

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition of USTelcom for) WC Docket No. 13-3
Declaratory Ruling that Incumbent Local)
Exchange Carriers Are Non-Dominant in)
The Provision of Switched Access Services)

COMMENTS OF AT&T INC.

I. Introduction and Summary.

AT&T Inc., on behalf of itself and its wholly-owned operating company affiliates (collectively, “AT&T”), submits these comments in the above-captioned proceeding in support of USTelecom’s petition for declaratory ruling that incumbent local exchange carriers (ILECs) are no longer dominant, and thus subject to dominant carrier regulation, in the provision of switched access services.¹

As the Commission itself has repeatedly recognized, the communications landscape is in the midst of a radical transformation.² When Congress opened all telecommunications markets to competition a little more than 15 years ago,³ consumers communicated with each other almost

¹ *Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 12- (filed Dec. 19, 2012) (*Petition*).

² *Connect America Fund*, 26 FCC Rcd 17663, para. 9 (2011) (*USF/ICC Transformation Order*) (noting that consumers increasingly are “shift[ing] from traditional telephone services to substitutes including Voice over Internet Protocol (VoIP), wireless, texting, and email”); *FCC Chairman Julius Genachowski Announces Formation of ‘Technology Transitions Policy Task Force,’* Public Notice (rel. Dec. 10, 2012) (“[T]he ongoing changes in our nation’s communications networks require a hard look at many rules that were written for a different technological and market landscape.”); *Connecting America: The National Broadband Plan* at ¶¶ 3, 59 (2010).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

exclusively via voice services provided by regulated monopolies over copper wires that had changed little since the telephone was invented 137 years ago. Today, that regulatory and technological monopoly no longer exists. Consumers can choose from a broad and increasing array of technologies, products, services, and providers to meet their communications needs, and their communications are more likely to take place over a wireless device or over an IP network than over a traditional voice telephone network, and to consist of a text, tweet, email, social-media post, video call or clip (or a mixture of text, voice and video over a single exchange) than a plain old voice call. Consumers have enthusiastically embraced these options. Indeed, there already are more households that have “cut-the-cord” and subscribe only to wireless services than there are households that subscribe to a circuit-switched telephone service provided by an ILEC, and the number of households served by an interconnected VoIP service (almost invariably over a cable broadband network/service) will soon surpass those subscribing to an ILEC switched voice service – if it hasn’t already.⁴

As is often the case, regulatory policy has not kept pace with these dramatic changes in communications markets. As a result, even as the share of households obtaining POTS service from an ILEC has dwindled to less than thirty percent⁵ and circuit switched networks are increasingly displaced by IP networks, ILEC voice services continue to be subject to monopoly-style, “dominant carrier” regulations not applicable to any other service provider. As the Commission itself recently acknowledged, these regulations “are based on decades-old assumptions that fail to reflect today’s networks, the evolving nature of communications

⁴ USTelecom Petition at 2.

⁵ See Exh. A to these comments (showing that, assuming the drop in ILEC subscribers continued to follow the same linear path as the preceding 5 years, the percentage of housing units with ILEC residential service in AT&T’s 22-state footprint fell to about 27% by the end of December 2012, and will fall to about 21% by the end of this year).

services, or the current competitive landscape,” and, consequently, “are ill equipped to address the . . . challenges raised by broadband, mobility, and the transition to Internet Protocol (IP) networks.” *USF/ICC Transformation Order* at para. 6.

These regulations impose significant social and economic costs, including both the administrative costs of complying with FCC rules and the loss of dynamism that results from inhibiting carriers’ ability nimbly to adjust to changes in consumer demand in today’s hypercompetitive marketplace. To make matters worse, as USTelecom correctly points out, as the number of subscribers to legacy, circuit switched services continues to dwindle rapidly, the cost of complying with these regulations are spread over fewer customers, proportionately increasing the burden on those that remain. *USTelecom Petition* at 3.

