4) relinquishment process established by Congress. Section 214(e)(4) enables an ETC to seek relinquishment of its ETC designation, and requires states (or the Commission if it designated the ETC) to "ensure that *all* customers served by the relinquishing carrier will be continued to be served."<sup>370</sup> Through this relinquishment process, Congress gave states and the Commission the authority to grant relinquishments for the ETCs that they designated and obligated states and the Commission, when doing so, to ensure that the customers served by the relinquishing carrier will continue to be served and that the other ETCs serving the area will have sufficient notice of the relinquishment to enable them to prepare to take on additional customers from the relinquishing carrier.<sup>371</sup> Because we view USTelecom's requested forbearance as yielding an analogous result to what would occur in the case of a relinquishment — i.e., consumers in areas where price cap carriers are ETCs with associated obligations today would, post-forbearance, lose the ability to invoke those protections — our section 10(a)(2) analysis is informed by the consumer protection goals identified in section 214(e)(4).<sup>372</sup> Most fundamentally, the section 214(e)(4) relinquishment process allows for the states (or the Commission, if applicable) to conduct an inquiry at a sufficiently granular level to ensure that the customers in that area "will continue to be served."<sup>373</sup> The relinquishment process not only entails an evaluation of what service providers are present in an area at a given point in time, but of the practical ability of those providers to take on additional consumers as might be needed once the relinquishing carrier is no longer an ETC subject to associated obligations in that area. Indeed, section 214(e)(4) not only involves an inquiry regarding the capabilities of other service providers, but, to the extent needed, includes a grant of authority to obligate remaining ETCs to acquire adequate facilities within a defined time period.<sup>374</sup>

112. Although USTelecom makes unsubstantiated claims regarding the burden of an incumbent provider going through state relinquishment proceedings,<sup>375</sup> it does not demonstrate that consumers would continue to be protected in the census blocks at issue if the Commission were to grant the requested forbearance from ETC designations and/or obligations that flow from such designations under the Commission's existing interpretation of section 214(e)(1). For one, we are not persuaded that there are other consumer protection interests common to all the outstanding requests for forbearance that

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<sup>369</sup> 47 U.S.C. § 160(a)(2).

<sup>370</sup> 47 U.S.C. § 214(e)(4) (emphasis added).

<sup>371</sup> *Id.*

<sup>372</sup> Thus, even insofar as the price cap carriers would still retain their ETC designation and their ETC-designated service area would not change under certain forbearance relief, we disagree with AT&T's suggestion that section 214(e)(4) is not relevant in this context. Comments of AT&T, WC Docket No. 10-90 et al., at 16 n.30 (filed Jan. 18, 2012) (AT&T Jan. 2012 Comments).

<sup>373</sup> 47 U.S.C. § 214(e)(4).

<sup>374</sup> *Id.*

<sup>375</sup> *See, e.g.*, 2014 USTelecom Reply at 26; Comments of USTelecom, WC Docket No. 10-90 et al., at 5 (filed Sept. 9, 2015) (USTelecom Sept. 2015 Comments); Verizon Jan. 2012 Comments at 12-14.

would be controlling or even instructive in the Commission's analysis.<sup>376</sup> Nor are we persuaded that the scope of still-pending requested forbearance necessarily is associated with marketplace conditions that give us comfort with the type of analysis employed in the *December 2014 Connect America Order* for the reasons described in our analysis below. Against this backdrop, we look for more detailed evidence that affected consumers will not be harmed in the specific areas at issue if the pending additional forbearance were granted.

113. We find that USTelecom does not provide specific evidence that demonstrates that in each census block where it seeks forbearance, it is no longer necessary that the price cap carrier be an ETC subject to the unforborne-from obligations to protect consumers.<sup>377</sup> First, forbearing from ETC designations in all census blocks where a price cap carrier does not receive high-cost support would effectively preempt the requirements that states impose on the carriers that obtain an ETC designation in their states.<sup>378</sup> Universal service has long been a federal-state partnership and the Commission has relied upon states to help ensure that the consumers that are served by price cap carriers continue to have access to voice service at reasonably comparable rates.<sup>379</sup> USTelecom has not provided evidence to demonstrate that if the Commission were to grant forbearance from ETC designations in each of the census blocks where price cap carriers do not receive support (1) which state obligations would be affected, (2) there would be other providers serving those areas that can carry on those obligations, or (3) that it is no longer necessary for a service provider to be required to meet those specific state requirements to ensure that the consumers that contribute to the universal service fund are protected.<sup>380</sup> Although commenters make passing references to state ETC obligations,<sup>381</sup> they do not provide enough specific information regarding which obligations, if any, are imposed in the census blocks at issue or which states impose such obligations to assure the Commission that those requirements are not necessary for helping the Commission achieve its statutory obligation to ensure that all consumers have access to reasonably comparable voice service at reasonably comparable rates.<sup>382</sup>

114. Second, we are not convinced based on the evidence presented that a consumer living in high-cost or extremely high cost census blocks where we have not granted partial forbearance will continue to have access to voice service at reasonably comparable rates if we forbear from the federal high-cost ETC voice obligation in all census blocks where the price cap carrier does not receive high-cost

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<sup>376</sup> For example, in the *Open Internet Order*, the Commission found that the Commission's interests under section 706 of the 1996 Act guided its interpretation and implementation of what is necessary to ensure just and reasonable conduct and for the protection of consumers under section 10(a)(1) and (a)(2), as well as constituting a significant part of its public interest analysis under section 10(a)(3). *See, e.g., Open Internet Order*, 30 FCC Rcd at 5839-41, paras. 495-96. Here, by contrast, we are unpersuaded by arguments claiming that forbearance would advance section 706, as discussed in greater detail in our section 10(a)(3) analysis below. *See infra* para. 131. For these same reasons, we do not find section 706 considerations to be a factor in our section 10(a)(1) analysis, either.

<sup>377</sup> 47 U.S.C. § 160(a)(2).

<sup>378</sup> *See* Reply Comments of the Pennsylvania Public Utility Commission, WC Docket No. 10-90 et al., at 9 (filed Sept. 8, 2014) ("ETC designations for [incumbent local exchange carriers] serving Pennsylvania consumers are still within [Pennsylvania Public Utilities Commission] jurisdiction under Section 214(e), and such designations cover a range of telecommunications services and facilities that are consistent with the statutory mandate in Section 254(c)(1), relevant FCC directives, and applicable State law.").

<sup>379</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17671-72, para. 15; 47 U.S.C. § 254(b)(3).

<sup>380</sup> *See* Reply Comments of the National Association of State Utility Consumer Advocates on Request to Refresh the Record, WC Docket No. 10-90, at 5 (filed Sept. 24, 2015) (noting that USTelecom did not give a "single example" in its petition of state-specific unfunded obligations).

<sup>381</sup> *See, e.g.,* AT&T Comments at 9-10; AT&T Aug. 2014 Comments at 15 n.37; USTelecom Sept. 2015 Comments at 4.

<sup>382</sup> 47 U.S.C. § 254(b)(3).

support. Unlike the census blocks where we previously granted partial forbearance, here we cannot reasonably predict based on the totality of circumstances that consumers will continue to have a reasonably priced voice option in the high-cost and extremely high-costs census blocks where price cap carriers continue to have a federal high-cost ETC voice obligation. Unlike the census blocks in which we already granted partial forbearance, where the price cap carrier will be replaced by, for example, a Phase II auction recipient, we cannot make a blanket determination that absent an ETC obligation, there will be a provider able to provide voice service at reasonably comparable rates to all fixed locations in the remaining high-cost and extremely high-cost census blocks. Also, the census blocks where we have not granted partial forbearance are not low-cost or served by an unsubsidized provider. Due to the challenges of serving such areas, we cannot reasonably predict that the price cap carrier or another provider would have a business case to maintain voice service at reasonably comparable rates absent support as we could for the areas subject to forbearance in the *December 2014 Connect America Order*. Given that the high-cost and extremely high-cost census blocks at issue lack these conditions, we conclude that closer scrutiny is required to ensure that all consumers living in the remaining high-cost and extremely high-cost census blocks retain reasonable access to voice services, and we find such evidence lacking here.

115. USTelecom has suggested that due to the widespread availability of wireless and VoIP services and the fact that the number of subscribers of legacy wireline voice service is declining as consumers favor other voice options,<sup>383</sup> it is no longer necessary to protect consumers by requiring that price cap LECs remain ETCs subject to the associated service obligations in the census blocks at issue. But it has provided these statistics at a generalized, high-level and has not demonstrated that these conditions exist in the remaining census blocks not subject to our prior grant of partial forbearance. Subscribers may increasingly prefer and subscribe to other voice options. But these high-level statistics do not provide us with assurance that in each census block at issue if price cap carriers no longer had the obligation to provide voice service, consumers living in the specific census blocks that do subscribe to the incumbent price cap carrier's voice service would have adequate alternatives — either a wireline or wireless option — for such service. General statistics on a national level about the prevalence of voice service options and consumers' preference for subscribing to services that are not provided by the incumbent price cap carrier are not a sufficient replacement for the localized inquiry that we find warranted in this context to determine that the requirements at issue are not necessary for the protection of consumers.<sup>384</sup>

116. USTelecom does cite data from one provider to support its request for forbearance, but we conclude that the data do not sufficiently assure us that consumers would be protected if we were to grant the requested forbearance. The USTelecom Petition references AT&T's claims that there are multiple Lifeline ETCs serving every one of its wire centers nationwide.<sup>385</sup> The USTelecom Petition also references the data that AT&T provided for two of the states it serves, Illinois and Louisiana, regarding the number of ETCs and other voice providers in its wire centers that are located in high-cost and extremely high-cost census blocks and the percentage of consumers that subscribe to AT&T's wireline services.<sup>386</sup> We are not persuaded that we should take the overly broad step of granting forbearance for all

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<sup>383</sup> See 2014 USTelecom Forbearance Petition at 8-13, 63-64, App. B & C; see also Verizon Jan. 2012 Comments at 9-12; AT&T Aug. 2014 Comments at 3, 25-26; AT&T Comments at 6-7; ITTA Comments at 3-6.

<sup>384</sup> AT&T claims that the existence of section 214(e)(4) does not establish that Congress intended that there would be an ETC serving every part of the country. AT&T Jan. 2012 Comments at 15-16. Here, we find the record evidence inadequate to demonstrate that even non-ETC providers will remain and be able to provide voice service at a reasonably comparable rate in a reasonable timeframe to all the customers the price cap carriers currently are required to serve by virtue of their ETC designations.

<sup>385</sup> 2014 USTelecom Forbearance Petition at 66; AT&T Aug. 2014 Comments at 32.

<sup>386</sup> 2014 USTelecom Forbearance Petition at 66; Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, WC Docket Nos. 10-90, 11-42, at 2-3, Attach. (filed Sept. 15, 2014) (A&T Sept. 15, 2014 *Ex Parte*

of the census blocks not subject to our prior grant of forbearance based on evidence provided by only one provider. Moreover, even with respect to AT&T alone, we are not persuaded that we should grant forbearance in the census blocks that are covered by the data and claims made by AT&T. Notably, AT&T has not provided evidence that would allow us to determine on a level of granularity, analogous to the protections provided by section 214(e)(4), that for each census block at issue that other ETCs will have the ability to take on additional consumers within a reasonable timeframe.<sup>387</sup> Without such a showing, we are not persuaded that consumers will be protected if we permit price cap carriers to bypass the 214(e)(4) relinquishment process in the remaining high-cost and extremely high-cost census blocks.

117. Nor are we convinced based on the data in the record provided for AT&T's service areas in Louisiana and Illinois that the existence of multiple voice service options in a wire center would necessarily ensure that consumers will continue to have access to voice service in the absence of another ETC being required to serve those customers. AT&T claims that multiple providers serve each wire center but does not provide evidence regarding the coverage of those providers in the specific census blocks at issue. As AT&T also has acknowledged in the pending Lifeline proceeding, most non-ILEC ETCs provide only mobile wireless service — meaning they do not offer the fixed voice option made available by price cap carriers.<sup>388</sup> In other contexts, parties have argued that there continues to be gaps in mobile wireless coverage, particularly in rural areas.<sup>389</sup> Thus, we are not persuaded that consumers will be protected if we forgo a localized inquiry into whether other ETCs can take on a price cap carrier's customers simply based on the fact that there are multiple wireless providers serving that census block.

