

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of USTelecom for Declaratory Ruling	)	WC Docket No. 13-3
that Incumbent Local Exchange Carriers Are	)	
Non-Dominant in the Provision of Switched	)	
Access Services	)	

**COMMENTS OF GENERAL COMMUNICATION, INC. IN RESPONSE TO PUBLIC  
NOTICE SEEKING TO REFRESH THE RECORD**

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**I. INTRODUCTION AND SUMMARY**

General Communication, Inc. (“GCI”) files these comments in response to the Public Notice issued by the Wireline Competition Bureau seeking to refresh the record in response to the petition of the United States Telecom Association (“USTelecom”) requesting a declaration that all incumbent local exchange carriers (“LECs”) are non-dominant everywhere in the provision of switched access services.<sup>1</sup> Once again, USTelecom has sought relief on behalf of all incumbent LECs from obligations that protect consumers and promote competition. Once again, it attempts to justify relief for every locality in the United States based on national statistics. GCI urges the Federal Communications Commission (“Commission”) to adhere to its own principles, developed in the context of granting relief to incumbent LECs from legacy

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<sup>1</sup> Petition for Declaratory Ruling of the United States Telecom Association, WC Docket No. 13-3 (filed Dec. 19, 2012) (“Petition”).

regulations based on the presence of competition, and examine such requests based on data revealing the characteristics of the local geographic and product markets.

If the Commission does grant any relief to incumbent LECs, it should ensure that such relief does not in any way affect the implementation of the *USF/ICC Transformation Order*,<sup>2</sup> or prejudice any of the Commission’s pending rulemakings regarding provisions from which USTelecom seeks relief. The Commission should also consider the specific consequences of relief on carriers other than incumbent LECs, such as competitive LECs that are required to benchmark their switched access rates against incumbent LEC rates.

## **II. USTELECOM HAS NOT JUSTIFIED NATIONWIDE RELIEF**

USTelecom seeks a declaration that “ILECs are no longer presumptively dominant when providing interstate mass market and enterprise switched access services.”<sup>3</sup> Specifically, USTelecom appears to be seeking nationwide relief for all incumbent LECs from:

- “price-cap or rate-of-return regulation”;
- the obligation to “file tariffs with applicable cost support for services”;
- the obligation to “file tariffs . . . on a minimum notice of seven days or more”;
- discontinuance rules applying “a 60-day waiting period for applications to discontinue, reduce, or impair services” instead of the 30-day waiting period applicable to providers other than incumbent LECs; and

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<sup>2</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663 (2011) (“*USF/ICC Transformation Order*” or “*USF/ICC Transformation FNPRM*”), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>3</sup> Petition at 9.

- the limitations on the availability of streamlined treatment for transfer of control applications under section 214 of the Communications Act (“Act”) that do not apply to non-dominant providers.<sup>4</sup>

While the Petition is far from clear, USTelecom may also be seeking relief from regulation of end user access charges—Subscriber Line Charges (“SLCs”).<sup>5</sup>

GCI agrees with previous commenters in this proceeding that USTelecom has not justified any relief. Far from justifying it, it has not even clearly defined or separately addressed the services for which it seeks relief,<sup>6</sup> nor has it even attempted to show that relief is warranted consistent with the Commission’s precedent for granting relief from dominant carrier regulation based on the presence of competitive alternatives.<sup>7</sup>

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<sup>4</sup> Petition at 9-10; Reply Comments of the United States Telecom Association at 2-3, WC Docket No. 13-3 (filed Mar. 12, 2013) (“USTelecom is seeking regulatory parity in the manner by which the switched access services of ILECs and CLECs are regulated by the Commission.”) (“USTelecom Reply”).

