

**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)
)

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) submits these reply comments to refresh the record on USTelecom’s petition for declaratory ruling (Petition) in the above-referenced proceeding.¹ No parties opposing the Petition in their “refresh” comments present any tangible or new evidence to dispute the overwhelming facts in the record clearly demonstrating that incumbent local exchange carriers (ILECs) are not dominant in the provision of switched access voice services because they no longer possess sufficient power to control prices in that marketplace.

I. USTELECOM HAS ALREADY CLARIFIED THE NARROW SCOPE OF RELIEF THAT IT SEEKS.

To the extent that parties to this proceeding are, in fact, confused about the scope of relief USTelecom seeks in the Petition, we reiterate that we do not seek blanket deregulation of ILEC switched access voice services, but rather a more narrow scope of relief that would place ILECs on equal footing with their competitors by declaring all providers to be “non-dominant” in the

¹ Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services, WC Docket No. 13-3 (filed Dec. 19, 2012) (Petition). *See Wireline Competition Bureau Seeks Comment to Refresh the Record on United States Telecom Association Petition for Declaratory Ruling That Incumbent Local Exchange Carriers are Nondominant in the Provision of Switched Access Services*, WC Docket No. 13-3, DA 16-79 (rel. Jan. 21, 2016) (*Public Notice*).

provision of switched access voice services. In the Petition, we explained that non-dominant status would relieve ILECs of certain obligations that the Commission had previously found were “specific obligations that flow directly from dominant carrier regulation.” Specifically, dominant carriers must file tariffs with cost support with a minimum notice of seven days (while non-dominant carriers may file tariffs with one day’s notice and without cost support); are subject to a 60-day waiting period for applications to discontinue, reduce, or impair services to be granted (compared to a 30-day period for non-dominant carriers); and are eligible for presumptive streamlined treatment for fewer types of transfers of control under section 214 than non-dominant carriers.²

We restated the scope of relief requested in reply comments to this proceeding as follows:

Granting this relief would place ILECs on equal footing with their competitors by: (i) allowing all carriers to file tariffs on one day’s notice and without cost support; (ii) subjecting all carriers to a 30-day waiting period for applications to discontinue, reduce, or impair services to be granted; and (iii) making all carriers eligible for presumptive streamlined treatment for more types of transfers of control under section 214.³

USTelecom also specified in reply comments that its Petition does not seek regulatory relief with respect to special access services, nor forbearance from any section 251 or section 271 requirements. We further stated that granting the Petition would have no effect on existing ILEC wholesale obligations, or impact carrier-to-carrier services.⁴ And in our most recent “refresh” comments, we offered additional assurance of our intent in seeking limited relief, pointing out

² Petition at 9-10.

³ Reply Comments of the United States Telecom Association, WC Docket No. 13-3, at 5-6 (filed Mar. 12, 2013) (USTelecom Reply Comments) (also stating, “This regulatory parity represents modest relief that would be entirely consistent with the Commission’s desire to ensure a level competitive playing field.”).

⁴ USTelecom Reply Comments at 6.

that the Commission has broad discretion to carve out or retain any regulations or requirements that, if eliminated, might have unintended consequences that could ultimately harm consumers.⁵

General Communication, Inc. (GCI) seems to suggest that forbearance petition-like procedural requirements should apply to this Petition, arguing that USTelecom “has not even clearly defined or separately addressed the services for which it seeks relief.”⁶ This argument fails, in large part because USTelecom is seeking a declaration regarding the regulatory status of ILECs. It also fails because USTelecom has several times identified the dominant carrier requirements that it believes would no longer apply to ILECs if the Petition is granted, and the Commission is fully aware of which provisions in its own rules apply solely to dominant carriers. Therefore, any additional claims that this request is impermissibly ambiguous should be summarily rejected.

II. NATIONWIDE RELIEF IS WARRANTED.

The Michigan Public Service Commission (PSC) and GCI are wrong in claiming that USTelecom’s reliance on the presence of competition at a national level cannot justify grant of the Petition.⁷ The Commission itself has recently confirmed that nationwide relief from regulatory requirements may be appropriate where “the necessity of the underlying regulations” themselves is being questioned, rather than the presence of competition in a particular market.⁸

⁵ Comments of the United States Telecom Association, WC Docket No. 13-3, at 9 (filed Feb. 22, 2016) (USTelecom Refresh Comments).

⁶ Comments of General Communication, Inc. In Response to Public Notice Seeking To Refresh the Record, WC Docket No. 13-3, at 3 (filed Feb. 22, 2016) (GCI Refresh Comments). *Cf.* 48 C.F.R. § 1.54 (describing pleading requirements for forbearance petitions).

⁷ *See* Comments of the Michigan Public Service Commission, WC Docket No. 13-3, at 2 (filed Feb. 22, 2016) (Michigan PSC Refresh Comments); GCI Refresh Comments at 5.