118. For similar reasons, we are also not convinced that low-income consumers will be protected if we effectively preempt price cap carriers' Lifeline obligations by forbearing from ETC designations or the obligation of ETCs to provide Lifeline service in all areas where price cap carriers do not receive support.<sup>390</sup> In particular, we find it appropriate to evaluate marketplace conditions for low-income customers in a more focused manner, even in areas where we might naturally expect at least some level of competitive provision of service generally. Low-income consumers may lack the resources to take advantage of alternative service options from non-Lifeline providers.<sup>391</sup> As noted above, there may

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Letter); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, WC Docket Nos. 10-90, 11-42, at 1-2, Attach. (AT&T Oct. 15, 2014 *Ex Parte* Letter).

<sup>387</sup> See 47 U.S.C. § 214(e)(4).

<sup>388</sup> See Comments of AT&T, WC Docket No. 11-42 et al., at 28-29 (filed Aug. 31, 2015) (AT&T Aug. 2015 Comments).

<sup>389</sup> See, e.g., Reply Comments of Competitive Carriers Association, WC Docket No. 10-90 et al., at 7-8 (filed Sept. 8, 2014); Comments of the Blooston Rural Carriers, WC Docket No. 10-90 et al., at 4 (filed Aug. 8, 2014); Letter from Steven K. Berry, President & CEO, Competitive Carriers Association, WC Docket Nos. 10-90, 10-208, at 3 (filed Apr. 15, 2014).

<sup>390</sup> We note that USTelecom limits its request for forbearance from price cap carriers' Lifeline obligations to areas in which price cap carriers do not receive high-cost support. See 2014 USTelecom Forbearance Petition at 62 ("Forbearance from enforcement of Section 214(e)(1)(A) where a carrier receives no high-cost support would meet all of the criteria of Section 10."); *id.* at 66-67 (arguing that it is not "necessary for a price cap carrier not receiving support for a given area to be required to continue providing voice telephony," and that "[t]he same is true for Lifeline service"). In comments supporting USTelecom's limited request for forbearance, AT&T raised a more general argument — mirroring its advocacy in WC Docket Nos. 10-90 and 11-42 — that the Commission should separate price cap carriers' Lifeline obligations from their ETC status. See AT&T Comments at 30-33. Those comments could not, of course, expand the scope of USTelecom's forbearance petition. See, e.g., 47 CFR § 1.54 (forbearance petitions must be complete as filed); *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19445, para. 61 n.161 (the Commission is "under no statutory obligation to evaluate [a] Petition other than as pled").

<sup>391</sup> The Commission has previously recognized that even where there is competition generally, categories of customers that might be expected to generate lower revenues could face different competitive options. See, e.g., *Section 272 Sunset Order*, 22 FCC Rcd at 16474-75, 6492-93, paras. 67-68, 106-07 (generally granting regulatory

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not be a Lifeline ETC fully covering the area. USTelecom has not met its burden of proof to demonstrate that it is no longer necessary to require that ETCs offer Lifeline service to protect such consumers. As explained above, while USTelecom makes high-level claims about the ubiquity of Lifeline ETCs and other voice service options, and consumers' preference for subscribing to wireless and VoIP services over legacy stand-alone wireline services,<sup>392</sup> it does not demonstrate that in each census block at issue consumers would have the opportunity to obtain Lifeline service from at least one Lifeline ETC if the price cap carrier no longer had the obligation to provide Lifeline service. Moreover, granting forbearance from the Lifeline obligation for all price cap carriers throughout their service areas based on information AT&T provided about its service area would be overly broad and could potentially provide forbearance in areas where the incumbent price cap carrier is the only ETC offering Lifeline service to qualified consumers. And even in cases where AT&T has demonstrated that there is more than one Lifeline provider designated to serve a wire center, USTelecom has not provided evidence to show that those remaining Lifeline ETCs, many of which likely are wireless providers (as AT&T has acknowledged), have the coverage and capacity to serve all of the price cap carriers' Lifeline customers within a reasonable period.<sup>393</sup>

119. We acknowledge that the section 214(a) discontinuance process provides some protection to consumers,<sup>394</sup> but USTelecom has failed to demonstrate that this protection is sufficient for consumers living in the census blocks at issue.<sup>395</sup> In evaluating an application for discontinuance authority, the existence, availability, and adequacy of alternatives is one of five factors the Commission typically considers.<sup>396</sup> This balancing that the Commission undertakes in evaluating section 214(a) discontinuance applications differs from the section 214(e)(4) relinquishment process, where Congress made clear that the sole focus is whether *all* consumers that were served by an ETC would continue to be served if that ETC were to relinquish its ETC designation.<sup>397</sup>

120. As we explained above, we granted partial forbearance before based on several factors including the backstop of the section 214(a) discontinuance process. But for the census blocks at issue

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relief in the provision of long distance service given the state of competition but adopting special protections for low volume users who may have fewer competitive choices and greater difficulty engaging in usage substitution).

<sup>392</sup> See, e.g., 2014 USTelecom Forbearance Petition at 63, App. B & C; AT&T Comments at 6-7; Verizon Jan. 2012 Comments at 9-12; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 20.

<sup>393</sup> 47 U.S.C. § 214(e)(4).

<sup>394</sup> *Id.* § 214(a); AT&T Comments at 8; Comments of CenturyLink, WC Docket No. 10-90, at 22-23 (Aug. 8, 2014) (CenturyLink Aug. 2014 Comments); AT&T Sept. 15, 2014 *Ex Parte* Letter at 2.

<sup>395</sup> A finding that forbearance would promote competitive market conditions “may” be the basis for finding forbearance in the public interest, permitting, but not requiring, the Commission to resolve section 10(a)(3) on that basis alone. 47 U.S.C. § 160(b). Here, in addition to questions about the nature and extent to which forbearance will promote competitive market conditions, other public interest considerations are significant to our section 10(a)(3) analysis, as well.

<sup>396</sup> *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003) (*Verizon Discontinuance Order*) (the Commission considers a number of factors in assessing section 214(a) discontinuance applications, including 1) the financial impact on the common carrier of continuing to provide the service; 2) the need for the service in general; 3) the need for the particular facilities in question; 4) the existence, availability, and adequacy of alternatives; and 5) increased charges for alternative services, although this factor may be outweighed by other considerations”). The Commission has sought comment on possible criteria against which to measure “what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (e.g., TDM to IP, wireline to wireless).” See *Emerging Wireline FNPRM*, 30 FCC Rcd at 9478-93, paras. 202-36.

<sup>397</sup> 47 U.S.C. § 214(e)(4).

where price cap carriers maintain the federal high-cost ETC obligation to provide voice service, we conclude that conditions are absent that would permit us to reasonably predict that customers will continue to be served with voice service at reasonably comparable rates if the price cap carrier no longer has this obligation. These census blocks are by definition high-cost or extremely high-cost, and therefore we cannot assume the incumbent will continue to offer voice service in the same way, at reasonably comparable rates, for the indefinite future without the relevant ETC obligation. We need to ensure that every consumer living in that census block will have an alternative option for such voice service in the absence of the price cap carrier having the obligation to serve those consumers.

121. We are also not persuaded that relying on the section 214(a) discontinuance process would be sufficient to protect consumers if we were to forbear from ETC designations in all census blocks where price cap carriers do not receive high-cost support.<sup>398</sup> Although the Commission will take into account whether prices will increase for consumers, the inquiry is based on “whether alternative services are priced so high that *most* users cannot afford to purchase them,” not whether low-income consumers will be able to purchase services.<sup>399</sup> And the Commission has made clear that any increase in charges for alternative services is just one of five factors that the Commission balances in evaluating section 214(a) discontinuance applications and that this factor can be outweighed by other considerations.<sup>400</sup>

122. Given USTelecom’s petition and the state of the evidence, we also conclude that USTelecom has not met its burden of demonstrating that ETC designations and obligations are no longer necessary to ensure that the charges, practices, or classifications of price cap carriers remain just and reasonable and not unjustly or unreasonably discriminatory in the census blocks at issue.<sup>401</sup> We relied on the existence of several safeguards in granting partial forbearance — specifically, other Title II requirements, the likelihood that the price cap carrier will continue to provide voice service in the relevant census blocks, states’ judgments in assuring local rates remain just and reasonable, and the section 214(a) discontinuance process.<sup>402</sup> It has not been shown that these safeguards will provide the same level of protection here, given the unique nature of the census blocks at issue and the lack of a demonstration that another party would be able to serve all of the affected consumers with rates that are reasonably comparable to rates offered in urban areas in such census blocks.

123. The census blocks where price cap carriers continue to have a federal high-cost ETC voice obligation are expensive to serve. We are not convinced that high-level claims about competitive conditions in the voice market generally provide sufficient assurance that rates will remain just and reasonable without a specific showing that such conditions exist in every census block at issue.<sup>403</sup> We also note that unlike many of the census blocks where we granted partial forbearance, in the census blocks

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<sup>398</sup> Although we find that the section 214(a) discontinuance process is not sufficient in itself to protect consumers based on the record we have in front of us, we are not persuaded that we should grant blanket discontinuance for all price cap carriers. See USTelecom Aug. 2014 Comments at 22; ACS Sept. 2014 Reply at 21; *December 2014 Connect America Order*, 29 FCC Rcd at 15667, para. 61. As we discuss above, the section 214(a) discontinuance process involves a case-by-case balancing of a number of factors and requires notice to consumers. No showing has been made in the record (1) that based on the relevant factors permitting price cap carriers to discontinue their services without going through the section 214(a) discontinuance process would serve the public interest or (2) how the Commission could ensure that consumers would be properly notified if the Commission were to grant blanket discontinuance. See 47 U.S.C. § 214(a); 47 C.F.R. § 63.71.

<sup>399</sup> *Verizon Discontinuance Order*, 18 FCC Rcd at 22751, para. 27 (emphasis added).

<sup>400</sup> *Id.* at 22742, para. 8, 22751, para. 27.

<sup>401</sup> 47 U.S.C. § 160(a)(1).

<sup>402</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15666, paras. 56-58.

<sup>403</sup> See, e.g., 2014 USTelecom Forbearance Petition at 62-67; AT&T Comments at 6-7.

at issue, we do not have the assurance that another ETC required to offer voice service at reasonably comparable rates to all locations in the census block will be serving that census block.

124. We also note that in all census blocks, low-income consumers could be at particular risk if there are gaps in coverage within the area where the price cap carrier previously offered Lifeline service. USTelecom has also not identified the specific state ETC obligations from which it seeks relief, making it difficult to determine whether practices would remain just and reasonable in the absence of those obligations. Accordingly, while it is quite possible that a price cap carrier that undergoes the statutory process for relinquishing an ETC designation under section 214(e)(4) will be able to demonstrate that rates will remain just and reasonable following its exit, we cannot make that determination on the general, broad assertions offered by USTelecom and commenters in this proceeding.

125. Based on the limited record evidence we have before us, we also conclude that it would not serve the public interest to grant blanket forbearance of price cap carriers' ETC designations and their associated obligations in all census blocks where price cap carriers do not receive high-cost support.<sup>404</sup> USTelecom has not met its burden to show in each census block at issue what voice and Lifeline options are available to consumers, which state obligations are imposed on ETCs and that those state obligations are unnecessary for promoting the public interest, and why it is no longer necessary for states or the Commission, if applicable, to handle relinquishments through the section 214(e)(4) process. Without a developed record on the state ETC obligations to which price cap carriers remain subject, we are unable to assess whether forbearing from ETC designations and effectively preempting those state requirements would serve the public interest, and thus do not find on this record that forbearance is warranted under section 10(a)(3).

