



April 1, 2016

**Ex Parte**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: *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)*

Dear Ms. Dortch:

As a follow-up to our March 17 *ex parte* meeting,<sup>1</sup> USTelecom submits additional information into the record of the above-referenced proceeding to further explain the bases for our request that ILECs no longer be subject to dominant carrier regulation in the provision of switched access voice services. The Commission's rules define a dominant carrier as one "found by the Commission to have market power (*i.e.*, power to control prices)."<sup>2</sup> Given the highly competitive state of the switched access voice services market in which ILECs collectively serve a mere 18 percent of residential customers, ILECs do not have the ability to control prices for these services nationwide.

A finding that ILECs are no longer dominant in the provision of switched access voice services would have a meaningful impact on ILECs' ability to compete for customers that increasingly are relying on non-traditional services and service providers for their communications needs. The facts do not justify continuing to single out a handful of ILECs by subjecting them to requirements that do not apply to their competitors, and that cannot be lawfully applied under the Commission's own rules absent a finding of market power and the ability to control prices.

As explained in numerous previous filings, the relief we seek would regulate ILECs the same as other regulated providers of switched access voice services in three general categories: tariffing requirements; applications to discontinue, reduce, or impair services; and procedures for transfers of control. Further, the Commission has sufficient authority to grant the requested relief by declaratory ruling. That is, once the Commission declares, consistent with

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<sup>1</sup> See USTelecom Ex Parte Letter, WC Docket No. 13-3 (filed Mar. 21, 2016).

<sup>2</sup> 47 C.F.R. §61.3(q).

the record, that ILECs lack market power and thus are not dominant in the provision of switched access voice service, these “dominant” ILEC requirements would no longer apply.

### **The Commission Should Eliminate Unnecessary and Unequal Tariff Notice and Cost Support Obligations.**

Currently, non-dominant carriers may file tariffs on one day’s notice, while dominant carriers are subject to longer notice periods.<sup>3</sup> For example, dominant carriers that choose not to seek deemed lawful status under section 204(a)(3) of the Act must file “on at least 16 days’ notice,” while non-dominant carriers need only file on one day’s notice.<sup>4</sup> The longer notice required for dominant carriers once served the purpose of facilitating scrutiny of rates established by carriers with market power to ensure that they did not abuse that market power. But no market power exists today for these services. Thus, the Commission should eliminate existing notice requirements that apply as the result of a carrier’s dominant status so that all providers of switched access voice services are subject to the same notice periods.

Similarly, dominant carriers that are subject to price cap or rate-of-return regulation must include cost support with certain tariff filings that carriers not subject to rate regulation are not required to submit.<sup>5</sup> To the extent these cost support requirements are tied to ILECs’ market power for switched access voice services, that rationale is no longer valid. However, we acknowledge that in some instances additional cost support information may be necessary to meet obligations not directly related to or dependent upon dominant status. For example, LECs withdrawing from the NECA pool must perform and submit a cost study to establish initial rates for their new tariff filings, without regard to their “dominance” status.<sup>6</sup> Also, in the

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<sup>3</sup> See 47 C.F.R. §§61.58(a), (e), (f). Also, certain provisions containing additional enhanced requirements applicable only to dominant carriers should no longer apply once relief is granted. See 47 C.F.R. §61.58(a)(4) (additional customer notification requirements); 47 C.F.R. §61.59 (effective periods for tariff changes applicable only to dominant carrier tariffs).

<sup>4</sup> 47 U.S.C. §204(a)(3); see 47 C.F.R. §61.58(a)(2)(ii). We note that granting relief would not affect any carrier’s ability to tariff switched access charges and to choose to file on more than one day’s notice for the purpose of getting “deemed lawful” status for tariff filings.

<sup>5</sup> See 47 C.F.R. §§61.38-39, 61.41, 61.49, 61.58 (setting forth requirements for dominant carriers to include cost and other supporting information with tariff filings). Non-dominant competing LEC rates are generally benchmarked to ILEC rates. 47 C.F.R. §61.26(b)-(c). See also 47 C.F.R. §1.773(a)(ii) (finding tariffs filed by non-dominant carriers without cost support to be *prima facie* lawful). We note that granting relief would not impact substantive price cap obligations such as caps on the SLC and other switched access charges.

<sup>6</sup> See, e.g., *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief*, 27 FCC Rcd 15753, 15760, ¶¶ 17 (2012) (explaining that rate-of-return carriers leaving the NECA pool and seeking to convert to price cap regulation must establish and file new interstate access rates using cost study methods prescribed in the Commission’s rules).

context of the *ICC Transformation* proceeding in which carriers are transitioning certain rates to bill-and-keep,<sup>7</sup> cost support and other supplemental information may be necessary to ensure compliance with those requirements. In such cases, the Commission has authority to require any carrier to submit supporting information pursuant to orders issued in that proceeding, and otherwise “as may be necessary for a review of a tariff filing.”<sup>8</sup> That is, grant of the requested relief would not prevent the Commission from requiring cost support for tariff filings where deemed necessary to serve a valid regulatory purpose.

