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

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance	)	WC Docket No. 12-61
Under 47 U.S.C. § 160(c) From Enforcement	)	
Of Certain Legacy Telecommunications	)	
Regulations	)	

REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments addressing the Public Notice in WC Docket No. 12-61 at DA 12-352 issued by the Federal Communications Commission (FCC or Commission) on March 8, 2012 soliciting Comments or Oppositions to the USTelecom Association Forbearance Petition (USTA Forbearance Petition or USTA Petition) on or before April 9, 2012, and Reply Comments on or before April 24, 2012.

The USTA Forbearance Petition seeks expansive relief from various regulatory obligations that include Equal Access Scripting Requirements and Open Network Architecture and Comparably Efficient Interconnection (ONA/CEI). The USTA Forbearance Petition also seeks regulatory relief from Enhanced Services Structural Separations Rules at 47 C.F.R. § 64.701 and All-Carrier Computer Inquiry Rules. The USTA Petition further seeks forbearance from Cost Assignment Rules, Part 32 Uniform System of Accounts set forth at 47 C.F.R. § 32.1-2.9000 and Property Record Rules set forth at 47 C.F.R. §§ 32.2000(e), (f). The USTA Forbearance Petition also seeks relief from certain "Service Discontinuance Approval requirements" that implicate 47 U.S.C. § 214, and 47 C.F.R. §§ 63.60, 63.61, 63.62, 63.63, 63.71(a)(5), 63.71(c), and 63.90(a)(8).

The Pa. PUC appreciates an opportunity to file Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, the Pa. PUC Reply Comments could change in response to later events, including Ex Parte filings or the review of other filed Reply Comments and legal or regulatory developments at the state or federal level. The Pa. PUC Reply Comments build upon and reiterate prior filings of the Pa. PUC on several issues concerning forbearance.[1]

The Pa. PUC opposes the USTA Forbearance Petition. Forbearance would unlawfully preempt and undermine regulatory obligations that exist under independent state law, including carrier of last resort (COLR) requirements. Forbearance cannot expressly or constructively preempt independent state regulatory authority and jurisdiction, particularly when doing so would centralize intrastate ratemaking as was attempted in the past.[2]

The Pa. PUC also opposes the USTA Petition because forbearance and similar pleadings like a declaratory ruling are inappropriate vehicles to examine complicated matters governed by federal rules. Rather, a rulemaking proceeding with appropriate notice and comment is the lawful and far superior approach.[3] This position is entirely consistent with USTA's own view that changes to federal rules can be implemented only through a rulemaking as opposed to a discrete proceeding, like a declaratory ruling, on important and complex matters governed by

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[1] *In re: Petition of Embarq Local Operating Companies and AT&T For Interim Limited Relief,* Docket Nos. 08-160 and 08-152, Reply Comments of the Pa. PUC (September 5, 2008); *In re: Petitions of Embarq and Verizon for Forbearance From Certain ARMIS Reporting Requirements,* Docket Nos. 07-204 and 7-273 (March 17, 2008); *In re: Petition of AT&T For Declaratory Ruling and Limited Waivers,* Docket Nos. 08-152, Comments of the Pa. PUC (August 21, 2008); *In re: Verizon Petition for Forbearance In the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas,* Docket No. 06-172, Pa. PUC Comments (March 6, 2007), Reply Comments (April 18, 2008).

[2] *In re: Petition of Embarq Local Operating Companies For Forbearance* and *AT&T Petition for Limited Declaratory Ruling and Interim Relief,* Docket Nos. 08-152 and 08-160, *In re: Petition of AT&T For Declaratory, Docket No. 08-152* Comments of the Pa. PUC (September 5, 2008), pp. 5-12.

[3] *In re: Federal-State Joint Board* and *Virgin-Mobile Petition for Forbearance,* Docket No. 96-45 and DA 07-4983 Comments of the Pa. PUC (January 14, 2008), p. 2; *In re: United Power Line Council,* Docket No. 06-10, Comments of the Pa. PUC (February 10, 2006), pp. 1-4.

federal rules, such as inter-modal number portability.[4]

The FCC must proceed cautiously in considering the USTA Petition. The USTA Forbearance Petition appears to involve the *Connect America Fund* proceeding at WC Docket No. 10-90 *et al.* and could have long-term impacts better examined there as opposed to here. The Pa. PUC has witnessed previous efforts to attain in a declaratory vehicle what was under consideration in a far more complex, and controversial, proceeding.[5]

A. Carrier of Last Resort Obligations Under Section 214 Cannot Be Summarily Eliminated Through Requests For Forbearance Relief.

