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

In the Matter of	)	
	)	
Petition of the United States Telecom	)	
Association for Waiver from Application	)	**WC Docket No. 08-225**
Of the Equal Access Scripting Requirement	)	

USTelecom is pleased to provide these reply comments in support of its Petition for Waiver from Application of the Equal Access Scripting Requirement. The overwhelming weight of the evidence submitted in this proceeding supports USTelecom's petition. The record demonstrates that the Equal Access Scripting Requirement is an artifact of a bygone era. Associations representing ILECs from around the nation and ILECs themselves from locations as diverse as Hawaii to Alaska have filed comments providing evidence of the competitive landscape in which they operate and the changed nature of the long distance marketplace. Even a cable competitor has filed in support.

First, let us summarize overall trends as set forth in the record. Stand-alone long distance services have become, in the words of the Commission, a "fringe market."[1] The majority of consumers do not choose a separate long distance provider.[2] As the Commission concluded, there is now a nationwide market for "all distance" services. The majority of subscribers choose nationwide or regional plans that include buckets of minutes which customers can use for long

[1]*See* Federal Communications Commission (FCC), *Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160 (c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services,* Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16442, 16498-16502, ¶¶ 3, 117-127 (2007) ("*BOC Equal Access Scripting Order*").
[2] *See* FCC, *Local Telephone Competition: Status as of June 30, 2008* (July 2009) at Table 6 (stating that 69% of residential subscribers are presubscribed to their local carrier for long distance service.)

distance calling, which have further shrunk the demand for separate landline long distance coverage.[3]

There is fierce intermodal competition. As part of this trend, we note that wireless substitution is increasing steadily, as more and more consumers cut the cord. According to the CDC, as of December 2008, while 78% of households have a land line connected to their residence (82% in 2007) 14.5% of wireline households primarily use a cell phone at their residence (13.1% in 2007).[4] As the FCC noted, among those who have retained a landline phone, many of the over 270 million CMRS subscribers, use their cell phones for long distance calls.[5] Three or more competitors provide wireless services in areas covering 95.5% of the population.[6]

The offer of "bundled services" is now the norm and cable competes head to head with wireline. In most zip codes, there is intermodal competition for voice services from cable and wireless, as well as the rapid growth of over-the-top Voice over Internet Protocol (VoIP) long distance services that provide nomadic coverage. As a result of this competition, independent ILECs are losing access lines to competitors. For example, according to the NECA Trends 2008 report on the Traffic Sensitive pool which represents predominantly small, rural ILECs: "competition contributed to a decline of more than 278,514 access lines, a 5 per cent drop over

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[3] *BOC Equal Access Scripting Order*, at ¶ 124.

[4] *See* Blumberg SJ, Luke JV, National Center for Health Statistics, *Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2008* (Released May 6, 2009) at p. 3. and Blumberg SJ, Luke JV. National Center for Health Statistics, *Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2007* (Released May 13, 2008) at p 3.

[5] *See* Cellular Telecommunications and Internet Association (CTIA), Wireless Quick Facts at http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited September 24, 2009).

[6] *See* FCC, Thirteenth Report, *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services* ("Thirteenth CMRS Competition Report") in WT Docket No. 08-27 (Terminated) (Released January 16, 2009) at p. 6. Two or more wireless carriers provided service in areas covering 98.5% of the population and at least one wireless carrier provides service covering 99.6% of the population.

last year.[7] This downward trend is part of an industry-wide decline in access lines attributable to competition from cable operators offering VoIP, as well as customers replacing land lines with mobile service."[8]

With the growth of intermodal competition for voice service, as the Commission found in the *RBOC Equal Access Scripting Order*,[9] it is likely that the EA Scripting Requirement will confuse consumers and cause them to focus only on one type of service and will therefore distort rather than promote robust competition among the many platforms available in today's marketplace.

The FCC previously found that all the BOCS were subject to "unnecessary costs" due to the EA Scripting Requirements.[10] As the current data shows, small, independent ILECs are facing competition from competitive LECs, as well as from new and increasingly popular forms of intermodal substitution which have not been subject to this requirement. The EA Scripting Requirement imposes significant burdens on them without an offsetting benefit in this competitive market.

Moreover, due to massive advertising spend, consumers in every region of the country are aware of the competitive alternatives available to them for long distance services. There is no need to tell them about one small segment of that intermodal marketplace for long distance.

But, as with any record, there are outliers. Two commenters, the California Public Utilities Commission (PUC) and General Communications, Inc. (GCI), assert that in California and Alaska, respectively, some ILECs serving the more rural parts of these states are not subject

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[7] *See* National Exchange Carrier Association, *Trends 2008* ("NECA Trends 2008") (2008) at pp. 4, available at https://www.neca.org/cms400min/NECA_Templates/ResourceInterior.aspx?id=100 (last visited September 24, 2009).
[8] *See* NECA Trends 2008 at pp. 4-5 (citing FCC).
[9] *RBOC Equal Access Scripting Order*, at 123.
[10] *RBOC Equal Access Scripting Order*, at ¶ 125.

to effective competition and that the Equal Access Scripting Requirement must therefore be retained for *all* independent ILECs. On its face, that is a bootstrap argument. Neither of these commenters adds anything to the record that addresses USTelecom's statistics with respect to competition nation-wide. Nor do they seriously argue that long distance service is actually now part of the larger all distance market. They cannot and they do not dispute that no matter where a customer lives, massive advertising campaigns have made customers aware of the many long distance service options that were not available when the EA Scripting Requirement was imposed.

