

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

In the Matter of)	
Petition of USTelecom For Forbearance)	
Under 47 U.S.C. § 160(c) From Enforcement)	
Of Certain Legacy Telecommunications)	
Regulations)	
)	

WC Docket No. 12-61

**OPPOSITION OF BROADVIEW NETWORKS,
MEGAPATH CORPORATION AND
XO COMMUNICATIONS**

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SUMMARY

Broadview Networks, MegaPath Corporation and XO Communications (the “Joint Commenters”) take no position at this time on aspects of the Petition other than Categories 9 and 10. With respect to these two categories encompassing the rules governing notices of network changes and service discontinuance approval requirements, the Joint Commenters submit that the Petition must be rejected because of the harm that could come to competition and consumers if the Commission were to forbear as requested.

With respect to these two categories, the Petition can and should be summarily denied because it is not complete as filed. Specifically, the section of the Petition seeking forbearance from the rules governing notices of network change fails to address and make the Commission and interested parties aware of an open proceeding regarding the retirement of copper loops and subloops, and, as a result, its fails to set forth a *prima facie* case sufficient to meet each of the statutory criteria for forbearance. With respect to the service discontinuance approval requirements, the Petition does not meet the procedural requirements for forbearance because USTelecom has not sufficiently specified the services for which it seeks forbearance.

US Telecom’s request for forbearance from the rules governing notices of network changes also fails on a substantive basis. The Petition contains only broad, unsupported allegations and fails to address the purpose of those rules, which serve to protect consumers and the public interest. Moreover, the Commission cannot grant forbearance from the rules governing notices of network changes while various proceedings are ongoing to address the considerable and complicated consumer protection, competition and public interest issues implicated by the retirement of copper loops and the transition from the PSTN to IP-based networks.

With respect to the service discontinuance approval requirements, the Petition does not meet the statutory criteria for forbearance because USTelecom has not adequately demonstrated that the proposed forbearance will not risk unjust and unreasonable rates or service interruption, and that Commission review and approval, and customer and public rights to object to the service discontinuance, are not necessary to protect consumers and competition, or are otherwise necessary to serve the public interest.

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Of Certain Legacy Telecommunications)	
Lifeline and Link Up)	
Regulations)	

**OPPOSITION OF BROADVIEW NETWORKS,
MEGAPATH CORPORATION AND
XO COMMUNICATIONS**

Broadview Networks, MegaPath Corporation and XO Communications (“Joint Commenters”), by and through their attorneys, submit this opposition in response to the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Public Notice¹ seeking comments on the United States Telecom Association (“USTelecom”) petition for forbearance from certain telecommunications regulations, including the rules governing notices of network changes and service discontinuance approval requirements.² The Joint Commenters take a position only on Categories 9 and 10 of the USTelecom Petition and take no position at this time on other aspects of the Petition.³

¹ See *Pleading Cycle Established For Comments on United States Telecom Association Petition For Forbearance From Certain Telecommunications Regulations*, WC Docket No. 12-61, Public Notice, DA 12-352 (Mar. 8, 2012) (“Public Notice”).

² See *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61 (filed Feb. 16, 2012) (“Petition”).

³ Section 10(c) provides that any telecommunications carrier, or class of telecommunications carriers may file a forbearance petition. 47 U.S.C. § 160(c).

With respect to these two categories encompassing the rules governing notices of network changes and service discontinuance approval requirements, the Joint Commenters submit that the Petition must be rejected because of the harm that could come to competition and consumers if the Commission were to forbear as requested. Indeed, with respect to these two categories, the Petition can and should be summarily denied because it is not complete as filed. Specifically, the section of the Petition seeking forbearance from the rules governing notices of network change fails to address and make the Commission and interested parties aware of an open proceeding regarding the retirement of copper loops and subloops, and, as a result, its fails to set forth a *prima facie* case sufficient to meet each of the statutory criteria for forbearance. With respect to the service discontinuance approval requirements, the Petition does not meet the procedural requirements for forbearance because USTelecom has not sufficiently specified the services for which it seeks forbearance.