<sup>5</sup> See COMPTTEL’s Opposition to USTelecom’s Petition for Declaratory Ruling at 2, WC Docket No. 13-3 (filed Feb. 25, 2013) (“COMPTTEL Opposition”); Comments of Granite Telecommunications, LLC at 2, WC Docket No. 13-3, (filed Feb. 25, 2013) (“Granite Comments”). The Commission has explained that “access services include both carrier’s carrier access charges and the subscriber line charge.” *USF/ICC Transformation Order*, 26 FCC Rcd. at 18,016 ¶ 957 n.1961. When the Commission addressed Qwest’s request for forbearance from dominant carrier treatment for its mass market and enterprise switched access services in Phoenix, the Commission addressed both the carrier’s carrier charges and the SLC. *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, FCC 10-113, 25 FCC Rcd. 8622, 8678-82 ¶¶ 111-18 (2010) (“*Qwest Phoenix Forbearance Order*”), *pet. for review denied sub nom. Qwest Corp. v. FCC*, 689 F.3d 1214 (10<sup>th</sup> Cir. 2012). USTelecom makes no mention of the SLC.

<sup>6</sup> See, e.g., COMPTTEL Opposition at 2; Granite Comments at 4-7.

<sup>7</sup> See Comments of the Ad Hoc Telecommunications Users Committee at 4-5, WC Docket No. 13-3 (filed Feb. 25, 2013); Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom at 6, WC Docket No. 13-3 (filed Feb. 25, 2013) (“Cbeyond Comments”); Comments of Cox Communications, Inc. at 4, WC Docket No. 13-3 (filed Feb. 25, 2013); Granite

When it last considered granting relief from dominant treatment for switched access services in the 2010 *Qwest Phoenix Forbearance Order*, the Commission clearly stated that even assuming there is competition for retail end user services, those services “do not pose a competitive constraint on a LEC’s carrier’s carrier switched access charges”<sup>8</sup> and found the record lacking as to whether competition was sufficient to constrain SLCs.<sup>9</sup> Two months ago, the Commission addressed a forbearance petition filed by USTelecom.<sup>10</sup> There, the Commission distinguished the localized, data-driven framework of the *Qwest Phoenix Forbearance Order* because Qwest had sought relief in a specific market as distinguishable from others “on the basis of competition,” while USTelecom was arguing that certain rules were “unnecessary in all geographic markets because the changing communications landscape throughout the country has rendered them outmoded and harmful.”<sup>11</sup> Even assuming that distinction is valid in some

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Comments at 6-7; Comments of the Massachusetts Department of Telecommunications and Cable at 3, 5-7 WC Docket No. 13-3, (filed Feb. 25, 2013); Comments of the National Cable and Telecommunications Association at 7, WC Docket No. 13-3 (filed Feb. 25, 2013).

<sup>8</sup> *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8679 ¶ 112.

<sup>9</sup> *Id.* ¶ 113.

<sup>10</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from the Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, Memorandum Opinion and Order, FCC 15-166 (2015) (“*USTelecom Forbearance Order*”).

<sup>11</sup> *Id.* ¶ 9. The Commission similarly distinguished the analysis used in the *Qwest Phoenix Forbearance Order* when it forbore from various requirements of Title II of the Act in the *Open Internet Order*. There, the Commission noted both that forbearance can be granted for reasons other than the presence of competition, and that the *Qwest Phoenix Forbearance Order* had specifically noted that its own analysis may not apply “when the Commission addresses advanced services, like broadband services.” *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd. 5601, 5808 ¶ 439 (2015) (quoting *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8644-45 ¶ 39), *pet. for review pending sub nom. U.S. Telecom Ass’n v. FCC et al.*, No. 15-1063 (D.C. Cir. filed Mar. 23, 2015). Neither distinction is relevant here, as USTelecom

instances,<sup>12</sup> it does not apply here. The principal basis of USTelecom's request for relief here is *nationwide competition*.<sup>13</sup> Moreover, it would be absurd if USTelecom could succeed in gaining relief across the entire country by providing vague assertions of nationwide competition, when Qwest failed to get that same relief in one locality on a record that contained far more detailed information about the state of competition there. To say otherwise would be to establish that Qwest simply sought too little in its failed attempt at forbearance from dominant regulation for switched access services.

USTelecom simply has not established that all incumbent LECs are non-dominant nationwide, and its Petition should be denied.