The indirect effects of dominant carrier status are equally important. Dominant carrier status at the Commission is effectively a “scarlet letter” that continues to have an impact on policymaking and enforcement, even when that status no longer bears any relation to reality. For example, in the USF/ICC Transformation Proceeding, the Commission asked whether it should subject ILECs alone to regulation of IP-to-IP interconnection even though the number of subscribers to cable and other providers’ VoIP services dwarfs that of subscribers to ILEC VoIP services.⁶ But because ILECs continue to be classified as dominant, the Commission continues to approach policymaking as if the precipitous declines in ILEC access lines are not taking place. s Particularly as the Commission overhauls its regulatory regime to reflect the radical changes that have reshaped the communications landscape, it is essential that the Commission discard canards like dominant carrier status that threaten to distort that process and skew policymaking going forward. The time has now come for the Commission’s regulatory framework to catch-up

⁶ See *USF/ICC Transformation Order* at ¶¶ 1335-98.

with technological and market-place changes, and to apply a 21st century regime to 21st century networks and services. While the costs and burdens of imposing 20th century regulation on ILECs may have made sense when they were the only game in town, now that ILECs' circuit switched voice services are subject to robust, cross-platform competition, there simply can be no justification for singling out ILEC switched voice services for dominant carrier regulation. . . . Consequently, as USTelecom requests, the Commission should promptly declare that ILECs are no longer presumptively dominant in the provision of such services and thus shall be regulated on the same nondominant basis as their competitors.⁷

II. The Commission and Congress Have Recognized the Need to Eliminate Unnecessary Regulation and Rely on Market Forces Where Possible.

For more than three decades, the Commission consistently has observed that competition, in the absence of market power, provides the best means of achieving and promoting the goals of the Communications Act,⁸ and that application of traditional common carrier regulation to firms that possess “insignificant market power imposes costs without any corresponding benefits.”⁹ As the Commission put it, more than thirty years ago, “a firm without market power does not

⁷ As USTelecom notes, its petition does not seek to deregulate ILEC switched access services and charges, nor would the relief it seeks alter the substantive requirements established in the *USF/ICC Transformation Order*. *USTelecom Petition* at 10. Thus, all LECs' access charges will remain subject to the transition established in that order for intercarrier compensation. *Id.* Likewise, its petition does not encompass ILEC special access services even though substantial evidence confirms that ILECs no longer are dominant in the provision of such services. *Id.*

⁸ *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 FCC2d 1, 3 (1980) (*Competitive Carrier First Report and Order*).

⁹ *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Further Notice of Proposed Rulemaking, 84 FCC2d 445, 458 (1980) (*Competitive Carrier FNPRM*); *Competitive Carrier First Report and Order*, 85 FCC2d at 3 (holding that, where “the costs of continuing to regulate the service offerings of any carrier or class of carriers by means of the prevailing tariff, entry, and exit rules exceed the benefits of applying them, even though some benefits may be apparent,” . . . “we may be able to dispense with such regulation”).

have the ability or incentive to price its services unreasonably, to discriminate among customers unjustly, to terminate or reduce service unreasonably or to overbuild its facilities.”¹⁰ It further found that such regulation imposes significant costs, including both compliance costs and, “[m]ost importantly,” the social costs of inhibiting regulated “firms’ ability to make rapid, efficient responses to changes in demand and cost,” which create a “danger that risky investments will not be undertaken.”¹¹ .

Congress as well has made clear its preference for relying on market forces, rather than regulation, to achieve the goals of the Act wherever possible. In 1996, it “direct[ed] the Commission to adjust or eliminate regulations as competition developed and market conditions evolved,”¹² amending the Act to establish a “procompetitive, deregulatory national policy framework” for telecommunications¹³ and requiring the Commission to eliminate unnecessary regulations to effectuate the procompetitive, deregulatory objectives of the Act. To that end, it enacted section 10 of the 1996 Act, which requires the Commission to forbear from applying any provision of the Act or any Commission regulation if it finds that: (1) enforcement of such regulation is not necessary to ensure that charges, practices, etc. are just and reasonable and not

¹⁰ *Competitive Carrier First Report and Order*, 85 FCC2d at 20-21.

¹¹ *Competitive Carrier FNPRM* 84 FCC2d at 453; *see also Competitive Carrier First Report and Order*, 85 FCC2d at 5 (noting that “[m]ore significant costs” than the administrative costs to regulated entities of complying with regulation “are inflicted on society by the loss of dynamism which can result from regulation”).

¹² *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona MSA*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, ¶ 4 (2010) (*Phoenix Forbearance Order*).