US Telecom's request for forbearance from the rules governing notices of network changes also fails on a substantive basis. The Petition contains only broad, unsupported allegations and fails to address the purpose of those rules, which serve to protect consumers and the public interest. Moreover, the Commission cannot grant forbearance from the rules governing notices of network changes while various proceedings are ongoing to address the considerable and complicated consumer protection, competition and public interest issues implicated by the retirement of copper loops and the transition from the PSTN to IP-based networks.

USTelecom is neither a telecommunications carrier nor a class of telecommunications carriers. Accordingly, USTelecom lacks the requisite standing and its Petition should be promptly denied for this reason.

With respect to the service discontinuance approval requirements, the Petition does not meet the statutory criteria for forbearance because USTelecom has not adequately demonstrated that the proposed forbearance will not risk unjust and unreasonable rates or service interruption, and that Commission review and approval, and customer and public rights to object to the service discontinuance, are not necessary to protect consumers and competition or are otherwise necessary to serve the public interest.

I. THE USTELECOM PETITION IS NOT COMPLETE AS FILED BECAUSE IT FAILS TO RAISE AND ADDRESS AN OPEN PROCEEDING REGARDING COPPER LOOP REPLACEMENT AND IT FAILS TO SPECIFY SERVICES FOR WHICH IT SEEKS FORBEARANCE FROM THE COMMISSION'S DISCONTINUANCE RULES

USTelecom's request for forbearance from the rules governing notice of network changes should be denied because it is not complete as filed.⁴ The Petition simply does not and cannot address the potential harm to consumers and competition that would follow from its request to forbear from the current notice of network change rules because it essentially end-runs other Commission proceedings in which copper loop retirement and PSTN transition issues are being carefully considered. With respect to the service discontinuance approval requirements, the Petition does not meet the procedural requirements for forbearance because USTelecom has not sufficiently specified the services for which it seeks forbearance.

⁴ See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56, ¶ 11 (2009) ("Forbearance Procedural Order").

A. The Petition Fails to Raise and Address an Open Proceeding Regarding Copper Loop Replacement

Section 1.54(c) of the Commission’s forbearance rules requires a petitioner for forbearance to identify all matters related to the relief sought in the petition. The Commission’s Forbearance Procedural Order explains that this requirement is to “identify any other proceedings pending before the Commission where the petitioner speaks to the relevant issues....”⁵ The Commission further explained that,

To understand fully the issues posed by forbearance petitions, and to make determinations within the statutory timeframe, the Commission must be aware of any related issues that the Commission is attempting to resolve in pending proceedings. Similarly, in light of the timeframe, disclosure of related filings is fair to opponents and commenters.⁶

Remarkably, USTelecom’s Petition seeks forbearance from the current rules governing copper loop retirement but fails to raise and address an open Commission proceeding regarding the retirement of copper loops and subloops. Therefore, the Petition does not fully identify related matters and does not adequately address important competition and consumer protection issues raised in that proceeding. As a result, the Petition fails to establish a *prima facie* case, as required by section 1.54(b) of the Commission’s forbearance rules, sufficient to meet each of the statutory criteria for forbearance.⁷

⁵ *Id.*

⁶ *Id.*, n.71.

⁷ *See* 47 C.F.R. § 1.54(b). The Commission may also treat these comments as a motion for summary denial of the Petition because even if the Petition is seen in the light most favorable to USTelecom, it fails to raise and address a related matter and does not contain facts and arguments sufficient to meet each of the statutory criteria for forbearance. *See* 47 C.F.R. §§ 1.56(a), 1.54(c), 1.54(b).

On January 30, 2007, the Commission issued a Public Notice establishing a pleading cycle for comments on two petitions for rulemaking regarding copper loop retirement and the Commission's Part 51 rules.⁸ The petition for rulemaking filed by XO Communications, LLC, Covad Communications Group, Inc. (now part of MegaPath), NuVox Communications (now part of Windstream) and Eschelon Telecom, Inc. (now part of Integra Telecom) discussed the inadequacy of the Commission's current rules, including Section 51.333, which permits limited objections to proposed retirements of copper loops and subloops.⁹ In response, USTelecom praised the Commission for declining to require regulatory approval prior to loop retirement, and instead relying on the existing public notice requirements and objection rights.¹⁰ One of USTelecom's largest members asserted that "the Commission reasonably concluded that its existing network notification requirements (with minor modifications) would adequately safeguard any legitimate CLEC interest."¹¹ However, in USTelecom's Petition, it seeks forbearance from those same notification requirements and objection rights.¹²

⁸ See *Pleading Cycle Established For Comments on Petitions For Rulemaking And Clarification Regarding The Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops*, RM-11358, Public Notice, DA 07-209 (2007) ("Copper Loops Public Notice").

