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

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

REPLY COMMENTS OF
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

The South Dakota Telecommunications Association (SDTA), by its attorneys, hereby responds to the comments submitted to refresh the record in connection with the Petition for Declaratory Ruling filed by the United States Telecom Association (USTelecom) asking the Commission to declare all incumbent local exchange carriers (ILECs) non-dominant in the provision of switched access services. SDTA supports the commenters opposing USTelecom's petition on the basis that it does not contain the factual showing necessary to support the request. SDTA also opposes USTelecom's petition because the scope and impact of the relief requested is not clear.

USTelecom Has Not Demonstrated that All ILECs, or Any ILEC, Faces Competition

USTelecom and its supporters argue that all ILECs should be declared non-dominant because they face competition from wireless carriers and Internet Protocol-based networks and ILEC access lines continue to decrease. In support of this claim, USTelecom and its supporters present nationwide data concerning ILECs' aggregate market share and access lines and the percentage of nationwide subscribers with wireless only service, wireline only service or

wireline and wireless service. Notably, neither USTelecom and its expert John Mayo, nor any of the commenters supporting USTelecom make any specific showing regarding the extent of competition faced by any particular ILEC. Commenters Verizon and CenturyLink fail to even substantiate that they themselves face competition throughout all of their study areas. Further, even if general, nationwide statistics were sufficient to make a showing of competition, and they are not, USTelecom and its supporters do not even allege that the statistics they cite apply to all LECs, nor could they.

On the contrary, there are many rural areas where the ILEC faces no wireline competition and little or no wireless competition. As stated by the Michigan Public Service Commission (Michigan PSC), there are areas where wireless service "can be unreliable or non-existent."[1] According to the Michigan PSC, the Commission's 18th Annual Mobile Wireless Competition Report for July 2015 "clearly shows areas of the country where wireless service is unreliable," including areas in Michigan's Upper Peninsula.[2] The Michigan PSC also states that many areas are still underserved by IP-based networks, including many areas in Michigan and, in particular, the Upper Peninsula.[3] The same holds true in South Dakota where there are many rural areas without a wireline competitive provider to the ILEC and with unreliable or non-existent wireless service. Accordingly, USTelecom's request for a declaratory ruling from the Commission all ILECs be declared non-dominant because they face competition is not supported and must be rejected.

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[1] Comments of the Michigan Public Service Commission at 2.

[2] Comments of the Michigan Public Service Commission at 3.

[3] Comments of the Michigan Public Service Commission at 4.

The Scope and Impact of USTelecom's Request is Not Clear

Although USTelecom asks the Commission to declare that all ILECs are non-dominant, it suggests that its request will impact only sections 61.38, 61.41 and 61.58 of the Commission's rules in connection with tariffing; section 63.71(c) in connection with the notice period for section 214 discontinuance filings; and section 63.03(b) in connection with streamlined treatment for section 214 transfers of control. However, it is not clear that USTelecom's request would impact all of these sections and it is not clear how these sections would be impacted. Nor is it clear that these are the only rules that would be impacted.

For example, Sprint states that the unilateral ability of ILECs to assess access charges on wireless carriers nullifies a claim that wireless substitution is relevant for considering ILECs' market power in the provision of switched access, suggesting that non-dominant carriers should not be allowed to file tariffs at all. Sprint also questions the propriety of providing high cost and CAF universal service support to ILECs if they are non-dominant.

In addition, it is not clear how the sections cited by USTelecom would be modified if the declaratory ruling requested is granted. For example, section 61.41 states that it applies to price cap local exchange carriers and local exchange carriers, not "dominant" or "non-dominant" LECs. Section 63.03(b) contains a number of subparts, only some of which specifically apply to dominant or non-dominant LECs.

While SDTA generally supports reducing the regulatory burdens on rural ILECs, the impact of USTelecom's request on ILECs and their customers cannot be fully evaluated until it is clear which rules would be changed and how. For this reason, as well as the argument that the Commission's section 1.2 declaratory ruling process is not the appropriate vehicle for

USTelecom's request because there is no controversy or uncertainty that the Commission needs to address, USTelecom's petition should be denied.

Respectfully submitted,

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