

**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
)	

**OPPOSITION OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) opposes the petition¹ filed by General Communication, Inc. (GCI) seeking reconsideration of the Memorandum Opinion and Order in which the Commission forbore 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.”² GCI claims that the relief granted was overbroad, and asks that the Commission “reconsider its decision to forbear from equal access requirements in rural areas of Alaska.”³ As explained below, the decision to forbear was a reasoned response to the dramatic changes in the wireline voice market since these requirements

¹ General Communications, Inc. Petition for Reconsideration, WC Docket Nos. 14-192, 11-42, 10-90 (filed Jan. 27, 2016) (*GCI Petition*).

² *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, Lifeline and Link Up Reform and Modernization, Connect America Fund*, WC Docket Nos. 14-192, 11-42, 10-90, FCC 15-166, at ¶ 46 (rel. Dec. 28, 2015) (*Forbearance Order*).

³ *GCI Petition* at 2.

were established, and the equal access and dialing parity obligations are no longer necessary for competition and consumer protection going forward. Moreover, the decision to “grandfather” a condition that allows incumbent LEC customers who currently presubscribe to a third-party long distance provider to retain equal access and dialing parity services provides a safeguard that ensures customers in rural Alaska and elsewhere who still want and expect to use stand-alone long distance service can do so.⁴ We therefore ask the Commission to deny the Petition. In the alternative, the Commission should dismiss the Petition because GCI did not participate in the underlying proceeding (and thus is not a party), nor has it adequately explained why it could not have participated earlier in the proceeding.⁵

I. THE CURRENT STATE OF COMPETITION IN THE LONG DISTANCE MARKET JUSTIFIES FORBEARANCE RELIEF.

Stand-alone long distance has been a “fringe” market for some time, and the overwhelming majority of telephone users in this country rely primarily or solely on all-distance services.⁶ The trends are clear; USTelecom estimates that by the end of 2015, only about 20 percent of U.S. households were using traditional “switched” landlines from a telephone provider.⁷ In fact, data show that in 2013, only 4.1 percent of Alaskan households used only a landline telephone, and 10.9 percent used landline mostly, for a total of 15 percent reliance on

⁴ *Forbearance Order* at ¶¶ 53-54.

⁵ See 47 C.F.R. § 1.106(b)(1) (a non-party that petitions for reconsideration must “state with particularity the manner in which the person’s interests are adversely affected” and “show good reason why it was not possible for him to participate” earlier in the proceeding).

⁶ *Forbearance Order* at ¶ 49.

⁷ See Brogan, Patrick, Vice President of Industry Analysis, USTelecom, *Voice Competition Data Support Regulatory Modernization*, available at http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf.

landline telephone service.⁸ Consistent with this trend of steadily declining landline usage, the number of new consumers who will have a need or desire to subscribe to a stand-alone long distance service is likely miniscule.⁹ As such, the original purpose of these requirements has long been achieved; the concerns about Bell Operating Companies giving preferential treatment to AT&T to the detriment of other competing long distance providers simply no longer exist in today's marketplace.

In granting the relief sought by USTelecom, the Commission explained that such relief “is warranted by the dramatic changes in the wireline voice market [], the regulatory disparity between incumbent LECs and their wireline competitors, and the costs associated with compliance.”¹⁰ The Commission also concluded that USTelecom has demonstrated that these requirements “are unnecessary to ensure just and reasonable long distance charges and practices or to protect consumers.”¹¹ That conclusion was based in part on its finding that “the vast majority of customers [are] not utilizing separate providers for local and long-distance service,” despite a recognition that a “substantial disparity in dialing convenience negatively impacts consumers.”¹² Moreover, to accommodate the “still significant number of retail customers” that currently use stand-alone long distance service, the Commission conditioned forbearance by grandfathering the equal access requirements so that they will continue to apply to current

⁸ U. S. Dep't. of Health and Human Services, Centers for Disease Control and Prevention, Nat'l Center for Health Statistics, *National Health Interview Survey Early Release Program*, at 1 (Dec. 2014), available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201412.pdf.

⁹ See *Forbearance Order* at ¶ 49 (“no party disputes that demand for stand-alone long distance service [] has declined, nor has any commenter presented evidence that new customers are subscribing to the service with any frequency”).

¹⁰ *Id.* at ¶ 46.

¹¹ *Id.* at ¶ 49.

¹² *Id.* at ¶ 50.

customers who rely on them rather than forcing them to abandon their chosen long distance service.¹³ The Commission therefore recognized that future new customers would not have the same options as current customers, and nevertheless found that forbearance was warranted. It is well within the Commission's authority to balance objectives in this manner in determining that forbearance relief is warranted.

II. THE GRANT OF FORBEARANCE IS SUPPORTED IN THE RECORD, AND IS IN THE PUBLIC INTEREST.

The Commission affirmatively found that forbearance was in the public interest for several reasons, and GCI, in arguing that grant of its own petition is in the public interest, ignores or discounts the Commission's findings without supporting its claims. For example, in arguing that the facts in Alaska do not support forbearance,¹⁴ GCI ignores the fact that the Commission rationally and justifiably based its determination on the state of the overall stand-alone long distance market, finding that these requirements impose meaningful costs and, as USTelecom noted, those costs "far outweigh the benefits."¹⁵ Further, GCI does not address at all the Commission's recognition that imposing these requirements asymmetrically on only incumbent LECs puts them at a competitive disadvantage to other providers, such as GCI, who are not obligated to provide equal access or incur the costs associated with that burden.¹⁶

Importantly, the Commission found that there are "limited competitive benefits generated by these requirements" for new customers, and on balance concluded that forbearance would

¹³ *Id.* at ¶ 52-53 (explaining that "the public interest requires that [they] avoid upsetting established customer expectations").