⁹ See *Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. For a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops*, RM-11358 at 8 (filed Jan. 18, 2007) ("Copper Loop Petition").

¹⁰ See *Comments of the United States Telecom Association*, RM-11358 at 5 (filed Mar. 1, 2007).

¹¹ *Opposition of AT&T*, RM-11358 at 11 (filed Mar. 1, 2007).

¹² See *Petition* at 56-59.

The 2007 copper loop retirement proceeding is a pending Commission proceeding where USTelecom and its members spoke to the relevant issues in USTelecom's current Petition. Further, the copper loop retirement proceeding certainly raises "relevant issues" of which the Commission should be aware in attempting to resolve the instant Petition. Finally, USTelecom's failure to raise and address the copper loop proceeding was unfair to opponents and commenters in light of the timeframe for comments on the Petition. Without identifying the copper loop proceeding, or discussing any of the important competition and consumer protection issues raised in that docket, USTelecom's Petition simply fails to meet its burden of filing a *prima facie* case necessary to allege satisfaction of each of the statutory criteria and, thus, the Petition was not complete as filed and it must be denied.

B. The Petition Does Not Identify Each Service For Which Forbearance is Sought

Section 1.54(a)(3) of the Commission's forbearance rules requires a petitioner for forbearance to identify each service for which forbearance is sought."¹³ The USTelecom Petition fails to identify each service for which forbearance is sought and thus the Petition is not complete as filed and must be denied. The US Telecom Petition states only that it "requests that forbearance relief be applied to all covered services, including but not limited to interstate and international voice and data services, whether provided to the consumer or business markets."¹⁴ It further refers generally to "legacy services" or "legacy offerings" throughout. Such broad

¹³ 47 C.F.R. § 1.54(a)(3).

¹⁴ Petition at A-13.

descriptions of retail and wholesale voice and data services are not adequate to meet the requirements of the Commission's rules that petitions for forbearance be complete as filed, and specifically that petitions identify each service for which forbearance is sought.¹⁵

Before the Commission established procedural rules for petitions for forbearance, including the requirement that a petition be completed as filed and identify each service for which forbearance is sought, the industry and the Commission discovered the difficulties with petitions for forbearance that did not identify each service for which forbearance was sought with specificity. Verizon filed a petition requesting that the Commission forbear from applying Title II obligations and other rules to its broadband services,¹⁶ which was deemed granted pursuant to Section 10(c) of the Communications Act of 1934, as Amended (the "Act") because the Commission did not deny the petition within the one year statutory deadline.¹⁷ Although Verizon had amended its petition to specify ten broadband services for which it sought forbearance from Title II common carriage regulations,¹⁸ there was widespread confusion and

¹⁵ See 47 C.F.R. § 1.54(a)(3).

¹⁶ See *Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) From Title II and Computer Inquiry Rules With Respect to Broadband Services*, WC Docket No. 04-0440 (filed Dec. 20, 2004).

¹⁷ See *Verizon Telephone Companies' Petition for Forbearance From Title II and Computer Inquiry Rules With Respect to Their Broadband Services is Granted by Operation of Law*, WC Docket No. 04-440, FCC News Release (rel. Mar. 20, 2006) ("News Release").