126. We also note that the USTelecom Petition appears to be more focused on how providing the requested relief would benefit price cap carriers and does not demonstrate how the benefits of granting this relief might flow through to consumers. Although we previously concluded in the *December 2014 Connect America Order* that price cap carriers might reallocate the funding they spent on maintaining their voice networks to deploying broadband networks when we granted partial forbearance for voice service for this limited number of census blocks,<sup>405</sup> we are not persuaded that requiring price cap carriers to remain ETCs meaningfully diverts carriers' resources from broadband deployment to high-cost areas in this context,<sup>406</sup> particularly when they have not provided evidence regarding the costs and available funding associated with state obligations, they remain eligible for Lifeline support, and they remain eligible for high-cost support in census blocks where we have not granted partial forbearance.<sup>407</sup>

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<sup>404</sup> 47 U.S.C. § 160(a)(3).

<sup>405</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15668-69, para. 65.

<sup>406</sup> *See, e.g.*, 2014 USTelecom Forbearance Petition at 68; ACS Comments at 9; ITTA Comments at 9; AT&T Aug. 2014 Comments at 13-14; AT&T Comments at 4, 8-9.

<sup>407</sup> Some commenters claim that Lifeline is a "pass-through program" because they are reimbursed for the discount they pass on to customers, and thus they are not fully compensated for the costs of providing Lifeline service from the Lifeline funding mechanism. *See, e.g.*, 2014 USTelecom Forbearance Petition at 67 n.206; AT&T Aug. 2014 Comments at 32-33; USTelecom Sept. 2015 Comments at 5. As we noted, to the extent a price cap carrier decides that it no longer wants to offer Lifeline service, and there is another ETC, it can relinquish its ETC designations through the section 214(e)(4) process. We also note that where price cap carriers have received partial forbearance from the federal high-cost ETC obligation to provide voice service but maintain a Lifeline obligation, we have determined that price cap carriers do not need support to maintain their networks, either because they are low-cost or because the existence of an unsubsidized competitor suggests that a carrier can serve the census block absent a subsidy. In areas where price cap carriers have not received partial forbearance, they remain eligible for high-cost support to maintain their voice network. We also note that the administrative costs of Lifeline are irrelevant in determining whether we should grant forbearance in areas where price cap carriers do not receive high-cost support. *See e.g.* 2014 USTelecom Forbearance Petition at 67 n.206; AT&T Aug. 2014 Comments at 32. Price cap carriers cannot use high-cost support to offset the administrative costs of Lifeline, thus we are not persuaded that we should

(continued . . .)

USTelecom also has not demonstrated that its member companies would reinvest these funds to serve the public interest by deploying to high-cost unserved areas rather than spending it to deploy broadband in areas that are already served or using the funds for other business purposes.

127. Moreover, the Commission made clear in the *USF/ICC Transformation Order* that one of its universal service goals includes the preservation of voice service.<sup>408</sup> On balance, we conclude that it would not serve the public interest to allow USTelecom to use forbearance to bypass the statutory scheme established by Congress in sections 214 and 254 without meeting their burden of proof. Rather, we conclude that it serves the public interest to require that the providers best situated to ensure that consumers maintain access to voice service at reasonably comparable rates continue to be subject to a legal obligation to provide that service at the present time, while the Commission completes the full implementation of the framework established in the *USF/ICC Transformation Order* to implement mechanisms that will encourage the deployment of voice- and broadband-capable networks to these areas. This approach reasonably balances our goals of maintaining voice service, encouraging the deployment of modern networks, ensuring customers have access to reasonable rates, and minimizing the universal service contribution burden on consumers.<sup>409</sup>

128. For similar reasons, we conclude that it would not serve the public interest for the Commission and the states to devote what would likely be considerable time and resources to identify any consumers that become unserved and then select and obligate other common carriers to serve those consumers pursuant to section 214(e)(3) for this period while we complete implementation of the *USF/ICC Transformation Order* reforms, when price cap carriers are already providing voice service to these consumers.<sup>410</sup> Such a process would require a full-scale assessment of potential replacement carriers to ensure that they have ability and capacity to serve unserved consumers. We note that many of these census blocks will be eligible for the Phase II auction and subsequent actions to award support to the extent no entity is authorized to receive support after the Phase II auction. Thus, it would not be a good use of resources to designate another carrier pursuant to section 214(e)(3) to serve an area when the price cap carrier might well be replaced by another ETC within the next several years. We were comfortable relying on the protection of section 214(e)(3) in conjunction with the totality of circumstances related to the partial forbearance we granted in the *December 2014 Connect America Order*.<sup>411</sup> But here the record lacks evidence that consumers will continue to have a reasonably priced voice option if forbearance is granted, and we are not convinced that relying on section 214(e)(3) would serve the public interest, particularly if the Commission (or states if applicable) would have to designate new ETCs across the country if consumers lack access to a reasonably priced voice service as a result of forbearance.

129. In section IV, we address issues that have principally been raised in pending rulemaking proceedings, but we recognize that arguments related to these issues are raised in the USTelecom Petition or arguably appear in the record of the forbearance proceeding. For instance, we explain in sections IV why we are not persuaded that our decision is inconsistent with the principle of competitive neutrality, or violates section 214(e) of the Act or the section 254 requirements that support be sufficient and providers “make an equitable and nondiscriminatory contribution” to universal service, or that large service areas

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grant forbearance in areas where price cap carriers do not receive high-cost support based on claims that Lifeline administrative costs are too high. 47 U.S.C. § 254(e) (“A carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”).

<sup>408</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 49.

<sup>409</sup> *Id.* at 17680, para. 49; 17681, para. 51; 17682, para. 55; 17682-83, para. 57.

<sup>410</sup> 47 U.S.C. § 214(e)(3).

<sup>411</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15667, para. 61.

violate section 254(f) of the Act.<sup>412</sup> We also explain that because price cap carriers are differently situated from new ETCs, we are not persuaded that the fact that new ETCs are able to seek an ETC designation that is limited to the areas where they will be receiving support from a high-cost mechanism like the Phase II auction requires that we grant the forbearance requested for price cap carriers to ensure that they can also seek a narrower service area.<sup>413</sup> Thus, to the extent arguments related to these issues were raised in the context of this forbearance proceeding as well pending rulemaking proceedings, we conclude that they do not persuade us that it would serve the public interest to grant USTelecom's forbearance request.<sup>414</sup>

130. Instead, we conclude that it serves the public interest for the states, or this Commission where appropriate, to handle these issues on a localized case-by-case basis through the section 214(e)(4) relinquishment process, as Congress intended. Such a case-by-case review is better handled by the states to the extent they have designated the ETC as they are experts regarding the facts on the ground within their respective borders, and thus can better identify which consumers may become unserved and which voice providers are able to serve those consumers. We are not persuaded by generalized claims in the record before us that the section 214(e)(4) relinquishment process is unduly burdensome.<sup>415</sup> No incumbent price cap carrier has submitted information to the record claiming to have faced difficulty in relinquishing its incumbent ETC designation to date, and as such, these arguments are merely speculative.<sup>416</sup> If price cap carriers are unable to relinquish their ETC designations in certain census blocks because they are the only ETC serving those census blocks, they should provide more specific information to the record regarding those particular census blocks as described above to demonstrate forbearance from their ETC obligations in those specific areas would be warranted. Although granting forbearance on such a case-by-case basis is likely to take longer than simply granting blanket forbearance,<sup>417</sup> we conclude that without more granular data about the census blocks at issue we cannot make an informed decision pursuant to the statutory criteria regarding whether these obligations remain necessary and whether granting forbearance would serve the public interest. On balance we conclude that the importance of ensuring that consumers continue to have access to voice services outweighs the costs to price cap carriers, particularly when price cap carriers have not demonstrated that it would be unduly burdensome for an incumbent carrier to relinquish its ETC designation in circumstances where it would be appropriate to relieve carriers of the accompanying obligations.

131. We are also not convinced that granting forbearance from ETC designations or obligations in the relevant census blocks is required by section 706 of the Telecommunications Act of 1996, which addresses the use of forbearance to remove "barriers to infrastructure investment" to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability

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<sup>412</sup> 47 U.S.C. § 214(e); 254. We note that these arguments were also raised by USTelecom and other commenters in the context of the Commission's rulemaking proceeding prior to this petition being filed. *See infra* Section IV. *See, e.g.,* 2014 USTelecom Forbearance Petition at 69-73; AT&T Comments at 5; ITTA Comments at 9-10; Verizon Comments at 8; ACS Comments at 8-9.

<sup>413</sup> *See infra* Section IV; 2014 USTelecom Forbearance Petition at 71-72.

<sup>414</sup> *See infra* Section IV.

<sup>415</sup> *See, e.g.,* 2014 USTelecom Reply at 26; USTelecom Sept. 2015 Comments at 5; Verizon Jan. 2012 Comments at 12-14.

<sup>416</sup> *See, e.g.,* Michigan PSC Reply at 8 ("[T]here is already a mechanism in place under Section 214(e) to allow a carrier to relinquish its designation as an ETC that ensures that another ETC must be in a given area before a carrier can discontinue service, and this process has not been shown to be unduly burdensome"); NASUCA Comments at 13 ("The relinquishment process has not been shown to be unreasonable").

<sup>417</sup> *See, e.g.,* Verizon Jan. 2012 Comments at 14; AT&T Jan. 2012 Comments at 15.

to all Americans.<sup>7418</sup> We are not persuaded that requiring price cap carriers to maintain their ETC designations and associated obligations unless they go through the section 214(e)(4) relinquishment process is a “barrier to investment” when price cap carriers remain eligible for Lifeline support. They have not provided specific evidence regarding the costs and support opportunities associated with state ETC obligations,<sup>419</sup> and they remain eligible for high-cost support in areas where they retain the federal high-cost ETC obligation to provide voice service. Section 706 requires that the method the Commission use to remove barriers to infrastructure investment be “consistent with the public interest,” and given the lack of persuasive evidence that forbearance will meaningfully advance section 706’s objectives, we are not persuaded that it could overcome the public interest considerations counseling against forbearance explained above.

132. We acknowledge that the requested forbearance may promote competitive market conditions by giving price cap carriers the flexibility to compete on a more equal regulatory footing with competitors that do not have such ETC obligations.<sup>420</sup> But there is no evidence to suggest that simply relieving price cap carriers of these obligations would promote market competition in every census block at issue so that we can be certain that affected consumers would continue to be served. We believe that the possible promotion of market competition in some of these areas is greatly outweighed by the risks inherent in granting the broad forbearance in all of these areas without a case-by-case review and evidence of how that forbearance will affect consumers living in the census blocks at issue. Accordingly, in this context we are not convinced that the promotion of competitive market conditions provides a basis by which we can find that forbearance would serve the public interest.

133. The record does not support a determination that forbearing from the requirement that ETCs offer Lifeline service in areas where they do not receive high-cost support would be consistent with the public interest. To make such a determination, among other points it is necessary to have sufficient information on factors such as (1) the marketplace considerations for low-income consumers specifically, including the extent to which they rely on wireline service (given that non-ILEC, Lifeline-only ETCs overwhelmingly provide only wireless service), and (2) to the extent the existing choices are not sufficient absent the presence of a price cap carrier, the likelihood that other choices are likely to emerge for low-income consumers.<sup>421</sup> The record before us on these issues does not persuade us that forbearance would be consistent with the public interest, and we thus deny such forbearance as a matter of the USTelecom petition and the high-cost rulemaking.

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<sup>418</sup> 47 U.S.C. § 1302(a). *See, e.g.*, 2014 USTelecom Forbearance Petition at 68-69; AT&T Jan. 2012 Comments at 15; AT&T Aug. 2014 Comments at 24; Verizon Jan. 2012 Comments at 8; AT&T Comments at 6.

<sup>419</sup> *See supra* para. 113.

<sup>420</sup> 47 U.S.C. § 160(b); *December 2014 Connect America Order*, 29 FCC Rcd at 15669, para. 66.