**III. IF THE COMMISSION GRANTS ANY RELIEF, IT SHOULD PRESERVE THE REQUIREMENTS OF THE *USF/ICC TRANSFORMATION ORDER* IN FULL AND AVOID OTHER DISRUPTIVE OR PREMATURE CHANGES**

GCI urges the Commission to deny the Petition. If, however, it does find some merit in the Petition, the Commission should take several steps to protect recently adopted reforms and prevent unintended consequences to its own proceedings or to other carriers.

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does premise its request for relief on the presence of competition, and its petition is limited to switched access services.

<sup>12</sup> GCI has petitioned the Commission to reconsider its decision in the *USTelecom Forbearance Order* to lift equal access and dialing parity requirements nationwide, even in rural Alaska where the standalone interexchange services market remains robust. General Communication, Inc. Petition for Reconsideration, WC Docket Nos. 14-192, 11-42, 10-90 (filed Jan. 27, 2016).

<sup>13</sup> *See, e.g.*, USTelecom Reply at 1 (“USTelecom’s Petition is predicated on the marketplace reality that ILEC switched access services are increasingly being displaced by competitive alternatives and that, as a result, ILECs do not have market power that warrants continued dominant carrier regulation.”). To the extent that USTelecom attempts to support its request by stating that relief would increase incumbent LECs’ ability to invest in new networks, GCI agrees with other commenters that these assertions do not justify relief. *See, e.g.*, Cbeyond Comments at 8-9.

First, the Commission should make absolutely clear that it is not altering in any way the requirements (substantive or otherwise) of the *USF/ICC Transformation Order* or any subsequent implementing *Order* of the Commission or any Bureau or Office. USTelecom would appear not to object to such a clear statement from the Commission, as it stated in its Petition that “non-dominant tariffing treatment would not – and is not intended to – in any way alter the substantive requirements established by the Commission in the [*USF/ICC Transformation Order*]. As such, all LECs’ access charges would remain subject to the transition established in that order for intercarrier compensation.”<sup>14</sup> The Commission should provide clarity, though, by stating that none of the requirements of the *USF/ICC Transformation Order* are modified by any relief it might grant, and add that all of the implementation decisions of the Bureaus and Offices also remain unaffected. The Wireline Competition Bureau, for example, has addressed how the National Exchange Carrier Association (“NECA”) is to treat the cap on interstate switched access charges when incumbent LECs enter and exit the NECA pool;<sup>15</sup> how incumbent LECs may establish their capped interstate switched access charges when they exit the NECA pool;<sup>16</sup> and how carriers calculate their Eligible Recovery.<sup>17</sup> The Commission should prevent confusion and be very clear that all of the decisions related to or implementing the *USF/ICC*

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<sup>14</sup> Petition at 9-10 n.16. Access charges for origination of 8YY calls are included in the substantive requirements to which USTelecom refers. *See* Petition at 9 n.16; *see also USF/ICC Transformation FNPRM*, 26 FCC Rcd. at 18,111 ¶ 1303 (seeking comment on whether originating 8YY traffic should be treated differently from other originating switched access traffic as the Commission adopts further reforms for originating switched access).

<sup>15</sup> *See Connect America Fund et al.*, Order, DA 13-564, 28 FCC Rcd. 3319, 3323-26 ¶¶ 8-14 (Wireline Comp. Bur. 2013).

<sup>16</sup> *See id.*

<sup>17</sup> *See Connect America Fund et al.*, Order, DA 14-434, 29 FCC Rcd at 3245, 3251 ¶ 14 (Wireline Comp. Bur. 2014).

*Transformation Order* stand without alteration, notwithstanding any decision to grant some or all of the relief USTelecom requests.

In addition, the Commission should clearly state that any relief granted to incumbent LECs with regard to their dominance or non-dominance does not change any substantive or procedural requirements with regard to NECA pooling. A vague and broad petition for declaratory ruling is no place to explore the effect of any relief on the complex and intricate pooling mechanisms. To the extent it grants relief, the Commission should ensure and state that any relief granted has no effect on pooling, the pooling process, or the substantive or procedural requirements that apply with regard to pooling and NECA tariff filing.