### **The Commission Should Harmonize Effective Date Waiting Periods For Applications to Discontinue, Reduce, or Impair Services.**

Under current rules, dominant carriers seeking to discontinue, reduce, or impair service are subject to different waiting periods than non-dominant carriers. Specifically, the waiting period for automatic grant of dominant carrier applications is 60 days, while applications by non-dominant carriers become effective on the 31<sup>st</sup> day after filing absent Commission action.<sup>9</sup> The additional delay affects ILECs’ ability to effectively plan and make business decisions, creating uncertainty that other providers do not face. Because the record demonstrates that ILECs no longer are dominant in the switched access voice services market, the Commission should eliminate this disparity as unnecessary and unwarranted.

### **The Commission Should More Broadly Permit Streamlined Procedures For Transfers of Control.**

The Commission’s current rules provide for streamlined procedures for certain types of transfers of control under section 214 of the Act.<sup>10</sup> In many instances, the availability of streamlined treatment is dependent on whether a dominant LEC is involved in the transaction.<sup>11</sup> Such distinctions are no longer justified for transactions involving switched access voice services, given the highly competitive state of that market. Thus, with the requested relief, presumptive streamlined treatment should apply to all transfer of control applications

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<sup>7</sup> See generally *Connect America Fund, et al.*, 26 FCC Rcd 17663 (2011); see also 47 C.F.R. §§51.901-919 (Subpart J) (regulations governing transitional access service pricing, including tariff filing requirements).

<sup>8</sup> 47 C.F.R. §§61.38(a), 61.39(a). For example, all parties subject to ICC transition rate reductions could, without additional rulemaking action, be directed to continue to include cost studies in their ICC transition tariff filings for switched access voice services until the transition is complete.

<sup>9</sup> 47 C.F.R. §63.71(e). Additionally, the public has twice as much time (30 days) to object to a dominant ILEC’s application than it has to object to an application filed by a non-dominant carrier (15 days). 47 C.F.R. §63.71(a)(5)(i)-(ii).

<sup>10</sup> 47 U.S.C. §214.

<sup>11</sup> See 47 C.F.R. §63.03(b).

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involving switched access voice services that otherwise meet the requirements in section 63.03(b) of the Commission's rules.

**USTelecom Seeks Relief For Traditional Incumbent Local Exchange Carriers.**

Finally, USTelecom's petition requests relief from dominant carrier regulation for traditional *ILECs*. We offer no opinion on whether other providers of switched access voice services that are or lawfully could be subject to dominant carrier regulation, such as centralized equal access providers,<sup>12</sup> should get the same relief.

Please do not hesitate to contact the undersigned if you have questions or concerns.

Respectfully submitted,



Diane Griffin Holland  
Vice President, Law & Policy

Attachment

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<sup>12</sup> See, e.g., *Application of Indiana Switch Access Division For Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations*, Memorandum Opinion and Order, 1 FCC Rcd 634, ¶ 2 (1986) (finding the Indiana Switch Access Division, which provides centralized equal access service from a tandem switch to IXCs, to be a dominant carrier providing exchange access service).

ATTACHMENT

**Table of Affected Requirements**

<b>Rule Sections</b>	<b>Effect of Relief on Requirements</b>
<b>1.773</b> Petitions for suspension or rejection of new tariff filings	All tariffs for switched access voice service under review subject to non-dominant carrier treatment ( <i>i.e.</i> , considered <i>prima facie</i> lawful without supporting documentation) (subsection (a)(ii)). Requirements for tariff filings made pursuant to regulations applicable to dominant carriers not applicable (subsections (a)(iii)–(v)).
<i>Part 51, Subpart J – Transitional Access Service Pricing</i>	
<b>51.901–51.919</b>	Tariff filings required for compliance with these provisions not affected.
<i>Part 61, Subpart E – General Rules for Dominant Carriers</i>	
<b>61.38</b> Supporting information to be submitted with letters of transmittal	Cost studies and other supporting data for switched access voice service tariffs from certain dominant carriers not applicable. The Commission may, however, require any issuing carrier to submit supporting information “as may be necessary” for a tariff review (subsection (a)).
<b>61.39</b> Optional supporting information to be submitted with letters of transmittal ...	Alternative cost studies and other supporting data for switched access voice service tariffs from certain dominant, non-price cap carriers not applicable. The Commission may, however, require any issuing carrier to submit supporting information “as may be necessary” for a tariff review (subsection (a)).
<b>61.41–61.49</b> Price cap tariff filings	Not affected. Cost studies and other supporting data for switched access voice service tariffs from certain dominant, price cap carriers not applicable.
<i>Part 61, Subpart F – Formatting and Notice Requirements for Tariff Publications</i>	
<b>61.58</b> Notice requirements	Dominant carrier notice requirements not applicable (subsections (a)(2)(ii) & (4), (e)). All tariffs for switched access voice service subject to non-dominant carrier treatment ( <i>i.e.</i> , filing on one day’s notice) (subsection (f)).
<b>61.59</b> Effective period required before changes	Dominant carrier effective period requirements not applicable (subsections (a) – (c)).
<i>Part 63, Extensions and Supplements</i>	
<b>63.03</b> Streamlining procedures for domestic transfer of control applications	Presumptive streamlining categories applicable to all transactions involving switched access voice services (subsection (b)).
<b>63.71</b> Procedures for discontinuance, reduction or impairment of service by domestic carriers	Dominant carrier procedures not applicable (subsections (a)(5)(ii), (e)). All applications to discontinue, reduce, or impair switched access voice service subject to non-dominant treatment (subsections (a)(5)(i), (e)).