<sup>421</sup> USTelecom attaches to its Petition a Sept. 7, 2011 paper by Dr. Kevin Caves concerning wireless substitution for fixed service. The paper references in passing an estimate of cross-price elasticity of mobile demand with respect to the price of fixed-line service for Lifeline customers. USTelecom also attaches a declaration from Professor John Mayo and a July 15, 2014 paper by Professor John Mayo et al. finding that the percentage of the low-income population that subscribes to wireless-only services has grown from 6 percent in 2003 to over 57 percent by 2013 as compared to 42 percent of all households. *See* 2014 USTelecom Forbearance Petition at Attach. B & C. We do not find these data points to be sufficient to conclude that forbearing from the requirement that price cap ETCs offer Lifeline service would be consistent with the public interest. For instance, even taking the economic assertions at face value, USTelecom has not addressed factors that may lead some low-income consumers to prefer wireline service. We note in that regard that the Lifeline program allows only one subsidized line per household, and thus the Lifeline customers of price cap LECs, such as AT&T, have elected to receive wireline rather than wireless service using the Lifeline discount. A presentation of cross-price elasticity estimates (in Caves) and statistics showing a majority of low-income households choose wireless (in Mayo et al.) says little about the preferences of households who have not switched to wireless service. USTelecom has not presented any data on households with a preference for fixed service and on how the loss of a fixed, low-cost option would affect the public interest.

134. We note, however, that the record in the pending Lifeline rulemaking — once fully developed — may inform the Commission’s consideration of the question. Indeed, AT&T, in its Aug. 31, 2015 comments to the pending Lifeline rulemaking, discusses a vision for “New Lifeline.” It states that while “the proliferation of Lifeline-only ETC status requests is a clear indication of the interest in participating in the program . . . that interest has been largely limited to a subset of prepaid wireless carriers.”<sup>422</sup> AT&T adds that “[c]ompetition for eligible consumers will become even more vibrant under New Lifeline, making it unnecessary to require a company receiving high-cost/[Connect America] funding to offer Lifeline service.”<sup>423</sup> Particularly in light of AT&T’s recognition of the interplay between broader Lifeline reforms and the request to forbear from Lifeline obligations of price cap carriers, we find it is appropriate to deny forbearance here but reserve the right to address the issue pending in the Lifeline rulemaking, where we are hopeful the record will be better developed on this issue, including through ex parte presentations in the near future.

#### **IV. ETC DESIGNATIONS AND SERVICE OBLIGATIONS (WC DOCKET NOS. 14-192, 11-42, 10-90)**

135. In this section, we address other arguments raised in the record of the forbearance proceeding and the pending rulemakings regarding ETC designations and service obligations. We decline to grant forbearance from ETC designations and obligations in areas where price cap carriers do not receive high-cost support in the context of the pending rulemakings. We also decline to revisit our longstanding precedent interpreting section 214(e)(1). Finally, we decline to take additional steps requested by commenters in the pending rulemaking proceedings.

##### **A. Forbearance in the Pending Rulemakings**

136. We note that in the high-cost rulemaking a number of commenters also supported forbearance from ETC designations and obligations in areas where price cap carriers do not receive high-cost support.<sup>424</sup> For the reasons discussed in our analysis of the USTelecom Petition,<sup>425</sup> we are not persuaded that forbearance should be granted in this context. These commenters did not raise additional arguments that persuade us that forbearance should be granted that have not otherwise been addressed.<sup>426</sup> And as we explained above,<sup>427</sup> we find that it is appropriate to separately address the issue of forbearance in the context of the Lifeline proceeding in the forbearance requests that have been raised separately in the Lifeline proceeding.

137. We also take this opportunity to clarify that in the census blocks where we have not granted forbearance, price cap carriers only have the federal high-cost ETC obligation to provide voice

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<sup>422</sup> AT&T Aug. 2015 Comments at 28.

<sup>423</sup> *Id.* at 29.

<sup>424</sup> Insofar as commenters seek relief from other obligations that are outside the scope of issues that are the focus of this proceeding, *see, e.g.*, Comments of Alaska Communications Systems Group Inc., WC Docket 10-90 et al., at 34-35 (ACS Aug. 2014 Comments) (seeking relief from incumbent local exchange carrier-specific obligations), we decline to take them up here, where the Commission, and the record before us, is focused on distinct issues. Commenters wanting the Commission to take up such issues are free to file a petition for rulemaking, which the Commission can evaluate with the benefit of the resulting record focused specifically on whether such rulemaking is warranted.

<sup>425</sup> *See supra* Section III.H.2.

<sup>426</sup> *See, e.g.*, Verizon Jan. 2012 Comments at 7-8; AT&T Jan. 2012 Comments at 14-15; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 15-17; Frontier Jan. 2012 Comments at 9; Reply Comments of Alaska Communications Systems Group Inc., WC Docket 10-90 et al., at 7-8 (ACS Feb. 2012 Reply); AT&T Aug. 2014 Comments at 24.

<sup>427</sup> *See supra* Section III.H.2.

service in their service areas where they have been designated as ETCs.<sup>428</sup> They are not required to provide voice service in census blocks they have been wrongly assigned or in other census blocks that are not located in their service area. In partially-served census blocks, price cap carriers' obligation to provide voice service is limited to their own service area, not the service area of any other price cap carrier or rate-of-return carrier serving that census block.

### B. Interpretation of Section 214(e)(1) of the Act

138. In addition to finding that USTelecom has failed to meet the statutory forbearance criteria with respect to its requests concerning ETC designations and obligations, we find that requiring price cap carriers to maintain their ETC designations and obligations in all census blocks where they do not receive high-cost support is consistent with section 214(e)(1). Likewise, we decline a request that we reinterpret section 214(e)(1) to require that price cap carriers only provide voice services in areas where they are *receiving* support. Commenters in certain pending rulemaking proceedings suggest that because section 214(e)(1)(A) requires that ETCs “offer the services that are supported by Federal universal service support mechanisms” throughout their service areas, ETCs should only be required to maintain their ETC designations and offer voice service throughout their service areas if they are in fact receiving universal service support in those areas.<sup>429</sup> Parties seeking review of the *USF/ICC Transformation Order* raised this issue before the Tenth Circuit, claiming that the Commission was acting “contrary to law” “by refusing to relieve [ETCs] of their ongoing duty to serve all comers without [universal service]” in areas served by unsubsidized competitors.<sup>430</sup>

139. First, we are not convinced by the argument that our decision in the *USF/ICC Transformation Order* to target high-cost support to certain unserved areas requires that we reinterpret section 214(e)(1) so that price cap carriers only have ETC obligations where they receive high-cost support. The Commission has previously found that the Act does not “require that all ETCs must receive support, but rather only that carriers meeting certain requirements be *eligible* for support.”<sup>431</sup> The Tenth Circuit has similarly found that “[h]ad Congress intended designated ETCs to automatically receive [universal service] funds, it could and should have omitted the phrase “be eligible to” from the language of [section] 214(e)(1), and that “[n]othing in the language of [section] 214(e) entitles an ETC to [universal

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<sup>428</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d) (requiring ETCs to offer the supported service “throughout the service area for which the [ETC] designation is received”).

<sup>429</sup> See, e.g., AT&T Aug. 2014 Comments at 19-20; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 8; Reply Comments of Verizon, WC Docket No. 10-90 et al., at 2-4 (filed Sept. 8, 2014) (Verizon Sept. 2014 Reply); Verizon Jan. 2012 Comments at 4, 8-9; Comments of ITTA, WC Docket No. 10-90 et al., at 19 (filed Aug. 8, 2014) (ITTA Aug. 2014 Comments); Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 7 (filed Jan. 18, 2012) (USTelecom Jan. 2012 Comments); AT&T Jan. 2012 Comments at 13-14.

<sup>430</sup> Additional Universal Service Fund Issues Principal Brief at 24-26, *In re: FCC 11-161*, 753 F.3d 1015 (2014) (No. 11-9900), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-322176A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-322176A1.pdf).

<sup>431</sup> *CETC Interim Cap Order*, 23 FCC Rcd at 8847, para. 29. The Commission noted that section 214(e)(1) of the Act states that “[a] common carrier designated as an eligible telecommunications carrier . . . shall be *eligible* to receive universal service support in accordance with section 254,” and that section 254(e) of the Act states “[o]nly an eligible telecommunications carrier designated under section 214(e) shall be *eligible* to receive specific Federal universal service support.” *Id.* See also *Universal Service First Report and Order*, 12 FCC Rcd at 8884-85, para. 192 (noting that an ETC’s service area is the “area for which the carrier *may* receive support from federal universal service support mechanisms”) (emphasis added). Compare 47 U.S.C. §§ 214(e)(1), 254(e) with 47 U.S.C. § 254(h)(1)(A) (providing that carriers offering certain services to rural health care providers “shall be entitled” to have the difference between the rates charged to health care providers and those charged to other customers in comparable rural areas treated as an offset to any universal service contribution obligation).

service] funding.”<sup>432</sup> We thus find our interpretation in that regard amply supported by the text of section 214(e)(1), and nothing in the record here persuades us to revisit that view.

140. We also continue to interpret section 214(e)(1) such that ETC obligations flow from the ETC’s eligibility for support, and are not limited to the actual receipt of federal high-cost universal service support. Section 214(e)(1)(A) and (B) imposes obligations on ETCs with respect to “the services that are supported by Federal universal support mechanisms under section 254(c).”<sup>433</sup> Although conceivably read in different ways, we remain persuaded to interpret the quoted language to refer broadly to the services that the Commission establishes as universal service, rather than only referring to services insofar as an ETC actually receives universal service support for its provision of them. Section 214(e)(1)(A) uses the same language in describing the ETCs’ service obligation — “the services that are supported by Federal universal service support mechanisms” — as section 254(c)(1) uses to describe what the Commission establishes as the definition of universal service under that provision.<sup>434</sup> The Commission’s existing definition of service that constitutes universal service under section 254(c)(1) does not vary depending on whether or not high-cost support actually is received, supporting the view that ETCs’ service obligations under section 214(e)(1) need not be read as varying on that basis, either.<sup>435</sup> The Conference Report also supports our view by characterizing section 214(e)(1) as imposing the obligation “that a common carrier designated as an ‘eligible telecommunications carrier’ shall offer *the services included in the definition of universal service* throughout the area specified by the State commission, and that such services must be advertised generally throughout that area”<sup>436</sup> while recognizing the possibility that the ETC might not actually receive support.<sup>437</sup> Further, as the Commission has recognized, there are “advantages to obtaining and maintaining an ETC designation *regardless* of whether a[n] . . . ETC receives high-cost support.”<sup>438</sup> “In particular,” an ETC could be eligible to receive “low-income universal service support” from a separate federal mechanism and “universal service support at the state level.”<sup>439</sup> Insofar as there are benefits to an ETC designation independent of the actual receipt of high-cost support, that further bolsters our interpretation that section 214(e)(1) obligations apply even when the ETC does not actually receive high-cost support.

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<sup>432</sup> *In re: FCC 11-161*, 753 F.3d at 1067, 1088. The Tenth Circuit held that the petitioners’ argument “rests on the faulty assumption that being designated an ETC under [section] 214(e) entitles a carrier to [universal service] funds.” *Id.* at 1088.

<sup>433</sup> 47 U.S.C. § 214(e)(1)(A). *See also id.* § 214(e)(1)(B) (imposing obligations regarding “such services”).

<sup>434</sup> 47 U.S.C. § 214(e)(1)(A) (“A common carrier designated as an eligible telecommunications carrier . . . shall, throughout the service area for which the designation is received- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier);”); 47 U.S.C. § 254(c)(1) (“Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services” meet certain criteria.)

<sup>435</sup> *See* 47 C.F.R. § 54.101.

<sup>436</sup> S. Conf. Rep. 104-230 at 141 (Feb. 1, 1996) (emphasis added).

<sup>437</sup> As the Conference Report states, “[u]pon designation, a carrier is eligible for *any* specific support provided under new section 254 for the provision of universal service in the area for which that carrier is designated.” *Id.* (emphasis added). By referring to “any” support provided under section 254, the Conference Report thus recognizes the possibility that support might not be provided in particular instances.

<sup>438</sup> *High-Cost Universal Service Support et al.*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8847-48, para. 30 (2008).