¹⁸ See Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-0440, at Attach. 1 (filed Feb. 7, 2006) and Letter from Suzanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-0440 (filed Feb. 17, 2006).

disagreement in the industry and reflected in the separate statements of the commissioners regarding what specific services were covered under the grant of forbearance.¹⁹

Three years later the Commission adopted the forbearance procedural rules and required petitioners to file petitions that are complete as filed, including identification of each service for which forbearance is sought.²⁰ The Commission determined to require that petitions be completed as filed “to make the process fairer for commenters, more manageable for the Commission, and more predictable for petitioners.”²¹ The USTelecom Petition is not complete as filed, and therefore the Petition must be denied. USTelecom’s vague references to “legacy offerings” and “all covered services,” are insufficient to meet this important threshold procedural requirement and therefore the Petition must be denied.

II. USTELECOM’S REQUEST FOR FORBEARANCE FROM RULES GOVERNING NOTICE OF NETWORK CHANGES DOES NOT MEET THE STATUTORY REQUIREMENTS FOR FORBEARANCE

Even if the Petition’s request for forbearance survives the foregoing procedural challenge, it must be denied because it does not meet the statutory test for a grant of forbearance relief. The Petition’s analysis of whether the enforcement of the notice of network change rules is necessary to protect consumers and in the public interest is based only on “broad, unsupported

¹⁹ See News Release, Separate Statements of Chairman Martin and Commissioner Tate contrasted with the Separate Statement of Commissioner Copps.

²⁰ See Forbearance Procedural Order, ¶ 16.

²¹ *Id.*, ¶ 12.

allegations²² regarding why those forbearance criteria are met rather than a full analysis of the purpose of the rules, as well as ongoing proceedings that will likely substantially impact the rules.

A. The Petition Fails to Address the Consumer Protection and Public Interest Purposes of the Notice of Network Change Rules

The Petition fails to meet the statutory requirements for forbearance because it focuses on forbearance benefits to incumbent LECs rather than addressing the consumer protection and public interest purposes of the notice of network change rules. The Petition seeks forbearance from enforcement of the notice of network change rules that (1) require the Commission to review the network change and issue a public notice, and (2) provide interconnected providers with an opportunity to file limited objections.²³ However, the Petition does not adequately explain why these requirements are no longer necessary to protect consumers, no longer promote competition, or are no longer consistent with the public interest. USTelecom merely states that consumers will receive the necessary notice from the incumbent LEC's website and that avoiding these requirements will allow incumbent LECs to modify their networks more quickly.²⁴ The Petition largely ignores issues presented by wholesale carriers' use of facilities subject to the notice of network change. Because the Petition fails to address the

²² Forbearance Procedural Order, n.81 (citing *Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2637, ¶ 16 (1998)).

²³ See Petition at 57.

²⁴ See Petition at 58-59.

original consumer protection and public interest purposes of the rules, it does not provide adequate justification for forbearance.

In the Local Competition Order adopting the notice of network change rules, the Commission noted that “at least two commenters appear to indicate that it would be reasonable to implement network changes immediately upon disclosure.”²⁵ The Commission rejected this proposal and found that,

[w]ithout adequate notice of changes to an incumbent LEC’s network that affect the ‘information necessary for the transmission and routing’ of traffic, a competing service provider may be unable to maintain an adequately high level of interoperability between its network and that of the incumbent LEC. This inability could degrade the quality of transmission between the two networks or, in a worse case, could interrupt service between the two service providers.²⁶

The Commission went on to establish the right to limited objection, which allows a provider that interconnects with the incumbent LEC to object to the timing of the network change because it is unable to accommodate the changes.²⁷

In a subsequent order, the Commission modified these rules with respect to the retirement of copper loops to “allow parties to file objections to the incumbent LEC’s notice of such retirement” and deem such objections denied unless the Commission rules otherwise within 90 days.²⁸ The Commission determined that affirmative regulatory approval prior to the

²⁵ Local Competition Provisions of the 1996 Telecommunications Act, CC Docket Nos. 96-8, 96-98, 95-185, 92-237, Second Report and Order, FCC 96-333, ¶ 206 (1996).

²⁶ *Id.*, ¶ 216.

²⁷ *See id.*, ¶ 221.