The California PUC concedes, as it must, that companies such as SureWest and Frontier face effective competition. It rests its case on the small, largely rural carriers in service territories in California that are not yet legally opened up to facilities-based wireline circuit switched local exchange competition. As the table below indicates, these companies represent only 81,560 lines of the 16,221,362 lines in the state, or one half of one per cent of all lines in California.

Exempt Companies in California	Lines	% of Lines in California
Ducor Telephone	1,200	0.01%
Foresthill Telephone	3,000	0.02%
Pinnacles Telephone	260	0.00%
Ponderosa Telephone	9,300	0.06%
Sierra Telephone	21,000	0.13%
Siskiyou Telephone	4,500	0.03%
Volcano Telephone	11,250	0.07%
Calaveras Telephone	4,200	0.03%
California-Oregon Telephone	2,100	0.01%
Evans Telephone	13,000	0.08%
Happy Valley Telephone	3,500	0.02%
Hornitos Telephone	650	0.00%
Kerman Telephone	6,400	0.04%
Winterhaven Telephone	1,200	0.01%
Total Lines of Exempt Companies in California	81,560	0.50%
Total Lines in California	16,221,362	100.00%

Source: JSI Capital Advisors. Phone Lines 2009

But these small companies do face competition. We have examined the allegations of the California PUC [11] respecting these small ILECs and, as we demonstrate below, they are wrong with respect to our members in California.[12] We herein provide evidence of the effective intermodal competition faced by those of our members, Kerman Telephone, Foresthill Telephone, Sierra Telephone, Ducor Telephone, Sierra Telephone, Siskiyou Telephone, and

[11] Because we do not seek a waiver for any company in Alaska, we will not address the comments of GCI, but we note that GCI concedes that "GCI now serves more than 50% of the interexchange market in Alaska – a position it earned through hard competition against AT&T Alascom." GCI Comments at 2.
[12] California PUC Comments at 6. We note that the PUC says that 16 small ILECs are affected, but in note 2, only 14 are listed, among which 7 are USTelecom members.

Volcano Telephone,[13] that the California PUC alleges "*may*" not be subject to effective competition.[14] As the use of the word "may" signals, this is speculation masquerading as fact. The facts demonstrate that these companies face effective competition.

As demonstrated by the Declaration of David Clark, Regulatory Manager of Kerman Telephone and Foresthill Telephone, these two companies, as is typical of our members, face voice competition from cable and wireless, over-the-top VoIP, and even Magic Jack. As Mr. Clark attests in discussing the competition Kerman faces:

> there is …effective competition from multiple wireless service providers, including Sprint, Verizon and Cricket/Leap Wireless. Clearwire and Unwired Broadband also advertise and provide service in our areas. Moreover, residents have also begun to use Magic Jack to obtain service. Dial-around long distance and prepaid cards are also available.[15]

The California PUC intimates that our member companies do not provide broadband service over which VoIP can ride to provide an effective competitive alternative for long distance service.[16] We have surveyed our members in California and report that they provide broadband over which customers can run over-the-top VoIP to between 80 and 100 per cent of their service territories with ongoing upgrades in those that are below 100 per cent availability. Kerman Telephone is offering broadband in 100 per cent of its service territories; Foresthill Telephone is offering broadband in 95 to 98 per cent of its areas; Sierra Telephone has broadband availability in 99 per cent of the areas served; Ducor Telephone is currently offering

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[13] *See* Comments of the California PUC at 2, n. 2.
[14] *Id.* at 6 ("In California, because the small ILECs are protected by law from wireline local exchange competition, the FCC's finding pertaining to bundles of local and long distance services the BOCs offered *may* not apply to the small ILECs.") (Emphasis added).
[15] Declaration of David Clark at ¶ 2.
[16] California PUC Comments at 8.

broadband to 85 per cent of its customers; Siskiyou Telephone areas and is currently offering 1 megabit to 3 megabits to 80 per cent of its service areas and is upgrading the rest of its service areas to that speed, and Volcano Telephone is at 100 per cent availability[17] All report that VoIP is providing competition and that there is attrition in access lines due to wireless, cable and VoIP competitors. David Clark's declaration demonstrates how both Kerman and Foresthill have lost access lines.