<sup>439</sup> *Id.*

141. Price cap carriers remain eligible to receive high-cost support in every census block where they continue to have the federal ETC high-cost obligation to provide voice service.<sup>440</sup> Moreover, all price cap carriers are eligible to receive Lifeline support and may be eligible to receive state support as a condition of maintaining their ETC designations in all census blocks until they choose to relinquish. Because commenters have not provided sufficient evidence to show that a scenario exists where they continue to have ETC obligations but are not eligible for support, we decline to exercise our discretion to issue a declaratory ruling that would alter our interpretation of section 214(e)(1) under such circumstances.

142. For the same reasons, we are not persuaded by claims that section 214(e)(5), which defines a “service area” to mean “a geographic area established . . . for the purpose of determining universal service obligations and support mechanisms,” requires that ETC designations expire in all areas where price cap carriers no longer receive high-cost support as a result of our decision to target high-cost support to certain areas.<sup>441</sup> Commenters have not provided specific evidence to demonstrate that price cap carriers are not eligible to receive Lifeline support or universal service support from state commissions, and price cap carriers remain eligible for high-cost support in the census blocks where they maintain a federal high-cost ETC voice obligation. Below, we also describe why our current interpretation does not constitute an unfunded mandate and is not inconsistent with the requirement that there be sufficient support mechanisms to preserve and advance universal service, and does not constitute a taking, violate competitive neutrality, or violate the mandate that the Commission’s universal service policies be “equitable and nondiscriminatory.”<sup>442</sup> We also describe why our decision to permit new ETCs to obtain ETC designations in areas where they are awarded support does not require that we take the same approach with price cap carriers.<sup>443</sup>

143. We also disagree that we need to reinterpret section 214(e)(1) to “fully” implement our goal of ensuring that broadband is available in high-cost areas.<sup>444</sup> While promoting the deployment of broadband is an objective of our *USF/ICC Transformation* reforms, another objective is to preserve existing voice service.<sup>445</sup> We conclude that, by continuing to find that section 214(e)(1) requires that ETCs provide the supported service if they are eligible for support, we are able to balance our dual objectives without sacrificing one for the advancement of the other.

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<sup>440</sup> Nothing in today’s ruling changes the fact that to the extent any carrier believes it needs additional support to provide voice service at reasonably comparable rates in those census blocks not subject to the prior grant of partial forbearance, it may bring to the Commission’s attention the particular facts that demonstrate it is unable to provide voice service at rates equal to or less than the then applicable reasonable comparability benchmark for voice service. AT&T provided data regarding costs for providing voice service in their high-cost and extremely high-cost areas based on the CostQuest Broadband Access Tool and a prior version of the Connect America Cost Model, neither of which were adopted by the Bureau. Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 11-42, at 2-3 (filed Nov. 19, 2014) (AT&T Nov. 19, 2014 *Ex Parte* Letter); AT&T Aug. 2014 Comments at 29 n.81. Because these earlier models were not adopted in the rulemaking process, we conclude they are not appropriate tools for determining the cost of maintaining standalone voice service. No other carrier provided specific evidence about its costs to maintain existing voice service in the areas at issue. Nor has any carrier provided specific evidence about its actual associated revenues to demonstrate a discrepancy between costs and revenues.

<sup>441</sup> 47 U.S.C. § 214(e)(5). *See, e.g.*, USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 12.

<sup>442</sup> *See infra* Section IV.C.

<sup>443</sup> *See infra* Section IV.C.

<sup>444</sup> *See, e.g.*, AT&T Aug. 2014 Comments at 21.

<sup>445</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17680-81, paras. 49, 51.

### C. Preemption or Otherwise Limiting State ETC Designations and Obligations as Requested by Certain Parties Outside of the Forbearance Context

144. In this section, we address certain additional arguments made by USTelecom and certain of its member companies outside of the forbearance context.<sup>446</sup> Specifically, we decline requests raised in certain rulemaking proceedings that the Commission should preempt state ETC designations and obligations or take steps to similar effect — such as the issuance of a declaratory ruling or rules sunseting or otherwise limiting ETC designations or obligations.<sup>447</sup> Commenters make only vague, unsubstantiated claims about burdensome state obligations in support of these requests. No price cap carrier has provided specific evidence, beyond a few general examples,<sup>448</sup> of where they are subject to state obligations as a result of being designated an ETC in that state, what those state obligations are, and whether they receive support from the states at issue. And while we acknowledge that the *USF/ICC Transformation Order* adopted a more targeted approach for providing high-cost support, we do not agree that this result requires taking the overly broad measure of preempting or otherwise limiting state ETC designations.

145. Although the Commission noted in the *Universal Service First Report and Order* that “service areas should be sufficiently small to ensure accurate targeting of high-cost support,”<sup>449</sup> this statement was a recommendation to states; the Commission did not prohibit states from adopting large study areas for price cap carriers. Concerns that large service areas would violate section 254(f) of the Act largely originated from the desire at that time to avoid erecting barriers to entry for smaller competitors by requiring those small competitors to provide service in a larger service area that is larger than they can cover with start-up costs,<sup>450</sup> concerns that are now moot given that the Commission has decided that it will only provide Connect America Fund support to one entity to serve fixed locations in an area.<sup>451</sup> And if price cap carriers believed that large state-designated service areas contravened the

<sup>446</sup> We note that to the extent related arguments were also raised in the forbearance proceeding, we have also addressed those issues above in explaining why we have denied USTelecom’s forbearance request. *See supra* Section III.H. In particular, any arguments discussed in Section III.H raised in support of forbearance — but not clearly raised in support of other regulatory relief — also do not persuade us to take other actions on that basis. We base this conclusion both on the lack of clarity regarding how such arguments relate to regulatory actions other than forbearance and given our conclusion above that those arguments fail to demonstrate that relief is in the public interest. *See supra* Section III.H. By the same token, with respect to those arguments discussed in this section that are not expressly referenced or discussed in our forbearance analysis above, we find that they were not clearly raised in support of forbearance, as opposed to other possible Commission actions. Given the lack of clarity regarding a nexus between those arguments and any forbearance the Commission might grant, the fact that we reject on the merits the claims that those arguments counsel in favor of the relief the commenters did clearly seek in raising those arguments, and the forbearance analysis already conducted above, we remain persuaded that forbearance would not be in the public interest under section 10(a)(3). For the same reasons, we find that those arguments do not justify a conclusion that the forbearance criteria in section 10(a)(1) and (a)(2) are met.

<sup>447</sup> 47 U.S.C. §§ 201(b), 254(f). *See, e.g.*, AT&T Aug. 2014 Comments at 16-19, 22-24; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 13-14; Verizon Jan. 2012 Comments at 5-7; AT&T Jan. 2012 Comments at 8-13; Frontier Jan. 2012 Comments at 9; Comments of Windstream, Inc., WC Docket No. 10-90 et al., at 33-34 (filed Jan. 18 2012) (Windstream Jan. 2012 Comments).

<sup>448</sup> *See, e.g.*, AT&T Aug. 2014 Comments at 15 n.37 (providing some general examples of state ETC obligations and explaining that it *receives* state universal service support in only three states, but not explaining which states impose such obligations and which states *make available* universal service support to support such obligations).

<sup>449</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8879, para. 184.

<sup>450</sup> 47 U.S.C. § 254(f); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 181, para. 177 (1996).

<sup>451</sup> We do not agree with commenters’ claims that Congress’ decision to require state commissions to work with the Commission if they intend to establish a smaller service area for a new ETC than the incumbent rural carrier’s study area demonstrates that Congress “plainly intended that the states issue ETC designations for non-rural carriers that are smaller than those carriers’ study areas . . . .” AT&T Comments at 11; 47 U.S.C. § 214(e)(5). Instead, Congress

(continued . . .)

Commission's rules to preserve and advance universal service when legacy mechanisms were in place, they should have challenged those service areas at the time they were designated, not years later after many price cap carriers have benefited from receiving universal service support in these large service areas.

146. Commenters have not demonstrated that in the context of the *USF/ICC Transformation Order* reforms, large state-designated service areas are inconsistent with the Commission's rules to preserve and advance universal service. We conclude that on balance, such obligations serve the public interest and advance universal service principles. As we transition to new funding mechanisms to achieve our goal of supporting the deployment of both voice and broadband-capable networks, the existing service areas and corresponding obligations will help preserve existing voice service for consumers until Phase II is fully implemented, and even the most remote, extremely high-cost areas are served, consistent with our universal service goals and principles.<sup>452</sup> We have already taken significant action to relieve price cap carriers of ETC obligations in response to our *USF/ICC Transformation Order* reforms by granting partial forbearance from the federal high-cost ETC voice obligation. Price cap carriers retain this obligation in just over six percent of the census blocks in incumbent price cap territories. And as we explain below, we intend to work with the states to take further targeted steps so that we do not inadvertently thwart state and Lifeline universal service goals by taking the broad action that commenters request at this point in time.

147. We disagree with commenters that maintaining ETC designations and obligations in the relevant census blocks violates the principle of competitive neutrality.<sup>453</sup> In earlier phases of this proceeding, commenters argued that requiring price cap carriers to maintain their ETC designations and ETC obligations is not competitively neutral because it would force price cap carriers that do not receive high-cost support to compete against carriers that receive Phase II auction support or some other form of high-cost support, and commenters have argued that it requires that price cap carriers maintain ETC designations and obligations in areas that are not eligible for high-cost support while other carriers are not subject to the same requirements.<sup>454</sup> First, we note that due to the partial forbearance we have already granted,<sup>455</sup> price cap carriers will not have a federal high-cost ETC obligation to compete with an ETC that has replaced the price cap carrier as the sole ETC receiving Connect America support to deploy voice and broadband networks to fixed locations. Second, price cap carriers remain eligible for high-cost support for their federal high-cost ETC voice obligation in the census blocks where forbearance has not been granted, i.e., including areas where the price cap carriers are eligible to compete to receive Phase II

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may have adopted a presumption that a rural carrier's ETC service area is its study area and procedures for redefining a rural carrier's service area due to concerns about protecting rural carriers — which typically are smaller providers — from competitive entry by carriers that serve only those customers that are least expensive. *See, e.g., Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1581-84, paras. 40-45 (2004) (analyzing a service area redefinition based on concerns expressed by the Federal-State Joint Board on Universal Service, including “(1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level”).

<sup>452</sup> 47 U.S.C. § 254(b)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 17860, para. 49.

<sup>453</sup> *See, e.g.*, 2014 USTelecom Forbearance Petition at 69-72; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 9; AT&T Aug. 2014 Comments at 23-24; Verizon Jan. 2012 Comments at 4-5, 7; Windstream Jan. 2012 Comments at 34; Reply Comments of CenturyLink, WC Docket Nos. 10-90 et al., at 4 (filed Feb. 17, 2012) (CenturyLink Feb. 2012 Reply); ACS Comments at 9; AT&T Jan. 2012 Comments at 5-6; AT&T Comments at 5.

<sup>454</sup> *See, e.g.*, AT&T Jan. 2012 Comments at 5-6; CenturyLink Feb. 2012 Reply at 4; Verizon Jan. 2012 Comments at 4-5; Windstream Jan. 2012 Comments at 34.

<sup>455</sup> *See December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

support and where they will potentially be replaced by another ETC which would eliminate their federal high-cost ETC voice obligation.<sup>456</sup> We intend to re-examine these obligations once we complete implementation of the Phase II framework adopted by the Commission in the *USF/ICC Transformation Order*. Third, in the census blocks where price cap carriers are required to maintain their ETC designations but they do not have the federal ETC high-cost obligation to provide voice service, they have access to the same Lifeline funding and section 214(e)(4) relinquishment process as any other Lifeline-only ETC.