The Pa. PUC supports the initial comments that the USTA Petition forbearance request from service discontinuance approval requirements under Section 214, 47 U.S.C. § 214, should be denied.[6] To begin, the forbearance request related to these Section 214 obligations seemingly conflicts with independent state law obligations. In short, USTA's very expansive Forbearance Petition, if approved, appears to conflict with the review authority of State commissions over discontinuance of services and abandonment and/or change of control of essential facilities, which is authority that exists separately under independent state law.

The very expansive forbearance request of the USTA Petition impacts the COLR obligations of incumbent local exchange carriers (ILECs) that are *jointly* administered by the FCC and State public utility commissions under independent state law. For example, discontinuance or abandonment of service by a public utility within Pennsylvania requires Pa.

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[4] *In re: Number Optimization,* Docket No. 99-200, Ex Parte Presentation of the United States Telephone Association (October 31, 2003, pp. 1-2 (the FCC cannot change wireline porting boundary or intervals as set forth in 47 CFR §§ 52.26(a) by a declaratory ruling proceeding but rather must institute a rulemaking proceeding in conformance with the Administrative Procedure Act.).

[5] Compare *In re: AT&T Petition for Interim Declaratory Ruling and Limited Waivers,* Docket No. 08-152, Ex Parte Filing of AT&T (July 17, 2008), Comments of the Pa. PUC (August 21, 2008, p. 3, n.1 with *In re: Intercarrier Compensation* and *Missoula Plan,* Docket No. 01-9, Ex Parte Letter of the Pa. PUC (October 27, 2008), Comments of the Pa. PUC (November 26, 2008), Reply Comments of the Pa. PUC (December 22, 2008).

[6] *See generally* COMPTEL's Opposition to USTelecom's Petition for Forbearance, April 9, 2012 (COMPTEL Comments), at 6-13; Opposition of Full Service Network LP to USTelecom's Petition for Forbearance, April 9, 2012 (FSN Comments), at 10-13.

PUC authorization under 66 Pa. C.S. § 1102(a)(2). Similarly, certain acquisitions or transfers of public utility property within certain monetary value guidelines "by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service" also require Pa. PUC approval. 66 Pa. C.S. § 1102(a)(3).

The concept of discontinuance of service under Section 214 is also related to the broad parameters of facilities abandonment or transfer of control of essential facilities. Given this relationship, the Pa. PUC is concerned that the USTA request for federal forbearance, if granted, would interfere with independent state law obligations by seeking to eliminate both FCC and State substantive review of how USTA members' facilities are affected by certain transactions; and the critical Commission and State examination of whether mergers and transfers of control affecting USTA's members are in the public interest.

USTA "seeks forbearance of the Commission's service discontinuance approval requirements in an area where a carrier makes available IP [Internet Protocol] broadband services (at least 4 Mbps download, 1 Mbps upload) and, as a result of the availability of such new services, seeks to discontinue a preexisting service offering that relies on other technology."[7] USTA alleges that under its forbearance request "customers are not losing service" but instead "customers will be getting service delivered via a new, more technologically advanced platform, specifically an IP network."[8] The USTA Petition premises its forbearance request on behalf of its numerous ILEC members on the basis that voice telecommunications service "will ultimately be just 'one of many applications running over fixed and mobile

[7] USTA Petition at 59.
[8] USTA Petition at 60.

networks'."[9] Initial comments have already pointed out that the USTA Petition does not adequately specify whether its Section 214 service discontinuance forbearance request applies to both the retail and wholesale contexts.[10]

The provision of basic wireline retail voice telecommunications services that involve a number of attendant and critical functionalities such as access to 911/E911 emergency services, "1+" equal access dialing for interexchange calls, access to telecommunications relay services (TRS), etc., constitute COLR obligations of the ILECs and are traditionally and lawfully regulated by State public utility commissions as intrastate retail telecommunications services. Even if the USTA Petition were to be somehow — and inadvisably — successful, federal forbearance from Section 214 abandonment of service requirements would not and could not lawfully preempt the COLR obligations of the ILEC members of USTA under the operation of independent State laws and regulations. In addition forbearance of COLR obligations is not appropriate at this time. The Commission soundly has reaffirmed the necessity for State regulated and enforced COLR obligations that involve basic retail wireline voice telecommunications services. The FCC Reform Order unambiguously states the following:

> Therefore, we do not seek to modify the existing authority of the states to establish and monitor carrier of last resort (COLR) obligations. We will continue to rely upon states to help us determine whether universal service support is being used for its intended purposes including by monitoring compliance with the new public interest obligations described in this Order.
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> Importantly, these reforms do not displace existing state requirements for voice service, including state COLR obligations. We will continue to work in partnership with the states on the future of such requirements as we consider the future of the PSTN.