²⁸ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, ¶ 282 (2003).

retirement of copper loop facilities was “not necessary...because our existing rules, with minor modifications, serve as adequate safeguards.”²⁹

The limited objection right, established in 1996 and modified in 2003, is a safeguard that goes directly to avoiding the potential situation where a competing service provider may be unable to obtain alternative facilities quickly enough or maintain an adequately high level of interoperability between its network and that of the incumbent LEC, which can lead to degraded service quality or service interruption. Such outcomes harm the competing service provider as a consumer of the incumbent LEC’s services, as well as the end user consumers of the competing service provider’s services. Further, such service degradation and interruption cannot be in the public interest. The Petition fails to address these concerns and therefore does not meet the statutory criteria for forbearance.

B. The Commission Should Not Forbear From Enforcing the Notice of Network Change Rules When the Commission and the Technical Advisory Council Are Considering the Consumer Protection and Public Interest Impacts of These Issues in Other Proceedings

USTelecom’s Petition should be denied because it requests that the Commission forbear from enforcing important protections for consumers and competitive providers in the notice of network change rules while the Commission and its Technical Advisory Council are considering the broad issues related to the transition from the copper PSTN to IP networks. The Commission would not protect consumers and promote the public interest by short changing those proceedings and processes and granting USTelecom’s Petition.

²⁹ *Id.*, ¶ 281.

One of the most important strategic transition issues currently ongoing in the industry and at the Commission is if, how and when to appropriately transition services from the copper-based PSTN to IP networks. The National Broadband Plan (“NBP”) identified the retirement of copper facilities, and the notification of competitive carriers, as a strategic issue to be addressed by the Commission in order to appropriately further broadband deployment.³⁰ Specifically, the NBP recommended that the Commission “ensure appropriate balance in copper retirement policies as part of developing a coherent and effective framework for evaluating its wholesale access policies generally.”³¹ An appropriate balance was deemed necessary because “[r]etirement of these copper facilities affects both existing broadband services and the ability of competitors to offer new services.”³² The NBP further recommended clarifying rights and obligations regarding interconnection in IP-to-IP format because “[f]or competition to thrive, the principle of interconnection—in which customers of one service provider can communicate with customers of another—needs to be maintained.”³³

In addition, on November 4, 2010, Chairman Genachowski convened the first meeting of the 5th Technical Advisory Council (“TAC”) under the authority of the Federal Advisory Committee Act.³⁴ The TAC was charged to “identify important areas of innovation and develop informed technology policies supporting America’s competitiveness and job

³⁰ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, Recommendation 4.9 at 48.

³¹ *Id.*, ¶ 49.

³² *Id.*, ¶ 48.

³³ *Id.*, Recommendation 4.10 at 49.

³⁴ See Technical Advisory Council Chairman’s Report, Apr. 22, 2011, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0425/DOC-306065A1.pdf.

creation in the global economy.”³⁵ One of the working groups formed was called Critical Transitions and it began analyzing the technical and regulatory issues associated with the transition from the PSTN to IP networks.³⁶ The TAC Critical Transitions working group has focused on issues associated with sun-setting the PSTN, which is the “orderly transition from the PSTN’s role as a ‘system of record’ for achieving key national goals.”³⁷

Concerns raised by the TAC regarding this transition to IP networks include universal service and accessibility; emergency services and reliability in individual incidents (e.g., backup power for both the network and home or small business environments); and emergency services, network robustness and priority access in crises and disasters.³⁸ On a related front, the TAC is also studying what methods have evolved for the exchange of traffic in a hybrid IP-based and circuit-switched network, as well as the technical issues that need to be worked out for an IP interconnection framework.³⁹

On November 18, 2011, the Commission released a Further Notice of Proposed Rulemaking in the high cost fund/intercarrier compensation reform proceeding seeking comment on the Commission’s legal authority to regulate IP-to-IP interconnection under Section 251 of

³⁵ *Id.* at 1.

³⁶ See Technical Advisory Council Status of Recommendations Presentation, June 29, 2011, available at <http://transition.fcc.gov/oet/tac/TACJune2011mtgfullpresentation.pdf>.

³⁷ See Critical Legacy Transition Working Group, Sun-setting the PSTN at 1, Sept. 27, 2011, available at <http://www.fcc.gov/encyclopedia/technological-advisory-council>.

³⁸ *Id.*, at 3.