148. We also conclude that it does not violate competitive neutrality to impose requirements on some ETCs when those requirements are narrowly tailored to advance the Commission's objective of preserving voice service for consumers living in high-cost and extremely high-cost census blocks. The principle of competitive neutrality does not require all competitors to be treated alike, but "only prohibits the Commission from treating competitors differently in 'unfair' ways."<sup>457</sup> Moreover, neither the competitive neutrality principle nor the other section 254(b) principles impose inflexible requirements for the Commission's formulation of universal service rules and policies. Instead, the "promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles" in section 254(b).<sup>458</sup> Any departure from strict competitive neutrality caused by requiring price cap carriers to maintain their ETC designations and voice obligations in the relevant census blocks is outweighed by the advancement of the section 254(b) principle that "[c]onsumers in all regions of the Nation . . . should have access to telecommunications . . . services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."<sup>459</sup> In the census blocks where we previously granted forbearance, we found that it promoted competitive neutrality to give price cap carriers the flexibility to compete on a more equal regulatory footing with competitors that are not ETCs,<sup>460</sup> but in the census blocks at issue here, we conclude that the benefits of maintaining voice service outweigh these concerns.

149. As the Commission noted in adopting the offer of model-based support,<sup>461</sup> the incumbent price cap carriers' long history of providing service in the relevant service areas, coupled with the fact that they have already obtained the ETC designation necessary to receive universal service support to serve those areas, puts them in a unique position to maintain voice service as we transition fully to Phase II support and work towards implementing a support mechanism that will target support to areas that remain unserved. We note that in other situations where the Commission has expressed concern over requiring an unsupported carrier to compete against a supported carrier or take on obligations where they may not be eligible for support, those carriers have been new entrants, and the Commission was

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<sup>456</sup> *Id.*

<sup>457</sup> *Rural Cellular Ass'n. v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009).

<sup>458</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8803, para. 52; see also *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001) (*Qwest I*) ("The FCC may balance the principles against one another, but must work to achieve each one unless there is a direct conflict between it and either another listed principle or some other obligation or limitation on the FCC's authority."); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) ("We reiterate that predictability is only a principle, not a statutory command. To satisfy a countervailing statutory principle, therefore, the FCC may exercise reasoned discretion to ignore predictability."); *Rural Cellular Ass'n. v. FCC*, 588 F.3d at 1103 ("The Commission enjoys broad discretion when conducting exactly this type of balancing.") (citing *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C.Cir.1999)).

<sup>459</sup> 47 U.S.C. § 254(b)(3).

<sup>460</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15669, para. 66.

<sup>461</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17732-33, para. 177.

concerned that imposing such requirements would create barriers to entry.<sup>462</sup> Those concerns do not exist here, where the price cap carriers involved are incumbent providers who have existing ETC designations and a long history of serving customers with voice service in the areas at issue, particularly where the obligation remains in a narrowly defined set of census blocks. We have seen no other proposals in the record that would provide assurance that consumers will continue to have access to voice service at reasonably comparable rates as we complete the transition towards supporting entities that provide both voice and broadband support in the census blocks at issue.

150. We are also not persuaded that requiring price cap carriers to maintain their ETC designations and obligations in the relevant census blocks (1) violates the “equitable and nondiscriminatory” provisions of section 254 by requiring unfunded carriers to maintain their ETC designations and obligations and also compete against other carriers,<sup>463</sup> (2) constitutes an unfunded mandate or is inconsistent with the requirement that there be sufficient support mechanisms to preserve and advance universal service,<sup>464</sup> or (3) that price cap carriers will be forced to provide voice service and also compete against other providers at a loss and therefore a taking in violation of the Fifth Amendment will result.<sup>465</sup> In the census blocks where price cap carriers remain obligated to provide voice service, they remain eligible to receive high-cost support. We note that we have already granted forbearance from this requirement in areas where we will be funding another ETC to provide voice and broadband to fixed locations in the census block.<sup>466</sup> In those areas where price cap carriers remain obligated to continue to be ETCs and offer Lifeline service, they will continue to be eligible to receive support through the Lifeline program like any other Lifeline-only ETC.<sup>467</sup> To the extent that price cap carriers remain obligated to comply with state-imposed regulations as a result of being ETCs, we find that price cap carriers have not provided enough information beyond generalized assertions regarding the state obligations that are imposed as a result of them continuing to be ETCs, and whether they are eligible to receive any type of funding to comply with those obligations so they have not demonstrated that the support they receive from states is insufficient. We also note that price cap carriers, like all ETCs, still retain the option to

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<sup>462</sup> See 2014 USTelecom Forbearance Petition at 70-71, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168 (2000); *Connect America Fund*, WC Docket No. 10-90, Second Report and Order, 27 FCC Rcd 7856 (2012).

<sup>463</sup> 47 U.S.C. § 254(b)(4), (d), (f) (requiring that all providers “make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service”). See, e.g., USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 9, 15; Verizon Jan. 2012 Comments at 5; USTelecom Jan. 2012 Comments at 7; Windstream Jan. 2012 Comments at 34.

<sup>464</sup> 47 U.S.C. § 254 (b)(5), (e), (f). See, e.g., Windstream Jan. 2012 Comments at 34; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 9; AT&T Comments at 5-6; AT&T Jan. 2012 Comments at 10; Verizon Jan. 2012 Comments at 4; ACS Aug. 2014 Comments at 33; CenturyLink Feb. 2012 Reply at 4; ACS Comments at 8; Verizon Sept. 2014 Reply at 3-4; Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 11-42, at 2-3 (filed Nov. 19, 2014) (AT&T Nov. 19, 2014 *Ex Parte* Letter).

<sup>465</sup> U.S. Const. Amend. V. See, e.g., Verizon Jan. 2012 Comments at 5; ITTA Aug. 2014 Comments at 19-20; Windstream Jan. 2012 Comments at 34-35; ACS Feb. 2012 Reply at 8. We also disagree that our decision to require price cap carriers to maintain their ETC designations and obligations in the relevant census blocks is arbitrary and capricious. See, e.g., Windstream Jan. 2012 Comments at 35. In this Order we provide detailed discussion as to why price cap carriers are best situated to maintain voice service for their existing customers during this transition period and why it serves the public interest to have ETCs maintain their ETC designations and obligations in the relevant census blocks.

<sup>466</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

<sup>467</sup> See, e.g., Comments Submitted on Behalf of the Public Utilities Commission of Ohio, WC Docket No. 10-90 et al., at 6 (filed Jan. 18, 2012).

relinquish their ETC designations in areas that other ETCs serve if they decide that they no longer wish to maintain their ETC designation in those areas pursuant to section 214(e)(4) of the Act.<sup>468</sup>

151. We do not agree that we need to take the broad measures of preempting existing ETC designations and obligations *simply because* new ETCs are able to be designated as ETCs for the service areas where they will receive support under new mechanisms (e.g., the Mobility Fund, rural broadband experiments, and the Phase II auction).<sup>469</sup> We note that new ETCs are differently situated than incumbent ETCs. Unlike incumbent price cap carriers, entities that are now or will be designated with narrower ETC designations and funded with our new Connect America mechanisms are starting with a clean slate. They are not seeking to narrow existing service areas to exclude census blocks where they already have the ETC obligation to serve consumers.

152. The price cap carriers do not provide any evidence regarding which specific state regulations are “inconsistent with the Commission's rules to preserve and advance universal service,” or if the regulations relate to “additional definitions and standards to preserve and advance universal service,” that the regulations do not “adopt specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”<sup>470</sup> Absent a specific showing from the price cap carriers, we have no evidentiary basis to preempt state obligations. As we have noted above repeatedly, price cap carriers have not provided specific details, beyond a few general examples, of the ETC obligations that states impose on ETCs, which specific states impose such obligations, in which states the price cap carriers are eligible to receive funding, and how these state laws or requirements meet the preemption standard.<sup>471</sup> To the extent any party is subject to a state rule that it believes violates section 254(f) of the Act, it can file a petition with the Commission requesting preemption of that specific state rule.<sup>472</sup>

153. Nor are we persuaded based on the record in front of us that we should adopt rules requiring states to adopt their own funding mechanisms.<sup>473</sup> While we strongly urge states to consider their own funding mechanisms to supplement our federal support to help advance our shared objective of ensuring access to both voice and broadband services, we recognize there may be particular circumstances in some states that could make it difficult for a state to take such action. Moreover, without a more developed record of regarding what obligations are imposed by the states and which already provide funding, we lack an understanding of the level of state funding necessary to provide sufficient support or which states should be subject to such rules.

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<sup>468</sup> 47 U.S.C. § 214(e)(4).

<sup>469</sup> See, e.g., 2014 USTelecom Forbearance Petition at 71-72; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 10; AT&T Aug. 2014 Comments at 16-19; Verizon Sept. 2014 Reply at 3-4; AT&T Comments at 9-10. We acknowledge that the Commission previously stated that “we believe that, to meet the competitive neutrality requirement in non-rural telephone company service areas, the procedure for designating carriers as ETCs should be functionally equivalent for incumbents and new entrants.” *Federal-Joint Board on Universal Service, Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 151756, para. 21 (2000). This statement was made in the context of ensuring that new entrants were not subjected to a more rigorous state ETC designation process than incumbents. See *id.* at 151756 n.39. This conclusion has no bearing on whether we should preempt ETC obligations altogether.

<sup>470</sup> 47 U.S.C. § 254(f).

<sup>471</sup> See *supra* para. 113.

<sup>472</sup> 47 U.S.C. § 254(f).

<sup>473</sup> See, e.g., ACS Feb. 2012 Reply at 8.

154. We also conclude that it would not serve the public interest to de-link Lifeline from ETC designations at this time and permit price cap carriers to opt-out of their Lifeline obligations.<sup>474</sup> We note that our decision at this point in time does not prejudice how we may address the issue in the context of broader Lifeline reforms where this issue has also been raised.<sup>475</sup> Commenters claim that the Act does not require that carriers providing Lifeline be ETCs,<sup>476</sup> and that there is widespread access to Lifeline providers that render the requirement that ETCs offer Lifeline and that Lifeline providers be ETCs unnecessary.<sup>477</sup> They also complain about the costs of compliance with the existing Lifeline program's requirements.<sup>478</sup> The Commission is currently considering reforms that would "rebuild the current framework of the Lifeline program and continue our efforts to modernize the Lifeline program so that all consumers can utilize advanced networks."<sup>479</sup> As we noted above, we recently released an FNPRM seeking comment on such issues as making broadband a supported service for the Lifeline program,<sup>480</sup> removing the responsibility of conducting the Lifeline eligibility determination from Lifeline providers,<sup>481</sup> and providing means for broader participation in Lifeline and encouraging competition in the Lifeline market.<sup>482</sup>

155. We will be able to better assess which Lifeline options will remain for consumers once we make final decisions on the requirements carriers will have to comply with to provide Lifeline services and the services that will be supported by Lifeline. We also find that any costs that are imposed on ETCs as a result of having to provide Lifeline are best addressed in the context of the Lifeline rulemaking, particularly given that the Commission is considering potentially relying upon a third party for eligibility determinations. Rather than make premature decisions that could leave consumers without a Lifeline option, we conclude that it will serve the public interest to maintain existing Lifeline obligations until we have had the opportunity to fully review the record and determine how to best achieve our universal service goals more comprehensively through Lifeline reform. In the meanwhile, ETCs continue to have

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<sup>474</sup> See 47 C.F.R. § 54.405 (requiring carriers designated as ETCs to offer Lifeline supported service). We note that USTelecom, in its forbearance petition, did not raise this general request for the Commission to de-link price cap carriers' Lifeline obligations from their ETC designations. The USTelecom forbearance petition asked more narrowly that the Commission forbear from requiring price cap carriers to participate in Lifeline in areas where they receive no high-cost funding. See *supra* para. 118 & n.390. Our analysis here of commenters' more general arguments, in rulemaking proceedings for separating price cap carriers' ETC designations from their Lifeline obligations may bolster our analysis of the narrower issue raised in the USTelecom forbearance petition. See *supra* para. 118; see also *supra* n.390. Nothing in this discussion can or should, however, be interpreted to expand the scope of USTelecom's petition.

<sup>475</sup> *Lifeline Second FNPRM*, 30 FCC Rcd at 7863-64, paras. 125-126.