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[9] USTA Petition at 60, quoting *In re Connect America Fund et al.*, (FCC November 18, 2011), WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 11, at 8-9 (FCC Reform Order).
[10] COMPTEL Comments at 8.

* * *

> We decline to preempt state obligations regarding voice service, including COLR obligations, at this time. Proponents of such preemption have failed to support their assertion that state service obligations are inconsistent with federal rules and burden the federal universal service mechanisms, nor have they identified any specific legacy service obligations that represent an unfunded mandate that make it infeasible for carriers to deploy broadband in high-cost areas. Carriers must therefore continue to satisfy state voice service requirements.

FCC Reform Order ¶ 15 at 10, ¶ 75 at 29, ¶ 82 at 31 (citing ABC Plan Attach. 1 at 13 and Attach. 5 at 8).

Thus, to the extent that the USTA Petition, through forbearance of Section 214 obligations, intends to circumvent and undermine lawful State COLR obligations and intends to re-litigate the issues that have already been addressed in the FCC Reform Order, this effort is both legally and technically unsustainable and should be rejected. Furthermore, if USTA and its ILEC members continue to have issues with the State COLR obligations set forth in the FCC Reform Order, they can address such issues in the appropriate judicial and/or administrative forums. However, such issues should not be addressed through the vehicle of a petition for federal forbearance because it is illegal, improper, and appears to be a collateral attack on the FCC Reform Order and its ongoing rulemakings.

The USTA Petition for forbearance from Section 214 obligations regarding service — and potentially essential facilities — abandonment, creates serious implications for end-user consumers, *irrespective* of whether voice telecommunications services will continue to be provided over PSTN conventional legacy circuit-switched wireline network technologies and communications protocols, or over upgraded PSTN packet switched wireline network facilities and IP-based protocols. For example, the USTA Petition completely fails to address whether its member ILECs would be willing to provide basic wireline stand-alone voice telecommunications services through a broadband and/or IP-based platform. Similarly, the USTA Petition does not

cover the current regulatory oversight of the quality and reliability of basic wireline voice telecommunications services on both the federal and state levels. If a wireline voice call to 911/E911 emergency services were to fail, seeking a competitive alternative service supplier, including intermodal wireless, will not be a remedy.

A core issue that remains is the *fundamental entitlement* of end-user consumers to have affordable and reliable access to retail wireline voice telecommunications services, inclusive of functionalities such as 911/E911, non-discriminatory "1+" dialing, and TRS, and the availability of essential facilities to provide such services under appropriate State COLR obligation regulatory oversight. This fundamental entitlement is part and parcel of the universal service concept that is enshrined in both federal and independent State laws. If USTA's member ILECs intend to continue providing basic retail wireline voice telecommunications services that are compatible with the established concept of universal service, *irrespective* of the technological platform, then the USTA Petition for forbearance relief from Section 214 obligations serves no purpose.

The USTA Petition for forbearance relief from Section 214 service abandonment requirements also has the potential of adversely impacting wholesale access service obligations and interconnection for USTA member ILECs as it has been amply pointed out in various initial comments. COMPTEL points out that USTA's forbearance request of the Section 214 service abandonment requirements would potentially "allow an ILEC unilaterally to sever a legacy network connection and to cease exchanging traffic with a competitive carrier because it [the ILEC] has upgraded its network to IP." COMPTEL further states that it "would neither serve the

public interest nor protect consumers to allow such disconnections of physical facilities to occur without Commission approval."[11]

However, matters of wholesale access, interconnection, and exchange of traffic also affect State public utility commission responsibilities under applicable provisions of the federal Telecommunications Act of 1996 (TA-96) and independent State Law. State public utility commissions are also at the forefront of adjudicating interconnection and wholesale access disputes, which often require evidentiary hearings where ex parte contacts and submissions are strictly prohibited. In addition, the FCC also has released an Order concerning the non-completion for wireline and wireless calls where the intended call recipients are often end-users of rural ILECs.[12] The recent Order provides concrete proof that the Commission intends to continue to police the areas of interconnection and wholesale access for all carriers. Thus, the relevant regulatory oversight both at the federal and State levels cannot be weakened through the intentional or default grant of federal forbearance as the USTA Petition requests on this issue.