³⁹ See Working Group Questions, Mar. 20, 2012, available at <http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting32812/Work-Group-Questions-3-28-12.pdf>.

the Act.⁴⁰ While noting that the interconnection requirements of Section 251 do not specify particular technologies, the Commission seeks comment on whether to regulate or leave IP-to-IP interconnection to commercial agreements.⁴¹ Reply comments on the Commission’s questions and proposals were submitted on March 30, 2012 and there is now a substantial record – and substantial work to be done – on these issues.

The Commission and the industry, through the TAC Critical Transitions working group, are diligently working through the issues and concerns inherent in the critical transition from the copper-based PSTN to IP networks in order to appropriately protect consumers and promote the public interest. The Commission should not short change these processes by forbearing from enforcing the existing protections for competitive providers and consumers before an “appropriate balance” and “orderly transition” can be developed.

The USTelecom Petition fails to address the consumer protection and public interest purposes of the notice of network change rules, and instead relies only on “broad, unsupported allegations.” Further, the Petition seeks forbearance before both the Commission and TAC have been able to fully explore the consumer protection and public interest implications of the transition to IP networks. Therefore, the Petition does not meet the statutory requirements for forbearance and must be denied.

⁴⁰ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶ 1335-98 (rel. Nov. 18, 2011) (“High Cost Reform Order”).

⁴¹ *See id.*, ¶¶ 1342-43.

III. USTELECOM’S REQUEST FOR FORBEARANCE FROM SECTION 214 AND THE RULES GOVERNING SERVICE DISCONTINUANCE APPROVAL REQUIREMENTS DOES NOT MEET THE STATUTORY REQUIREMENTS FOR FORBEARANCE

The Petition’s request for forbearance from certain service discontinuance requirements contained in Section 214 of the Act and related Commission rules must be denied because it fails to specify which services are included in its request and instead relies on unacceptably vague references to “legacy offerings” and “all covered services,” and it otherwise fails to meet the statutory test for grant of forbearance. Specifically, USTelecom claims that incumbent LECs should not be required to obtain Commission approval prior to discontinuing “legacy offerings” in areas where the incumbent LECs replace the discontinued service with IP broadband services. As demonstrated above, reliance on the terms “legacy offerings” and “all covered services” does not meet the complete as filed procedural requirements that each service for which forbearance is sought be identified.⁴² Substantively, the Petition does not meet the statutory criteria for forbearance because USTelecom has not adequately demonstrated that the proposed forbearance will not risk unjust and unreasonable rates, and that Commission review and approval, and customer and public rights to object to the service discontinuance, are not necessary to protect consumers, preserve competition and serve the public interest.

USTelecom states that it would continue to give notice of service discontinuance to customers and the Commission.⁴³ However, the rules from which USTelecom seeks forbearance contain the definition of discontinuance (Section 63.60), the requirement for the carrier proposing to discontinue a service to request authority by formal application to the

⁴² See 47 C.F.R. § 1.54(a)(3).

⁴³ See Petition at 62.

Commission (Sections 63.61 and 63.62), the requirement to include in the notice to customers the fact that they have a right to object to the service discontinuance (Section 63.71(c)(5)) and the requirement to include in a publicly posted notice of discontinuance, the right for any member of the public to protest the application for discontinuance (Section 63.90(a)(8)).⁴⁴ These rules are necessary to ensure just and reasonable rates and to protect the interests of consumers, preserve competition and serve the public interest.

A. The Petition Does Not Demonstrate Conclusively That Enforcement of the Service Discontinuance Requirements Is Not Necessary to Ensure that Charges Will Be Just and Reasonable

The Petition should be denied because it does not meet the statutory requirement to demonstrate that the enforcement of the service discontinuance requirements is not necessary to ensure that charges are just and reasonable. USTelecom explains that, “in the circumstances under which USTelecom is seeking forbearance, customers are not losing service” because “customers will be getting service delivered via a new, more technologically advanced platform, specifically an IP network.”⁴⁵ The Joint Commenters disagree, because consumers may not want the new, more advanced platform and therefore they would be losing the existing telecommunications service that they want. That would be a case of service discontinuance and not a replacement service as USTelecom would have the Commission believe.