<sup>476</sup> See, e.g., AT&T Aug. 2014 Comments at 8, 30-31; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 19-20. See also USTelecom Aug. 2014 Comments at 24; Reply Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 14 (filed Sept. 8, 2014); CenturyLink Aug. 2014 Comments at 22.

<sup>477</sup> See, e.g., AT&T Aug. 2014 Comments at 31-33; USTelecom Mar. 14, 2014 *Ex Parte* Letter Attach. at 20; Comments of AT&T, WC Docket No. 10-90 et al., at 5 (filed Sept. 9, 2015) (AT&T Sept. 2015 Comments); AT&T Comments at 6-8; USTelecom Sept. 2015 Comments at 5.

<sup>478</sup> See, e.g., AT&T Dec. 2014 Comments at 4; AT&T Aug. 2014 Comments at 32-33; AT&T Sept. 15, 2014 *Ex Parte* Letter at 5.

<sup>479</sup> *Lifeline Second FNPRM*, 30 FCC Rcd at 7824-25, para. 9

<sup>480</sup> *Id.* at 7844, paras. 61-62

<sup>481</sup> *Id.* at 7845-62, paras. 63-120.

<sup>482</sup> *Id.* at 7862-69, 121-141.

the option to seek relinquishment of their ETC designations through the section 214(e)(4) process if they decide they no longer want to provide Lifeline service.<sup>483</sup>

156. Even though we decline at this time to take the broad action requested by commenters, we do acknowledge that once Phase II has been fully implemented, and we have undertaken efforts to ensure service in the most remote, extremely high cost areas, it may serve the public interest to make certain adjustments to legacy ETC designations to reflect the more targeted distribution of high-cost support. But rather than make premature and sweeping changes that could lead to the unintended consequences discussed above, we conclude that a more targeted approach is warranted that respects the primary role that Congress gave the states in designating ETCs and that will capitalize on their knowledge of the facts-on-the-ground within their individual borders. At the same time, we want to work cooperatively in partnership with the states to develop a shared understanding for how ETC designations and obligations might be adapted to the changing landscape, taking into account circumstances at the local level.

157. We therefore invite a dialogue with the states regarding existing state and federal ETC obligations, available state and federal funding, and voice options for consumers living in price cap carrier census blocks where ETCs have not been authorized to begin receiving Phase II support. We share the same objective - ensuring that all of the consumers living in the census blocks that do not have a Phase II provider at a minimum maintain access to voice service. Achieving these objectives requires aligning both state and federal ETC obligations with available support, and for states to create explicit state support mechanisms to supplement the federal mechanism. We also believe it would be fruitful to discuss the role of section 214(e)(4) relinquishment process in the context of our reforms and whether any guidelines or rules should be put into place to govern this process.

## V. ORDERING CLAUSES

158. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that USTelecom's Petition for Forbearance filed October 6, 2014, IS GRANTED IN PART AND IS OTHERWISE DENIED, as set forth herein.

159. IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that section III of this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release.

160. IT IS FURTHER ORDERED, pursuant to section 4(i), (j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), (j), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Petition for Declaratory Ruling filed by Granite Telecommunications, LLC, on May 4, 2015, IS DISMISSED AS MOOT.

161. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 10, 201-206, 214, 218-220, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 160, 201-206, 214, 218-220, 254, 303(r), 332, 403, that section IV hereof IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>483</sup> 47 U.S.C. § 214(e)(4).

**APPENDIX A****Comments, Oppositions, & Replies in WC Docket No. 14-192****Comments**

Access Point, Birch Communications, Bullseye Telecom, Sage Telecom,  
Telscape Communications (Access Point et al.)  
Alaska Communications Systems Group, Inc. (ACS)  
American Cable Association (ACA)  
AT&T Services, Inc. (AT&T)  
CenturyLink  
Garland Connect (Garland)  
ITTA, The Voice of Mid-Size Communications Companies (ITTA)  
National Association of State Utility Consumer Advocates (NASUCA)  
Puerto Rico Telephone Company, Inc. (PRTC)  
United States Telecom Association (USTelecom)  
Verizon  
XO Communications LLC (XO)

**Oppositions**

Birch, BT America, Integra, Level 3 (Birch et al.)  
COMPTEL  
Full Service Network LP and Alarm Industry Communications Committee (FSN/AICC)  
Granite Telecommunications, LLC (Granite)  
Sprint Corp. (Sprint)

**Reply Comments**

Alarm Industry Communications Committee (AICC)  
Frontier Communications Corporation (Frontier)  
Michigan Public Service Commission (Michigan PSC)  
National Association of State Utility Consumer Advocates (NASUCA)  
NTCA–The Rural Broadband Association, the National Exchange Carrier Association Inc.,  
and WTA-Advocates for Rural Broadband (NTCA et al.)  
Pennsylvania Public Utility Commission (Pennsylvania PUC)  
United States Telecom Association (USTelecom)  
Wyoming Public Service Commission (Wyoming PSC)  
XO Communications LLC (XO)

## APPENDIX B

Forbearance Granted in this Order (WC Docket No. 14-192)<sup>1</sup>

Category of Rule	Applicable C.F.R. or U.S.C. sections	Scope of Forbearance	Conditions
BOC Entry into Long Distance	47 U.S.C. § 271(c)(2)(B)(i)-(ii), (iv)-(xiv) 47 U.S.C. § 271(d)(6) (except as it applies to 47 U.S.C. § (c)(2)(B)(iii))	BOCs	No
Equal Access	47 U.S.C. § 251(g) (only as specified in Part III(C) <i>supra</i> ) 47 U.S.C. § 251(b)(3) (only as specified in Part III(C) <i>supra</i> ) 47 C.F.R. § 51.205 (only as specified in Part III(C) <i>supra</i> ) 47 C.F.R. § 51.209 (only as specified in Part III(C) <i>supra</i> ) 47 C.F.R. § 51.213 (only as specified in Part III(C) <i>supra</i> ) 47 C.F.R. § 51.215 (only as specified in Part III(C) <i>supra</i> )	Incumbent LECs as to inter-exchange services	Yes (As specified in Part III(C) <i>supra</i> )
64kbps Voice Channel	47 C.F.R. § 51.319(a)(3)(iii)(C)	All	Yes (As specified in Part III(D) <i>supra</i> )
Computer Inquiry Requirements	47 C.F.R. § 64.702 Other requirements not codified	All	Yes (As specified in Part III(E) <i>supra</i> )

## Partial Forbearance Granted in this Order

Category of Rule	Applicable C.F.R. or U.S.C. Sections	Scope of Forbearance	Conditions
Newly Deployed Entrance Conduit	47 U.S.C. § 224 (only as specified in Part III(F) <i>supra</i> ) 47 U.S.C. § 251(b)(4) (only as specified in Part III(F) <i>supra</i> )	Incumbent LECs	No

<sup>1</sup> To the extent that there are any inconsistencies between this Appendix and the Memorandum Opinion and Order, the Memorandum Opinion and Order controls.

**STATEMENT OF  
CHAIRMAN TOM WHEELER**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

The over-arching goal of the Commission's process reform initiative is to improve how the agency conducts its business and, ultimately, the Commission's effectiveness in promoting the public interest. Getting process reform right requires balancing sometimes competing goals. On the one hand, we want to eliminate outdated, unnecessary rules to let the marketplace work. On the other, we have an obligation to preserve core values like competition, consumer protection, and universal service. Balanced properly, these commitments can promote innovation and investment, paving the way for the deployment of the new networks and services that consumers demand. This Order gets that balance right.

Today, we consider a petition from USTelecom that seeks forbearance relief from a broad array of obligations that apply to incumbent telephone carriers. These rules were adopted to protect or expand competition, but technological and market conditions have changed dramatically, making the rules outdated.

When we consider whether to grant forbearance, we must ask several essential questions: Is this rule necessary to ensure that rates and practices are just and reasonable? Is it necessary to protect consumers? Would eliminating the rule serve the public interest? Would it promote competition?

The item we adopt today carefully considers the issues one-by-one. We grant forbearance to the full extent supported by the record. The Order eliminates costly regulations that are no longer necessary in today's environment. Removing these rules will promote the ability of local phone companies to build out broadband and invest in modern and efficient networks.

At the same time, it preserves requirements that remain essential to our fundamental mission. The item ensures that price cap carriers remain obligated to provide reasonably priced voice service to consumers living in areas that are the most expensive to serve.

This Order is just the latest evidence that the Commission takes a common-sense approach to regulation, and will eliminate outdated, unnecessary rules to let the marketplace work, while taking the necessary steps to ensure consumers are protected.

Thank you to the Wireline Competition Bureau for their work on this item.

**STATEMENT OF  
COMMISSIONER MIGNON CLYBURN  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

Eliminating unnecessary and obsolete obligations, while preserving requirements that are essential to maintaining the integrity of those abiding principles of ensuring competition, consumer protection, universal service and public safety laid out so eloquently in the Communications Act, is a sound regulatory practice.

In this case, I support granting relief from provisions that seem to have outlived their purpose, including certain provisions of section 271, that are duplicative of section 251, which were designed to enable the Bell Operating Companies – a term that has little meaning these days – to enter the long distance market. Similarly, the separate long distance market has become less relevant, and it is hard to justify retaining an obligation on incumbent carriers to enable their consumers to select a separate long distance carrier (a requirement known as equal access).

Evolution of the market does not always mean, however, that regulations necessary to stimulate such change should be eliminated, because doing so could undermine the very conditions that have enabled competition to flourish. Indeed, I would submit that the need for interconnected networks is as relevant to competition today as it was a century ago when AT&T agreed to the Kingsbury Commitment. While the policies and means of doing so may change, competition may not occur organically absent appropriately-balanced government policies.

While the Order does a reasonable job balancing these issues, I am concerned that forbearance from certain obligations, such as access to entrance conduit in greenfield situations, may inadvertently curtail future competition. I would have greater comfort if the Order included a thorough market analysis to determine the impact on competition and public interest. Unfortunately, in my view, that is not the case.

I hope my fear, that once the conduit is deployed, future competitive options may be inhibited due to the costs to new entrants and burden on private entities, is not realized. The notion that we should take action to reduce the costs of trenching fiber is not a novel issue. Indeed, Congress has been working on a bipartisan basis, under the leadership of Representatives Walden and Eshoo, on the “Dig Once” broadband deployment bill, or the Broadband Conduit Deployment Act of 2015, to deploy conduit once rather than retrenching. While such Congressional actions are for deploying along public roads rather than private property, I submit that many of the concerns and the desire to reduce costs and burdens, are the same regardless of where the construction is located. For these reasons, I cannot support this section of the item.

While I am grateful that the Order does not forbear from entrance conduit in “brownfield” situations, it is just a matter of time before today’s greenfield is tomorrow’s brownfield. And, in the future, the difference will be that competitive providers will have access to certain entrance conduit and not others.

Even so, I do appreciate the effort to create a balanced approach, and that the Order declines to forbear in circumstances where consumers, competition or the public interest could be adversely impacted. As a result, I vote to approve in part and dissent in part.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

If you want to make way for the new, you need to get rid of the old. That is what we do today with the forbearance petition that is before us. Guided by the issues raised in this filing, we comb through relics in our rules and scrap policies that reflect a communications era that predates the digital age.

To this end, we discard stale requirements for stand-alone long-distance service. We remove duplicative policies for wholesale services. And we dispense with practices that were built for narrowband rather than broadband markets. To the extent that issues raised here are the subject of broader proceedings, we commit to addressing them in other fora. We should do so expeditiously. I think this approach is modern and principled. As a result, this decision has my support.

**STATEMENT OF  
COMMISSIONER AJIT PAI  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

It's an iron law of economics: You can't spend a dollar twice. That means every dollar spent complying with outdated, legacy regulations or maintaining creaky, aging networks is a dollar that can't be spent deploying next-generation infrastructure, like ultrafast fiber. New technologies, faster broadband, greater deployment—that's what consumers want, and that's what we should be aiming to deliver.