B. Forbearance Should Not Be Granted From Open Network Architecture And Comparably Efficient Interconnection Requirements That May Impact Interconnection Obligations And Other Requirements For Non-Discriminatory Wholesale Access.

The Pa. PUC is also concerned about the impact of the USTA request for forbearance from open network architecture (ONA) and comparably efficient interconnection (CEI) requirements on the interconnection obligations and other requirements for non-discriminatory access to the ILECs' network facilities. FSN, a competitive local exchange carrier (CLEC), in its initial comments clearly states that it relies on certain ONA elements supplied by ILECs as inputs for the provision of its competitive services.[13] If the requested forbearance is granted via

[11] COMPTEL Comments at 10-11.
[12] *In re Developing an Unified Intercarrier Compensation Regime, et al.*, (FCC, Rel. Feb. 6, 2012), CC Docket No. 01-92, Declaratory Ruling, DA 12-154.
[13] FSN Comments at 5.

a Commission ruling or by default, it is unclear what ONA elements the USTA members will provide and under what conditions.[14] Whether ONA elements are utilized for the provision of narrowband services is immaterial if the providing ILECs are still classified as dominant carriers by the FCC with essential facilities and functionalities that are utilized by competitive providers.

CEI requirements have been designed to provide regulatory safeguards so that the ILEC relationship with its unregulated affiliates that provide enhanced services does not harm unaffiliated competitors providing similar services. At the end of the day, USTA's member ILECs are still common carriers and are obliged to provide their wholesale access facilities (inclusive of transmission facilities) to their affiliated and unaffiliated enhanced service providers on equal terms and conditions. Such common carrier requirements are not losing their importance in an evolving marketplace for retail broadband access and enhanced services, where ILEC unregulated affiliates provide bundled services to end-users while largely utilizing the underlying retail and wholesale network access facilities of the regulated ILECs.

Federal CEI regulations are also reflected to a certain degree by individual States that regulate ILEC operations. For example, Pennsylvania law prohibits the subsidization of ILEC intrastate services that have been characterized as competitive and price deregulated.[15] Similarly, the Pa. PUC enforces certain competitive safeguards regulations and a code of conduct for all ILECs operating within Pennsylvania.[16] Such State-specific statutes and competitive safeguard regulations cannot be lawfully preempted by a federal forbearance grant consummated by Commission Order or by default.

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[14] FSN Comments at 7-9.

[15] A local exchange telecommunications company [ILEC] shall be prohibited from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services. 66 Pa. C.S. § 3016(f)(1).

[16] 52 Pa. Code § 63.141 *et seq.*

C. The Reforms Of The Federal USF And Intercarrier Compensation Militate Against Further Forbearance Relief From Accounting And Reporting Obligations.

The Pa. PUC is opposed to the elimination of the accounting and reporting requirements that are part of USTA's Petition for forbearance relief. The Pa. PUC is of the opinion that such forbearance relief is totally premature in view of the joint Commission and State responsibilities in implementing, monitoring and policing the implementation of the FCC's Reform Order.[17]

The FCC Reform Order modifications to the federal USF and intercarrier compensation mechanisms militate against any grant of forbearance relief for accounting and reporting obligations of USTA's member ILECs. The FCC Reform Order imposes, in these mechanisms, the necessary monitoring and policing responsibilities both for the Commission and the individual States. The exercise of these monitoring and policing responsibilities will be conclusively undermined if USTA's request for forbearance relief from accounting and reporting obligations for its member ILECs were to be granted intentionally or by default. Specifically, the FCC Reform Order stated the following:

> The billions of dollars that the Universal Service Fund disburses each year to support vital communications services come from American consumers and businesses, and recipients must be held accountable for how they spend that money. This *requires vigorous ongoing oversight* by the Commission, working in partnership with the states, Tribal governments, where appropriate, and U.S. Territories, and the Fund Administrator, USAC [Universal Service Administrative Company]. This section reforms the framework for that ETC [Eligible Telecommunications Carrier] oversight. We establish a uniform national framework for information that ETCs must report to their respective states and this Commission, while affirming that states will continue to play a critical role overseeing ETCs that that they designate.

FCC Reform Order, ¶ 568, at 185-186 (footnotes omitted, emphasis added).