USTelecom fails to assure the Commission and consumers that the new more advanced service will not be more expensive than, or offer all of the same functionality of, the

⁴⁴ Of course, if no application to the Commission is necessary and incumbent LECs can discontinue service upon providing notice, then not only are customers and the public not given notice of their right to object or protest, but they actually have no right to object or protest because the service will be discontinued upon notice.

⁴⁵ Petition at 60.

unknown service that would in theory be discontinued. Without submitting an application for discontinuance for Commission review and approval, and retaining opportunities for customers and the public to object or protest the change, incumbent LECs will have no check on their ability to replace existing services with more advanced, but potentially more expensive or functionally different, IP-based services. Therefore, the service discontinuance could affect the rates charged to consumers. Accordingly, the USTelecom Petition must be denied because USTelecom has not demonstrated that the service discontinuance rules are not necessary to ensure that the charges for service provided are just and reasonable.

B. USTelecom Has Not Demonstrated that Enforcement of the Service Discontinuance Requirements is Not Necessary to Protect Consumers

Section 10 of the Act requires that a petitioner for forbearance demonstrate that enforcement of the regulations are not necessary for the protection of consumers; the Petition fails to meet this burden.⁴⁶ The Petition asserts that, “[b]ecause USTelecom’s forbearance request is premised upon broadband services being available to replace the legacy offerings being discontinued, the requirement that a broadband provider maintain that legacy offering when it no longer makes economic sense to do so is unnecessary to protect consumers.”⁴⁷ This assumes that all consumers would prefer a broadband solution to the legacy offering, and that such consumers, the Commission and the public should have no opportunity to object to the service discontinuance and replacement on any grounds. Many consumers, businesses, organizations and the Commission itself, for example, may be concerned about the replacement

⁴⁶ See 47 U.S.C. § 160(a)(2).

⁴⁷ Petition at 61-62.

of copper facilities that include constant power to the line so that plug in phones remain operational in power outages with broadband services, which operate on limited battery backup during a power outage. Consumers and the public should at least have the opportunity to raise such objections as part of the established service discontinuance process. Again, if many consumers do not want the replacement service, for whatever reason, then this is a case of service discontinuance and not service replacement as USTelecom has described it, and USTelecom has not demonstrated why the procedural consumer protections contained in the existing rules should not apply.

The Petition relies on the fact that the Commission granted commercial mobile radio service (“CMRS”) forbearance from the Section 214 authority, including discontinuance requirements, to support its case for forbearance for “legacy” incumbent LEC services.⁴⁸ The Commission decided to grant forbearance from the Section 214 requirements to CMRS providers after extensive market analysis, a determination that CMRS providers generally lack market power and that the level of competition in the CMRS marketplace was sufficient to exercise forbearance authority.⁴⁹ The Commission has not done the same market analysis or reached the same conclusions regarding the competitive marketplace for all incumbent LEC “legacy services.” Further, as discussed below, the general, high level “competitive analysis” provided by USTelecom does not come close to providing the required market analysis for forbearance. Therefore, the fact that the Commission found sufficient competition in the CMRS marketplace

⁴⁸ See Petition at 61.

⁴⁹ See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, FCC 94-31, ¶¶ 135-139 (1994).

has no bearing on the USTelecom petition for forbearance from the service discontinuance requirements for “all covered incumbent LEC services, including but not limited to interstate and international voice and data services...”⁵⁰ Because the Petition fails to demonstrate that the service discontinuance rules are not necessary for the protection of consumers, it must be denied.

C. The Petition Does Not Demonstrate That Forbearance From Enforcing the Service Discontinuance Requirements Is Consistent With the Public Interest

USTelecom’s Petition should be denied because it fails to demonstrate that the requested forbearance would promote competitive market conditions or is otherwise consistent with the public interest. The Petition argues that enforcement of the service discontinuance rules is consistent with the public interest because it “would advance the Commission’s goal ‘of encouraging migration to modern, all IP networks,’ which is plainly in the public interest.”⁵¹ Such a “broad, unsupported allegation” does not address real service-specific issues that may be presented by particular service discontinuance proposals, including the differences with respect to line-powered copper lines and battery backed-up alternatives. Nor does it address the fact that the issue of how to appropriately advance the Commission’s goal of migration to IP networks remains open in several proceedings and venues. Further, the competitive analysis USTelecom provides is woefully inadequate and it contains little that resembles the market analysis typically required for forbearance, especially with respect to enterprise services and the wholesale market.