And so, since my first days in this office, I have called on the FCC to remove regulatory barriers to infrastructure investment.<sup>1</sup> Again<sup>2</sup> and again<sup>3</sup> and again<sup>4</sup> and again<sup>5</sup> and again<sup>6</sup> and again<sup>7</sup> I have pressed the agency to eliminate unnecessary regulations, streamline compliance, and excise obligations that don't benefit consumers and only create additional paperwork for accountants and auditors.

Today, we start to grant some of that relief. For example, we eliminate the long-defunct *Comparably Efficient Interconnection* requirements and adopt a streamlined process for the elimination of the *Open Network Architecture* requirements. We end the long-distance equal-access and dialing-parity rules, which have allowed hucksters to scam small businesses and the elderly for years.<sup>8</sup> And we end the so-called checklist obligations of section 271 that let regulatory arbitrageurs resell the services of others at regulated prices, reducing the total investment in communications infrastructure.

Perhaps most importantly, we embrace the importance of next-generation technologies like fiber by ending the requirement that incumbents unbundle a 64 kbps channel when they retire copper. A channel that small provides a tiny fraction of the capacity of what the FCC now calls broadband (0.25%),

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<sup>1</sup> See Remarks of FCC Commissioner Ajit Pai at Carnegie Mellon University, "Unlocking Investment and Innovation in the Digital Age: The Path to a 21st Century FCC," at 6 (July 18, 2012), <http://bit.ly/1NrmYsb>.

<sup>2</sup> Remarks of FCC Commissioner Ajit Pai at the Hudson Institute, "Two Paths to the Internet Protocol Transition" (Mar. 7, 2013), <http://bit.ly/1UEDYxT>.

<sup>3</sup> *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket Nos. 12-61, 10-132, 09-206, 08-225, 08-190, 07-273, 07-204, 07-139, 07-21, 05-342, CC Docket Nos. 02-39, 00-175, 95-20, 98-10, 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, 7752-53 (2013) (Statement of Commissioner Ajit Pai, Approving in Part and Concurring in Part).

<sup>4</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Notice of Proposed Rulemaking, 29 FCC Rcd 10638, 10658 (2014) (Statement of Commissioner Ajit Pai).

<sup>5</sup> Remarks of FCC Commissioner Ajit Pai at Techfreedom's Forum on the 100th Anniversary of the Kingsbury Commitment (Dec. 19, 2013), <http://bit.ly/1k4MuJa>.

<sup>6</sup> Remarks of FCC Commissioner Ajit Pai before the Internet Innovation Alliance, "The IP Transition: Great Expectations or Bleak House?" (July 24, 2014), <http://bit.ly/1QPgx4v>.

<sup>7</sup> Remarks of FCC Commissioner Ajit Pai on Receiving the 2015 Jerry B. Duvall Public Service Award at the Phoenix Center 2015 Annual U.S. Telecoms Symposium (Dec. 1, 2015), <http://bit.ly/1RU3Nul>.

<sup>8</sup> *GPSPS, Inc.*, File No.: EB-TCD-14-00016988, NAL/Acct. No.: 201532170011, FRN: 0022128334, Forfeiture Order, 30 FCC Rcd 7814, 7817 (2015) (Statement of Commissioner Ajit Pai).

and it's rarely used in practice. In fact, the chief proponent of keeping the requirement admits having never ordered such a channel. And the obligation puts incumbents to a Hobson's Choice: either they retire the copper and buy expensive equipment to unbundle a channel that no one will ever use, or they maintain the copper even if no one's using it. By getting rid of this silly rule, capital once wasted on regulatory compliance will now be freed up for more fiber deployment.

That's not to say I agree with every decision made here. We could have and should have gone farther in ditching outdated dictates. For example, I cannot support the decision to retain section 272(e)(3)'s long-distance imputation requirement.<sup>9</sup> That arcane accounting rule requires companies to train specialized accountants—the costs of which are ultimately borne by consumers—even though there is no corresponding public benefit.<sup>10</sup> The FCC itself targeted that provision as ripe for forbearance just last year.<sup>11</sup> Our own staff cannot articulate any current use of that rule. Yet we retain it just because it may have once had value. That's arbitrary and capricious.

Nor can I support the unfunded mandate the *Order* adopts for price cap carriers in remote areas.<sup>12</sup> With respect to these costly-to-serve areas, the Communications Act imposes telephone-service obligations on incumbent local exchange carriers. Those carriers often lack the legal means to recover all the associated costs from their customers.<sup>13</sup> To make up that difference, the Communications Act directs the Commission to offer those carriers “sufficient” universal service support.<sup>14</sup> This raises the question: In this case, what is “sufficient”? The Commission's own model estimates that it should cost price cap carriers more than \$1,488,789,806 each year to serve these remote areas and that the total expected revenue for voice and broadband service in such areas is only \$393,562,260.<sup>15</sup> That leaves price cap carriers short \$1.095 billion a year, or with less than one-third the revenues they need to cover the cost of service in remote areas.<sup>16</sup> This mismatch makes obvious that the support isn't “sufficient” under the

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<sup>9</sup> See *Order* at paras. 40–45.

<sup>10</sup> See Letter from Maggie McCready, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 14-192, at 2 (Dec. 10, 2015).

<sup>11</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Notice of Proposed Rulemaking, 29 FCC Rcd 10638, 10650, para. 43 (2014).

<sup>12</sup> See *Order* at paras. 101–57.

<sup>13</sup> Communications Act § 254(b)(3) (“[R]ates [must be] reasonably comparable to rates charged for similar services in urban areas.”).

<sup>14</sup> Communications Act § 254(b)(5).

<sup>15</sup> There are 624,702 extremely high-cost locations where the monthly cost of service exceeds \$198.60. The high-cost threshold, i.e., where the expected cost of service exceed the expected revenues, is \$52.50. See *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3905, 3905, n.1 (Wireline Comp. Bur. 2015); *Connect America Cost Model Final Results: Offer by Carrier and State*, <http://fcc.us/1IBO4qW> (Apr. 29, 2015).

<sup>16</sup> Although the *Order* downplays this estimate by noting that the model estimates the costs of deploying a fiber-based, broadband network, *Order* at note 365, the model's “IP fiber network would be the appropriate choice for a wireline network even if there were no service obligation to extend broadband.” See *Connect America Fund, High-Cost Universal Service Support*, WC 10-90, 05-337, Report and Order, 28 FCC Rcd 5301, 5316, para. 33 (Wireline Comp. Bur. 2013). Essentially, in other words, where there's going to be voice, there's going to be fiber. Indeed, the actual voice-only copper networks deployed in remote areas likely requires an order of magnitude more support than our model estimates. That's because the costs of a copper network are higher, see *id.* at 5315, para. 33 (“Network construction costs are essentially the same whether a carrier is deploying copper or fiber, but fiber networks result in significant savings in outside plant operating costs over time.”), and the revenues associated with a voice-only network are fewer (just \$33.24 per location, calculated by applying the model's methodology to the voice benchmark, see *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice*

(continued . . .)

Act.<sup>17</sup> And it's the kind of arbitrary and capricious Washington demand that makes Americans cynical about government.

For these reasons, I respectfully approve in part and dissent in part.

(Continued from previous page) \_\_\_\_\_  
*and Broadband Services and Posting of Survey Data and Explanatory Notes*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3687 (Wireline Comp. Bur. 2015)).

<sup>17</sup> The Order responds that carriers “remain eligible to receive high-cost support” even where their actual support amount is zero. *Order* at para. 141. But the *Order* literally has no explanation why that meets the statute’s command. And offering an opportunity for case-by-case review, *id.* at note 440, is no response. The problem isn’t the details, whether the FCC has allocated the right amount for any particular remote area. The problem is systemic: The support offered (none in the areas where USTelecom has sought forbearance) has no rational connection to the unrecoverable costs of the obligations imposed.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Connect America Fund*, WC Docket No. 10-90.

I approve the forbearance provided in this item, to the extent it exists. I caution, however, that upon closer reading, it is not the half a loaf that some have proclaimed it to be but more closely resembles a couple of heel portions. In several cases, even when relief is “granted”, the Commission makes clear that it will continue to enforce the obligations through other statutory provisions—the familiar fauxbearance approach made famous by the Net Neutrality fiasco. In the end, I will take the little relief found acceptable to my colleagues but argue that we were required to provide much more.

The petition before us presented an opportunity to break out of a time warp of the old debates and bygone market era of the Telecommunications Act’s earliest days and adopt meaningful relief to enable companies to shift their resources to providing the new technologies and services that consumers are demanding. That is, to fulfill the supposed goals of the tech transitions proceeding. Unfortunately, in several instances, the actual relief in the item is denied or is insufficient.

In particular, the Commission proves once again that it is only willing to forbear when other statutory provisions remain in place that can allegedly accomplish the same objectives or unless there is no evidence that any competitor is actually benefiting from a provision. For example, on section 271, the Commission grants relief from checklist items that duplicate requirements mandated under section 251, grants relief from checklist items that nobody is using, but denies relief from a checklist item that is not fully duplicated by another provision. Now, consider this troubling statement from the item:

Nor has USTelecom established that the continued application of sections 201, 202 and 251 of the Act presents a sufficient basis for forbearance from the remaining section 272 obligations. While other provisions of the Act certainly complement, and may partially overlap, with the remaining section 272 obligations, we agree with [certain commenters] that section 272 establishes protections that are not wholly replicated by any other Act provision or Commission requirement.

If the standard, found nowhere in the statute, is that every provision from which forbearance is sought must be “wholly replicated” by another provision or rule, then the forbearance process has truly become a farce. How is that relief? It doesn’t sufficiently reduce any burden; it just allows for a quick and misleading nod in a vaguely deregulatory direction. In other words, it’s a mixture of obfuscation and indignation to our true responsibility under section 10.

Even worse, petitioners are forced to prove, in detail, exactly how the Commission can continue to regulate them through continued application of other provisions. Some may choose to play along in the hope of at least obtaining some incremental relief. But I expect that their filings will be used against them should they eventually try to seek relief from the remaining regulations.

Also troubling is the lack of consistent analysis in the item. When the Commission plans to deny relief, it is quick to dismiss “bare” or “conclusory” assertions by petitioners. However, when the Commission wants to grant some forbearance, it is prepared to overlook “bald statements” and point to the “totality of the record”. Similarly, in some sections, petitioners are faulted for providing insufficient data on competition, but in other instances, we are told that persuasive evidence of competition “is not

inherently necessary to grant forbearance”. In addition, data used to explain how market developments have “sharply mitigate[d]” prior concerns about dialing convenience was at one point inserted into the draft and then inexplicably removed. For an agency that wants to be an umpire or referee on all types of conduct, this item reaffirms my belief that it has no reliable strike zone and no idea how to call a fair game.

Having found this item generally lacking of what it could or should have been, I inquired about the possibility of granting USTelecom’s long-pending petition requesting that incumbents be regulated as non-dominant in the provision of switched access voice service. It basically has been sitting idle for three years. At my direction, my staff has periodically asked about the status of the petition, including most recently in June of this year. With the petition continuing to languish, I decided to blog about it in the hopes of prompting a decision. When that did not occur, I raised it again in the context of this proceeding given that they are related issues, and sought a path to how or when it would be considered. Doing so would probably lessen my critique of the forbearance item since the two items are completely intertwined. In fact, it is my understanding that USTelecom contemplated including it in its forbearance petition or filing a separate petition.

Alas, not only was my request to act on the petition refused, but my office was informed that the way in which we had raised it was “not appreciated” as if I had shaken some sense of decorum or operating procedures in *this* Commission. Really, this Commission? It’s hard to take seriously such claims of umbrage when this very item initially contained a key decision on the Remote Areas Fund that caught everyone by surprise because it was not necessary to resolve the forbearance petition. Ah, consistency.

Even more troubling, I was told I couldn’t even get answers to two basic questions posed over a week ago, including: when have the additional requirements for dominant carriers made a difference compared to what would have happened under the non-dominant rules. I recognize that staff primarily works on the Chairman’s agenda, but I did not think it would be too much to ask for someone to spend a small amount of time to answer a couple of questions.

In sum, we could have done more on the forbearance petition, and we could have addressed the related non-dominance issue.