[17] Although the FCC Reform Order has been formally appealed by numerous parties including the Pa. PUC, its implementation has not been legally stayed.

The FCC Reform Order further articulates similar references when it comes to monitoring compliance with the eligible recovery mechanism of the intercarrier compensation reforms.[18]

Since the contemplated and necessary "vigorous ongoing oversight" by both the Commission and the States will be seriously undermined if the forbearance relief requested in the USTA Petition, numerous commenters are opposed to the forbearance request. The National Association of Utility Consumer Advocates (NASUCA) and others point out that the FCC's contemplated adoption of a broadband cost model that will be used for the purposes of estimating and distributing Connect America Fund (CAF) support to eligible carriers in 2013 requires the submission of data by carriers under the FCC's Part 32 rules of the Uniform System of Accounts (USOA).[19] In contrast, the USTA Petition wants to eliminate Part 32 accounting and reporting for its federal price cap member ILECs. Both the California Public Utilities Commission (Ca. PUC), and Commissioner Larry S. Landis, Indiana Utility Regulatory Commission (IURC), point out that the elimination of the Part 32 rules cannot take place before the FCC completes the necessary reforms of the jurisdictional separations process.[20] Furthermore, a number of States still rely on accounting data and information that are filed as part of the remaining FCC Automated Reporting Management and Information System (ARMIS) reports for intrastate proceedings that involve Parts 32, 64, 65, 36 and 69 of the FCC's USOA Rules, including useful cost accounting data that will become even more necessary as the Commission and the States are working to implement the FCC Reform Order and its ongoing rulemakings.[21]

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[18] FCC Reform Order, ¶¶ 921-923, at 333.
[19] Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, and the New Jersey Division of Rate Counsel, (NASUCA *et al.* Comments) at 26.
[20] Comments of the California Public Utilities Commission and the People of the State of California on Petition for Forbearance of the United States Telecom Association (Ca. PUC Comments) at 7; Comments of Commissioner Larry S. Landis of the Indiana Utility Regulatory Commission (IURC Commissioner Landis Comments) at 3.
[21] NASUCA *et al.* Comments at 23-24.

The Pa. PUC further believes that forbearance relief at this time is premature. The Commission, in its FCC Reform Order, is significantly changing both the federal USF and intercarrier compensation regimes and, in doing so, is requiring accountability so that the agency can determine if its reforms are achieving the policy goals set forth therein. In addition, the Commission has set numerous issues for comment as part of its Reform Order to further determine what requirements and accountability is needed to ensure, for example, that carriers receive proper CAF support and that broadband availability including COLR obligations and interconnectivity are achieved. At this time, the Commission is addressing various issues and gathering additional information through FNPRMs so that the reforms of its November 18, 2011 Order are fully realized by telecommunications carriers and end-users.

Thus, the Commission's recent actions demonstrate that rulemakings are the proper regulatory vehicle in further analyzing comments and data by all stakeholders to address the key reforms in its November 18, 2011 Order. In addition, the Commission's directives and deadlines in its Reform Order demonstrate that implementation of this Order by telecommunications carriers and state commissions is of foremost importance to and an immediate goal of the FCC. In light of the recent actions of the FCC, the Pa. PUC believes that the FCC is dedicated to the rulemaking process and the federal Administrative Procedures Act to determine what regulatory requirements are needed in the current and future telecommunications marketplace.

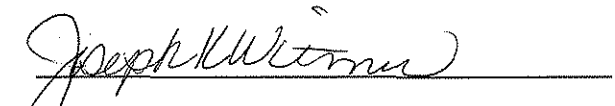
Therefore, the Pa. PUC believes that this is not the time for the Commission to grant forbearance of any of its current regulations or previous orders until the FCC Reform Order's implementation and further proposed rulemakings are completed and legally sustained.

D. The FCC Must Address In Detail USTA's Forbearance Relief Request With Respect To Individual ILECs.

The Commission must address the merits and the arguments of the USTA Petition as they apply to USTA's *individual* ILEC members. USTA made very generalized arguments as to why forbearance relief should apply to its member ILECs.[22] Both the requirements of the statute and the Commission's past sound practice dictate that the FCC must carefully scrutinize the merits of the relevant facts and arguments especially with the appropriate geographic focus. Such analysis should involve the individual carriers that are members of USTA.

The Pa. PUC appreciates this opportunity to file Reply Comments in this proceeding.

Respectfully Submitted,



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[22] COMPTEL Comments at 2-3.