First, as discussed in detail above, the Commission addressed the transition to IP networks in the NBP, such issues are in front of the TAC Critical Transitions working group and

⁵⁰ Petition at A-13.

⁵¹ Petition at 62 (citing High Cost Fund Reform Order, ¶¶ 764, 783, 968).

most recently, the Commission sought comment on the appropriate regulatory regime for IP-to-IP interconnection in the Further Notice of Proposed Rulemaking in the high cost fund/intercarrier compensation reform proceeding. The High Cost Reform Order is the very order cited by USTelecom for the proposition that the Commission seeks to encourage migration to all IP networks. That Order and Further Notice recognizes that there are many complicated issues to address, such as IP-to-IP interconnection, to ensure that the transition to IP networks serves the public interest.⁵² That order simply does not support USTelecom's request to short circuit the Commission proceedings and TAC process through forbearance from the Commission's service discontinuance rules.

Second, the competitive analysis provided by USTelecom fails to address retail enterprise services or any wholesale market, which is required by Commission precedent in considering the public interest in petitions for forbearance.⁵³ Indeed, USTelecom's competitive analysis includes only nationally aggregated and non-carrier specific data that provides little if any information useful in this context (*e.g.*, no data relating to specific incumbent LECs, geographic markets, competitive alternatives to particular services, etc.). In the Qwest Phoenix MSA Forbearance Order, the Commission criticized the previous grant of forbearance in the Qwest Omaha Forbearance Order because the focus on "Qwest's market share for retail mass market telephone service was not, by itself, sufficient to determine whether Qwest possessed the

⁵² High Cost Reform Order, ¶¶ 1335-98.

⁵³ See 47 U.S.C. § 160(b).

power to control price...in the market for retail mass market services or retail enterprise services, or in any wholesale market.”⁵⁴ The Commission concluded that,

the Commission’s nearly exclusive emphasis on Qwest’s share of the mass market retail voice marketplace—without meaningful consideration of Qwest’s market shares in other relevant retail and wholesale markets, as well as other factors pertinent to whether Qwest, individually or jointly, possessed market power in those markets—is not supported by current economic theory.⁵⁵

USTelecom’s competitive analysis provided with the Petition includes general statements and statistics regarding consumer choices for wireline, VoIP, wireless and other services without any breakout or focus on competition for enterprise services or any analysis of the wholesale market. It is woefully inadequate to serve as a competitive analysis supporting the requested forbearance with respect to the rules encompassed in Category 10 (or Category 9).

The service discontinuance rules from which USTelecom seeks forbearance include discontinuance of wholesale services (*i.e.*, the severance by a carrier of physical connections with another carrier or termination of the interchange of traffic with such other carrier).⁵⁶ USTelecom’s competitive analysis provides no discussion of the wholesale market and therefore cannot demonstrate that forbearance will promote competitive market conditions.⁵⁷ Further, if granted the requested forbearance, incumbent LECs could discontinue TDM-based special access services without Commission approval or an opportunity for competitive provider customers of such wholesale services to object, which would nullify the ongoing considerations

⁵⁴ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-133, ¶ 28 (2010) (“Qwest Phoenix MSA Forbearance Order”).

⁵⁵ *Id.*

⁵⁶ *See* 47 C.F.R. § 63.60(b)(5).

⁵⁷ *See* 47 U.S.C. § 160(b).

in the longstanding special access proceeding.⁵⁸ The Petition fails to demonstrate that forbearance from the service discontinuance rules for incumbent LEC legacy services would promote competitive market conditions or otherwise be consistent with the public interest, and therefore it must be denied.

IV. CONCLUSION

For the foregoing reasons, Joint Commenters urge the Commission to deny USTelecom’s petition for forbearance from the rules governing notices of network changes and service discontinuance approval requirements.

Respectfully Submitted:	
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⁵⁸ See generally *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).