> Kerman has experienced a loss in access line of (-1.86%) through eight months of 2009 and on top of (-2.95%) in 2008. Foresthill has lost (-1.81%) of its access lines on top of a (-3.89%) loss in 2008. Access minutes have also been dropping off at a rate of between 9%-15% per year.[18]

The drop-off in lines demonstrates that Kerman and Foresthill face competition and that the competition is making inroads. Equally telling is the loss of access minutes at the high rate of between 9 and 15 per cent per year, suggesting that even those who are retaining wireline service from Kerman and Foresthill are likely using alternatives such as wireless or over-the-top VoIP to make some of their calls. This squares with the Commission's conclusion in the *BOC Equal Access Scripting Order* that consumers often make "long distance calls" using "all distance" minutes offered by their wireless carrier.

To dispute that wireless is a competitive force facing the small ILECs, the California PUC invents a burden of proof for USTelecom to demonstrate that each house and business in independent ILECs service territories has wireless service.[19] The California PUC does not suggest that in the *BOC Equal Access Scripting Order* the Commission required such a showing

[17]. We obtained this data from representatives of each listed company.
[18] Declaration of David Clark at ¶ 4.
[19] California PUC comments at 7 ("they offer no evidence that one provider is available to *all* the residences or businesses in the census block. Nor are Petitioners able to demonstrate that wireless reception is available *within* the physical residences and small businesses throughout the service territory of the companies seeking relief.")

or that it has done so elsewhere. USTelecom has used available statistical evidence to it to paint the picture of wireless competition throughout the nation and has now provided data respecting each of its member California companies showing that they face competition, typically including wireless competition, in their service areas, consistent with that nation-wide picture.[20] And this argument ignores the competition provided by VoIP, whether through a cable company or an over-the-top provider and from pre-paid and dial-around service providers.

But most important, the argument misses the mark. The Commission determined that the EA Scripting Requirement did not serve the public interest any longer because it is likely to confuse consumers and mislead them into thinking only wireline providers can deliver long distance service. No one contends that the Commission erred in making that determination in the *BOC Equal Access Scripting Requirement Order* or that it does not apply with equal force to customers of small and mid-size ILECs

It is time that the EA Scripting Requirement was lifted from the shoulders of the small and mid-sized ILECs. Subjecting one segment of the marketplace to a regulatory burden that does not affect its competitors distorts the market and makes it harder for the small and mid-size ILECs to compete. It is indisputable that this regulatory asymmetry has a distorting effect. There is no offsetting benefit.

USTelecom thanks the Commission for seeking comment on its petition. The Commission has demonstrated that it will remove the regulatory underbrush wherever the Commission sees it. This will free companies to compete for customers with better service and lower prices rather than to devote resources to compliance with regulations that have outlived their usefulness.

[20] Declaration of David Clark at 2-3.

Respectfully submitted

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September 25, 2009

DECLARATION OF DAVID CLARK
IN SUPPORT OF USTELECOM'S PETITION FOR WAIVER FROM
APPLICATION OF THE EQUAL ACCESS SCRIPTING REQUIREMENT

1. I, the undersigned, David Clark, am the Regulatory Manager of Kerman Telephone Co. and Forest Hill Telephone Co. (dba Sebastian). Our business office is located at 811 South Madera Ave, Kerman CA 93630. As Regulatory Manager I am familiar with the state of competition for voice services to which Kerman Telephone and Forest Hill Telephone companies are subject.

2. Kerman Telephone itself offers broadband service to 100 per cent of its service area at speeds between 3 to 10 megabits, ample for customers to use over-the-top VoIP service for long distance calls. We believe that Vonage does in fact offer such services to customers in our service territory. In addition, Comcast offers broadband and voice service to between 70 and 80 per cent of the customers in Kerman Telephone's service area. Moreover, there is also effective competition from multiple wireless service providers, including Sprint, Verizon, AT&T (Cingular) and Cricket/Leap Wireless. Clearwire and Unwired Broadband also advertise and provide service in our areas. Moreover, we believe that residents have also begun to use Magic Jack to obtain service. Dial-around long distance and prepaid cards are also available.

3. Similarly, since acquiring Forest Hill Telephone in late 2005, we have expanded broadband coverage to reach 95 to 98 per cent of our service area and that coverage continues to grow as part of the plan to reach 100 per cent coverage. There is broadband competition from wireless (Verizon) and from cable companies (Suddenlink), as well as from over-the-top independent VoIP providers such as Vonage.

4. Kerman has experienced a loss in access line of (-1.86%) through eight months of 2009 on top of (-2.95%) in 2008. Foresthill has lost (-1.81%) of its access lines through 8 months of 2009 on top of a (-3.89%) loss in 2008. Access minutes have also been dropping off at a rate of between 9%-15% per year.

5. Taken together, the alternative long distance services described above provide stiff competition to the Kerman Telephone and Forest Hills Telephone Companies, as they do to other small, independent ILECs in California. Just as in other parts of the United States, long distance is fast becoming part of a national all distance market for customers in rural areas of California. From national advertising campaigns on, for example, television, residents have become aware of the many long distance options available to them, such as those mentioned above. For those reasons, it is my view that the Equal Access Scripting Requirement no longer serves a regulatory purpose.

David D. Clark   Dated 9/24/09

David D Clark