¹³ Joint Explanatory Statement of the Committee of Conference, S. Rep. No. 104-230, Conf. Rep. at 113 (1996). *See also* Telecommunications Act of 1996, Pub. Law 104-104, Preamble (Feb. 8, 1996) (“An Act To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”).

unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.¹⁴ Likewise, section 11 of the Act requires the Commission biennially to review all regulations issued under the Act to determine “whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service,” and “to repeal or modify any regulation it determines to be no longer necessary.”¹⁵

III. Changes in Market Conditions and Consumer Demand Obviates Any Basis for Maintaining Dominant Carrier Regulation of ILEC Switched Voice Services.

Three years ago, the Commission rejected a petition by Qwest seeking forbearance, *inter alia*, from dominant carrier regulation of its switched access services in Phoenix, Arizona based on the growth in competition for traditional voice telephone services.¹⁶ It acknowledged that “the communications market [was] changing, as technology, prices, product characteristics, and consumer preferences evolve,”¹⁷ and that large numbers of consumers had switched from traditional voice telephone services to alternatives – including wireless and VoIP services.¹⁸ Nonetheless, it found that Qwest had failed to demonstrate there was sufficient competition to ensure in Phoenix that it would be unable to raise prices, discriminate unreasonably, or harm consumers.¹⁹

¹⁴ 47 U.S.C. § 160 (under the third criterion, the Commission is required to consider whether forbearance will promote competitive market conditions).

¹⁵ 47 U.S.C. § 161.

¹⁶ *Phoenix Forbearance Order*, 25 FCC Rcd at ¶ 110.

¹⁷ *Id.* at ¶ 3.

¹⁸ *Id.* at ¶¶ 53-61.

¹⁹ *Id.* at ¶ 2.

Whatever the merits of that finding three years ago, there is no longer any reasonable basis for classifying ILECs dominant in the provision of voice services. As the data adduced by USTelecom in its petition amply demonstrates, by any measurement (number of lines/households served or volumes of traffic), ILECs provide circuit-switched voice services to a rapidly dwindling minority of consumers nationwide.²⁰ Indeed, less than one-third of U.S. households subscribed to an ILEC-provided circuit-switched voice service by the end of last year (even as the number of housing units that ILECs are required by regulation to serve has increased), and that figure is projected to decline to one-quarter of households by the end of this year.²¹ And ILEC switched access minutes declined more than 70 percent in little more than a decade despite continued growth in the population.²² *In contrast, when AT&T was declared nondominant in 1995 in the provision of interstate, interexchange services, it still held almost two-thirds of that market.*²³

Customers are abandoning ILEC voice services in droves because they have a plethora of alternatives available to them, some of which offer more functionality than legacy voice services. According to the Commission's own data, as of June 2011, 23 percent of fixed voice lines in the United States were provided over interconnected VoIP, and one-quarter of households were subscribed to interconnected VoIP service, almost invariably provided over a cable broadband network.²⁴ And the Commission's Technology Advisory Council has projected, that, based on

²⁰ USTelecom Petition at 24-40.

²¹ *Id.* at 8, 26.

²² *Id.* at 26.

²³ *AT&T Nondominance Decision* 11 FCC Rcd at 3294.

²⁴ *USTelecom Petition* at 27-28, citing FCC Report, *Local Telephone Competition: Status as of June 30, 2011*, Industry Analysis Division, Wireline Competition Bureau (2012 *Local Competition Report*).

current trends, the number of consumers subscribing to VoIP services will surpass those subscribing to the PSTN in 2013.²⁵ The Commission's data also show that 85 percent of households have access to cable broadband services, and thus have readily available, existing alternatives to the ILEC for wireline voice services (*i.e.*, facilities-based interconnected VoIP provided by a cable operator or any one of the innumerable providers of over-the-top VoIP). These networks easily could absorb virtually all voice traffic still carried over the PSTN.²⁶

Likewise, a large and increasing number of households has cut the cord entirely, and rely solely on wireless to make and receive voice calls.²⁷ According to the Centers for Disease Control and Prevention (CDC), approximately 36 percent of households had only wireless telephone service during the first half of 2012²⁸ (as compared to less than 25 percent when the Commission issued its *Phoenix Forbearance Order*²⁹). Moreover, 97.2 percent of the population is covered by at least three mobile voice providers, and 94.3 percent is covered by four or more.³⁰

AT&T's own experience mirrors these nationwide trends. Since 1999, the number of

²⁵ *Id.* at 26.