The Commission should also take care to ensure that the relief granted does not *increase* the regulatory burdens of other carriers. For example, competitive LECs are required to benchmark their switched exchange access services to the rate of the incumbent LEC serving the same geographic area.<sup>18</sup> Today, when an incumbent LEC lowers its tariffed rate, the competitive LECs that benchmark to that rate have 15 days from the effective date of the new tariff to adjust their rates and (if they tariff their rates) file new tariffs to remain appropriately benchmarked.<sup>19</sup> USTelecom seeks to permit all incumbent LECs to file their switched access tariffs on one day's notice, but makes no mention of the additional burdens this would place on competitive LECs to adjust their own rates that much more quickly. The Commission should ensure that relief for incumbent LECs does not decrease the amount of time that competitive LECs have to bring their

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<sup>18</sup> 47 C.F.R. § 61.26(b), (c) (“The benchmark rate for a CLEC’s switched exchange access services will be the rate charged for similar services by the competing ILEC.”).

<sup>19</sup> 47 C.F.R. § 61.26(c) (“If an ILEC to which a CLEC benchmarks its rates, pursuant to this section, lowers the rate to which a CLEC benchmarks, the CLEC must revise its rates to the lower level within 15 days of the effective date of the lowered ILEC rate.”).

own rates and tariffs into compliance. If the Commission determines that a rulemaking would be the most appropriate way to modify its benchmarking rules, it should grant a global waiver of the current rule, pending the completion of the rulemaking proceeding, to permit competitive LECs to have the same amount of time that they would have had absent relief.

Finally, the Commission has a number of pending proceedings to consider changes to rules that are also relevant to USTelecom's Petition. For example:

- In the *USF/ICC Transformation FNPRM*, the Commission sought comment on modifying its rules regarding the SLC and further reforming switched access charges, including for 8YY traffic.<sup>20</sup>
- In the *Technology Transitions FNPRM*, the Commission is considering modifications to its discontinuance rules, with consideration being given to *lengthening* the notice periods for incumbent LECs that are discontinuing TDM-based service to carrier-customers.<sup>21</sup>

To the extent that these rulemakings seek comment on augmenting the existing rules for incumbent LECs, they serve as evidence that the Commission has not been persuaded that incumbent LECs should be less regulated than they are now. But in all events, these rulemakings

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<sup>20</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd. at 18,109-22 ¶¶ 1297-1334; *see also* COMPTel Opposition at 3 (urging the Commission to defer action on USTelecom's petition with regard to the SLC pending resolution of the *USF/ICC Transformation FNPRM* as to that topic).

<sup>21</sup> *Technology Transitions et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97, 30 FCC Rcd. 9372, 9494-95 ¶¶ 238-40 (2015) (seeking comment on various timing issues including whether to align timing for notices of discontinuance of TDM-based services as wholesale inputs with the requirement to provide 180 days' notice of a copper retirement to interconnecting carriers and non-residential retail customers and at least 90 days' notice to residential retail customers) ("*Technology Transitions FNPRM*").

are the appropriate fora for addressing these obligations going forward, and the Commission should take care not to do anything within the context of USTelecom's Petition that would hamper its ability to make appropriate decisions in these or other rulemakings based on the records therein.<sup>22</sup>

#### IV. CONCLUSION

GCI urges the Commission to deny the Petition as vague, unsupported, and inconsistent with precedent. To the extent it grants any relief, the Commission should ensure that it does nothing to backpedal on the reforms of the *USF/ICC Transformation Order* and the subsequent implementing orders or to prejudice ongoing proceedings or other carriers.

Respectfully submitted,



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<sup>22</sup> GCI does not read USTelecom's Petition to have any effect on the Consensus Alaska Plan that is currently under consideration as a means to bring broadband and mobile services to unserved and underserved communities in Alaska. Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Feb. 20, 2015). Nonetheless, GCI urges the Commission to take care not to grant relief that would affect or prejudice the Plan.