⁸ *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, et al.*, WC Docket Nos. 14-192, 11-42, 10-90, Memorandum Opinion and Order, FCC 15-166, at ¶ 9

Thus, despite opposing parties' claims, there is no need for the Commission to "take into account individual areas" or survey some unspecified number of specific areas or states to determine whether overall the market for switched access voice services is sufficiently competitive to warrant relief on a nationwide basis.⁹

Commission precedent also supports a finding of ILEC non-dominance on a nationwide basis. In the *AT&T Non-Dominance Order*, for example, the Commission reclassified AT&T as non-dominant in the provision of interstate, interexchange service nationwide based in large part on AT&T's loss of more than one third of national market share over the previous 10 years and the presence of multiple competitors.¹⁰ As USTelecom explained in the Petition, the Commission "recognized that, over time, developments in the marketplace may result in a previously dominant carrier becoming non-dominant."¹¹ In the case of long distance service, those developments included a dramatic loss in market share to multiple competitors with the proven ability to take business away from AT&T, which led the Commission to conclude that "AT&T no longer maintained market power in the interstate, interexchange markets and accordingly [to reclassify] AT&T as non-dominant in the provision of these services."¹²

(rel. Dec. 28, 2015) (*Modernization Forbearance MO&O*) (rejecting arguments that the Commission was required to assess the competitiveness of particular markets in considering USTelecom's forbearance request).

⁹ See Michigan PSC Refresh Comments at 2. The Michigan PSC also claims, without providing specific evidence, that some customers do not have access to competitive options for their voice service. See *id.* at 6 ("areas still exist where ILECs are the only choice for voice services"). These and other similar anecdotal claims are unsupported by the record, and thus need not be given any weight.

¹⁰ See *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3721 (1995) (*AT&T Non-Dominance Order*). See also Petition at 13-15 (explaining the bases for finding AT&T to be non-dominant in the long distance service market on a nationwide basis).

¹¹ Petition at 14.

¹² *Id.* (citing *AT&T Non-Dominance Order*).

III. OPPOSING PARTIES' OTHER ARGUMENTS ARE EQUALLY UNPERSUASIVE.

In calling for safeguards in the event that any relief is granted,¹³ the two ILEC competitors who filed “refresh” comments opposing the Petition have apparently accepted the inevitability of a finding that ILECs are non-dominant. This is not surprising, given the overwhelming and indisputable evidence of dramatic decline in ILEC market share and market power due to intense competition. Their half-hearted assertions that ILECs remain dominant providers of switched access voice services are not persuasive, and the Commission should not be distracted by this latest round of repeated, unsubstantiated claims.

Sprint, in particular, spends several pages discussing issues that are outside the scope of the Petition, in an apparent attempt to horse trade for relief that it has sought in other proceedings but, to date, has not been successful in securing.¹⁴ Not one of these issues has any bearing on the questions raised by the Petition; the Commission therefore need not weigh or even consider them in the context of this proceeding.

Finally, the Michigan PSC complains about “outmoded data” that are up to five years old, failing to acknowledge that USTelecom presented the most up-to-date data available at the time it filed the Petition, and has continued to update the record since that time. In our “refresh” comments, for example, we provided evidence showing that by the end of 2013, 43 percent of households were wireless only, 30 percent used landline other than ILEC switched access, and a

¹³ See GCI Refresh Comments at 2 (“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 [USF and ICC reform], or prejudice any of the Commission’s pending rulemakings); Comments of Sprint Corporation, WC Docket No. 13-3, at 7 (“If [] the Commission decides to grant USTelecom’s petition, it should do so only in conjunction with a prohibition on the tariffing of switched access charges by [ILECs].”) (Sprint Refresh Comments).

¹⁴ See Sprint Refresh Comments at 2-6.

mere 27 percent of households used traditional ILEC voice service.¹⁵ Recent statements from the Commission are consistent: “almost 75 percent” of residential customers no longer get voice service over traditional ILEC facilities.¹⁶ This new information, which makes the case for non-dominance even stronger, should lay to rest the Michigan PSC’s concerns about stale data.

IV. CONCLUSION

ILECs long ago lost their stronghold in the switched access market, and continued dominant regulation of ILECs is simply not warranted by the record or by the current state of the market for switched access voice services. With an updated record before it demonstrating that ILECs face robust and diverse competition and lack any power they may have once had to control prices regardless of market forces, the Commission’s task is clear and straightforward. We therefore ask for a declaration that ILECs are no longer subject to dominant carrier regulation in the provision of switched access voice services.

Respectfully submitted.

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¹⁵ See USTelecom Refresh Comments at 3 (citing Brogan, Patrick, Vice President of Industry Analysis, USTelecom, *Voice Competition Data Support Regulatory Modernization*, at 1 (*USTelecom Voice Competition Research*), available at http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf).

¹⁶ See *Modernization Forbearance MO&O* at ¶ 6.