¹⁴ *GCI Petition* at 9.

¹⁵ Petition for Forbearance of the United States Telecom Association, WC Docket No. 14-192, at 37 (filed Oct. 6, 2014) (*Forbearance Petition*).

¹⁶ *Forbearance Order* at ¶ 51. Despite GCI's claim that it provides equal access service comparable to incumbent LEC equal access, *GCI Petition* at 11, it is noteworthy that GCI and other non-incumbents are under no legal or regulatory obligation to do so.

promote competition by removing regulatory burdens¹⁷ rather reduce competition, as GCI asserts.¹⁸ GCI makes other vague assertions that amount to conjecture about what “could” happen without equal access requirements. For example, GCI speculates that existing competition could be significantly limited without equal access requirements, jeopardizing customer convenience and service quality.¹⁹ But GCI offers no proof or evidence that these harms would even likely occur in the absence of an equal access mandate for new customers.

Further, GCI’s claim that it did not anticipate national relief on equal access and dialing parity requirements is suspect, and further is belied by the fact that USTelecom’s request for relief was not limited to one or a particular type of locality.²⁰ GCI had every opportunity to become a party to this proceeding by filing comments or otherwise voicing its concerns; the fact that it chose not to and does not adequately explain why should disqualify GCI from now seeking reconsideration.²¹ GCI had 14 months to speak up; the Commission should not now reward GCI’s failure to raise issues about any purported detrimental effect that forbearance would have in rural Alaska by granting this petition.

¹⁷ *Forbearance Order* at ¶ 51.

¹⁸ *See GCI Petition* at 9-12.

¹⁹ *Id.* at 10.

²⁰ *See generally Forbearance Petition* at 33-38. Moreover, despite GCI’s contention that arguments “consistent with GCI’s position were made by other parties” in the record, *GCI Petition* at 8, support for the relief GCI seeks here (that is, different treatment for rural Alaska) is simply not present.

²¹ *See* 47 C.F.R. § 1.106(b)(1).

III. FORBEARANCE DECISIONS ARE NOT SUBJECT TO COMMISSION RECONSIDERATION ONCE THE STATUTORY DEADLINE HAS EXPIRED.

Even if GCI had demonstrated that reconsideration here is warranted (and it has not), section 10(c)²² is a deregulatory statute that directly serves the Act’s purpose of “reduc[ing] regulation in order to . . . encourage the rapid deployment of new telecommunications technologies.”²³ Forbearance is mandatory once the statutory conditions are met,²⁴ and if a petition is not denied for failure to meet the requirements under subsection (a) within the statutory deadline, that petition is granted by operation of law under the terms of section 10(c). Specifically, the statute directs that any forbearance petition “shall be deemed granted *if the Commission does not deny the petition for failure to meet the requirements for forbearance*” within one year, or one year and 90 days, if extended.²⁵ Thus, after forbearance is granted — whether by the Commission’s affirmative grant or by the statutory “deemed grant” provided for by Congress — and the statutory deadline has passed, the Commission must initiate a new rulemaking proceeding before it could reinstate any requirements for which forbearance relief was granted. To be clear, nothing in the statute denies the Commission authority to reconsider a grant of forbearance within the statutory deadline.²⁶ But the statutory deadline precludes the Commission from belatedly reconsidering relief that has already been granted, because any denial would occur after the close of the statutory period, in conflict with the plain language of §

²² 47 U.S.C. § 160(c).

²³ *AT&T Inc. v. FCC*, 452 F.3d 830, 836 (D.C. Cir. 2006) (citation omitted).

²⁴ *See* 47 U.S.C. § 160(a)(1)-(3); *see also* 47 U.S.C. § 160(b) (directing the Commission to consider under subsection (a)(3) whether forbearance will enhance competition).

²⁵ 47 U.S.C. § 160(c).

160(c). Otherwise, the Commission could effectively ignore the statutory deadline and defeat Congress's clear purpose for imposing a deadline for denying forbearance relief.

IV. CONCLUSION.

For the reasons discussed herein, we ask that the Commission deny GCI's petition to reconsider its decision to forbear from equal access requirements in rural areas of Alaska.

Respectfully submitted,

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Dated: February 8, 2016

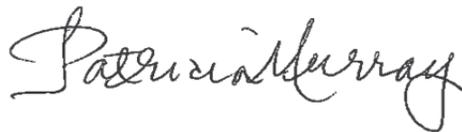
²⁶ Similarly, the Commission may timely reconsider a denial and extend additional deregulatory relief, consistent with the deregulatory purpose of the forbearance provisions.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2016, that true and correct copies of the foregoing Opposition of the United States Telecom Association were provided via electronic mail to the following:

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