²⁶ See Richard N. Clarke, Journal of Information Policy, *The case for reforming regulation of PSTN voice services*, Volume 2, 287, 295 (2012) (*Clarke Paper*) available at, <http://jip.vmhost.psu.edu/ojs/index.php/jip/article/view/101/67> .

²⁷ CDC Report, *Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012-2011*, at 1 (Oct. 12, 2012).

²⁸ CDC Report, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2012*, at 1 (rel. Dec. 2012).

²⁹ *Phoenix Forbearance Order* at ¶ 55.

³⁰ FCC Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, ¶¶ 44 (2011) (*Fifteenth Wireless Competition Report*).

residential switched ILEC access lines in AT&T's ILEC states has fallen by more than 700 percent, even as the number of total housing units that ILECs must stand ready to serve has continued to increase.³¹ The latest projections based on FCC figures shows that, by the end of this year, only about 21 percent of housing units in AT&T's ILEC region will subscribe to traditional voice services provided by an ILEC.³² In certain states, the number is much lower. In Michigan, Florida, Texas, Nevada and Illinois, for example, projections based the latest FCC figures show that fewer than 20 percent of housing units will subscribe to ILEC POTS service by the end of the year.³³ Indeed, in only one state will the number of housing units subscribing to ILEC POTS service even approach one-third (in Kentucky, the number of housing units subscribing to ILEC POTS is 29 percent).³⁴

The very large, and increasing, number of consumers that have abandoned ILECs' traditional voice telephone services in favor of wireless and interconnected VoIP services shows that consumers themselves consider these alternatives to be technically and economically equivalent, and thus competitive, substitutes for ILEC switched voice services. These data, along with that cited by USTelecom in support of its petition, further show that, regardless whether one looks at market share, the extent of existing competition, the ease and speed with which competing providers could expand capacity to absorb remaining ILEC switched voice

³¹ See Exh. A to these comments.

³² See Exh. B to these comments.

³³ *Id.*

³⁴ *Id.*

traffic, or the demand elasticity of voice customers (as shown by the number of customers that already have switched),³⁵ ILECs are no longer are dominant in the provision of voice services.

IV. Conclusion.

For the foregoing reasons, the Commission should grant USTelecom's petition and declare that ILECs presumptively are nondominant in the provision of switched access services.

Respectfully submitted,

/s/ Christopher M. Heimann
Christopher M. Heimann
Gary L. Phillips
Peggy Garber

AT&T Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036
(202) 457-3058 – phone
(202) 457-3074 – facsimile

Its Attorneys

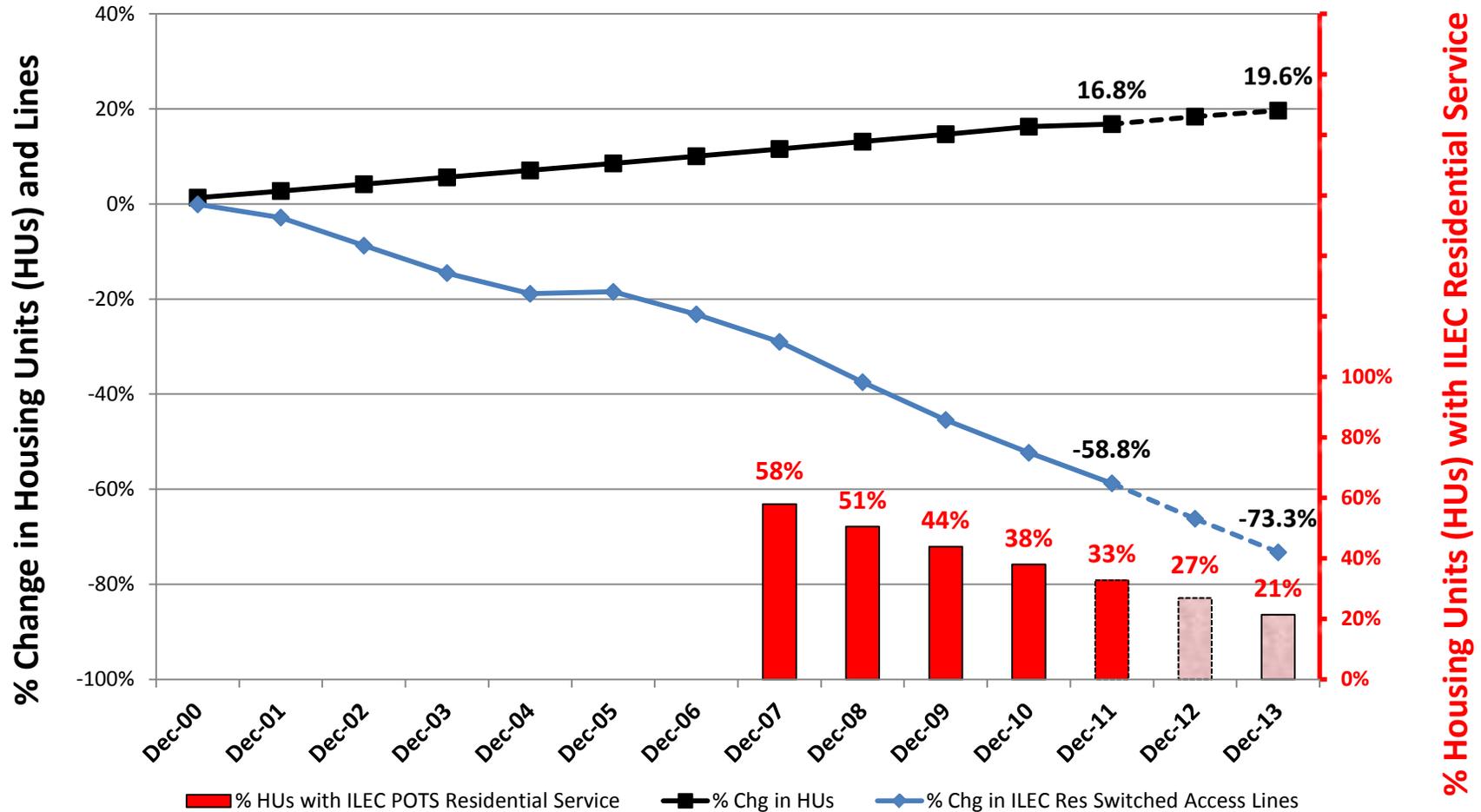
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³⁵ See also *Clarke Paper* at 303-07 (analyzing whether PSTN providers would find it profitable to raise prices or reduce service quality if they were declared nondominant and deregulated).

ATTACHMENT A

Statewide Change in Housing Units and ILEC Residential Lines

AT&T States, December 1999 - December 2013



Data Source:

- ILEC Residential Lines from FCC Local Telephone Competition Reports
- Housing Units are linear plots of values from 1990, 2000, 2010 Census plus ACS 2011 1 Yr Estimate
- Data for 2012 and 2013 are estimates using linear trending

ATTACHMENT B

Trends in ILEC Residential Switched Access Line Service & Housing Units (1999 - 2013)

State	Cumulative Change in HUs (1999 - 2013)	Cumulative Change in ILEC Res Switched Access Lines (1999 - 2013)	HUs with ILEC POTS Residential Service (2013)	State Rank as % of HUs with ILEC POTS Residential Service (Lowest to Highest)
Michigan	9.1%	-83.2%	15%	1
Florida	30.4%	-80.0%	15%	2
Texas	30.3%	-75.2%	19%	3
Nevada	58.9%	-71.1%	19%	4
Illinois	10.8%	-78.1%	19%	5
Connecticut	9.7%	-78.8%	20%	6
Kansas	12.0%	-74.0%	20%	7
Oklahoma	13.4%	-72.6%	22%	8
Tennessee	21.2%	-71.8%	22%	9
Indiana	13.9%	-73.1%	22%	10
Georgia	32.6%	-67.9%	23%	11
Ohio	9.6%	-74.4%	23%	12
Wisconsin	17.4%	-70.3%	23%	13
Louisiana	9.3%	-69.9%	23%	14
Arkansas	17.1%	-65.0%	24%	15
North Carolina	31.2%	-65.8%	24%	16
Mississippi	13.8%	-64.0%	24%	17
Alabama	15.0%	-65.9%	25%	18
Missouri	14.8%	-69.3%	25%	19
California	15.6%	-72.6%	25%	20
South Carolina	30.0%	-60.6%	26%	21
Kentucky	14.0%	-60.5%	29%	22
22-State Totals	19.6%	-73.3%	21%	

Data Source:

- ILEC residential switched access lines from FCC Local Telephone Competition Reports
- Housing Units (HUs) are linear plots from 1990, 2000 & 2010 Census data and ACS 2011 1Yr Estimates
- Data for 2012 & 2013 are estimates using linear trending