

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)
)
United States Telecom Association) WC Docket No. 13-3
)
Petition for Declaratory Ruling that Incumbent)
Local Exchange Carriers Are Non-Dominant)
In the Provision of Switched Access Services)
)

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its reply comments in the above-referenced proceeding to highlight a subset of positions raised in the initial comments that, collectively, demonstrate that there is no basis for granting the petition for declaratory ruling (the “Petition”) of the United States Telecom Association (“USTelecom”) asking the Commission to grant non-dominant status to incumbent local exchange carriers (“LECs”).¹ While the Petition is procedurally flawed, and cannot be granted for that reason alone, the comments also establish that the Petition fares no better if evaluated on the substance of its arguments.

I. The Petition Should Be Dismissed as Procedurally Defective.

As both ViaSat and the joint comments of CBeyond, EarthLink, Integra, Level 3 and tw telecom (collectively, the “Joint Commenters”) note, the USTelecom petition is procedurally defective.² While USTelecom asks for a declaratory ruling, that relief is limited under the Commission’s rules to “terminating a controversy or removing uncertainty” concerning existing

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on United State Telecom Association Petition for Declaratory Ruling that Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3, DA 13-21 (rel. Jan. 9, 2013) .

² Comments of ViaSat, Inc. at 1; Comments of CBeyond Communications, Inc., EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC and tw telecom inc. (“Joint Commenter Comments”) at 3-4.

Commission rules or policies.³ USTelecom does not identify any controversy or uncertainty concerning the regulatory status of incumbent LECs, and indeed there is none. What USTelecom really wants is a change in the rules or forbearance, and its Petition does not meet the standards for either a petition for rulemaking or a forbearance petition.⁴ Remarkably, AT&T itself seems to acknowledge that forbearance is the appropriate route for the relief USTelecom seeks.⁵ Consequently, the petition should be dismissed.

II. The Petition Should Be Denied on Substantive Grounds

As Cox described in its initial comments, the Petition should be denied because (1) it improperly attempts to connect retail market share to carrier-to-carrier services; (2) incumbent LECs still act as bottlenecks, particularly in the carrier-to-carrier context; (3) the underlying factual claims concerning incumbent LEC market share in the Petition do not withstand scrutiny; and (4) there is no evidence that eliminating dominant carrier status would result in any benefits.⁶ Many commenters agree with Cox that the relief requested in the Petition is unsupported and should be denied.

For instance, COMPTTEL and the Joint Commenters note the flaws in the USTelecom market share analysis, and rightly argue that USTelecom “does not reference or discuss market share or lines lost by any individual carrier,” even though there are more than 1,300 incumbent LECs, each with its own specific circumstances; and that the Commission never has treated all of voice telecommunications as a monolithic service market.⁷ COMPTTEL also cites the Commission’s recent Phoenix forbearance decision to demonstrate that it is improper to base wholesale deregulation on retail market share, while Sprint agrees with Cox that the loss of retail

³ 47 C.F.R. § 1.2.

⁴ Notably, Section 10 of the Communications Act sets specific standards for granting petitions for forbearance, and the petition, even if read generously, does not address most of the standards under Section 10. 47 U.S.C. § 110.

⁵ Comments of AT&T, Inc. (“AT&T Comments”) at 5-6.

⁶ See Cox Comments.

⁷ Comments of COMPTTEL (“COMPTTEL Comments”) at 2-3; Joint Commenter Comments at 5-6.

market share “is not the same thing as being non-dominant in the provision of switched access services.”⁸ Further, Granite Telecommunications, COMPTTEL and the Joint Commenters agree that incumbent LECs still retain market power and control over bottleneck facilities that competitors need to be able to use to stay in business.⁹ Perhaps most tellingly, the only user group that commented on the Petition, the Ad Hoc Telecommunications Users Committee, agrees that USTelecom did not support its factual claims.¹⁰

Even the parties that support USTelecom do not provide any reason to grant the Petition. These parties rely on the same unpersuasive arguments made by USTelecom, and in many cases much of the same information. For instance, AT&T devotes nearly half of its comments to a discussion of retail market share, and Verizon devotes eight of its 13 pages to the same points.¹¹ Notably, AT&T – like USTelecom – relies on changes in incumbent LEC POTS market share, ignoring the fact that AT&T and Verizon have substantial numbers of non-POTS customers served through their U-Verse and FiOS platforms and also are the leading wireless providers in the United States.¹² AT&T and Verizon also fail to address the Commission’s conclusion that retail market share is not indicative of a need for relief from regulation of carrier-to-carrier services, which renders their analysis irrelevant.¹³

AT&T and Verizon also fail to identify a single dominant carrier regulation that actually is burdensome or provide any evidence that the current regulatory system is preventing

⁸ COMPTTEL Comments at 6-7; Comments of Sprint Nextel Corp. (“Sprint Comments”) at 2. Sprint also notes that incumbent LECs have significant advantages not shared by competitors, including access to federal high-cost universal service funding. Sprint Comments at 3-4; *see also* Comments of Competitive Carriers Association at 2-3.

⁹ Comments of Granite Telecommunications, LLC at 7-8, 9-11; Joint Commenter Comments at 10 (bottleneck facilities); COMPTTEL Comments at 5-8 (market power).

¹⁰ Comments of Ad Hoc Telecommunications Users Committee at 3-9.

¹¹ Comments of AT&T Inc. at 6-10, Comments of Verizon and Verizon Wireless at 2-10. The Independent Telephone & Telecommunications Alliance also filed comments supporting the Petition, but similarly provided no additional factual support for any of USTelecom’s claims.

¹² *See* Cox Comments at 5.

¹³ *See id.* at 2, *citing* Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 in the Phoenix, Arizona Metropolitan Area, *Memorandum Opinion and Order*, 25 FCC Rcd 8622, 8679 (2010).

incumbent LECs from competing effectively.¹⁴ This failure is remarkable given the broad scope of relief they seek.¹⁵ In fact, it is not at all clear what regulations AT&T and Verizon would eliminate, as they are not subject to rate regulation for their interstate retail services and are subject to essentially the same regulation as competitive carriers in many other areas, including customer privacy, CALEA and slamming.¹⁶ AT&T and Verizon also fail to acknowledge the impact of the fundamental changes in the paradigm for recovery of costs associated with access services adopted in the Commission's *USF-ICC Transformation Order*, which still are in the process of being implemented.¹⁷

In fact, the only regulation AT&T identifies as unnecessary in its view is regulation of IP-to-IP interconnection.¹⁸ Not only is IP-to-IP interconnection currently the subject of several other proceedings, but Cox and others have demonstrated the importance of ensuring that incumbent LECs cannot leverage their bottleneck interconnection facilities to stifle competitors.¹⁹ Although the Commission will determine the precise form of regulation of incumbent LEC IP-to-IP interconnection in other proceedings, AT&T's treatment of the issue

¹⁴ Verizon says that providing notice and cost support with tariffs is burdensome and "reduces the flexibility to offer new services," but does not, for instance, explain why that issue could not be addressed in some other way or provide any information on the practical impact of these requirements on its operations. Verizon Comments at 11. In fact, tariffs for new services offered by price cap carriers already are subject to the same one day notice period as non-dominant carrier tariffs. Compare 47 C.F.R. § 61.58(b) (one day notice for new services offered by price cap carriers) with 47 C.F.R. § 61.23(c) (one day notice for new services offered by non-dominant carriers).

¹⁵ See Cox Comments at 5-6.

¹⁶ In some cases, such as 911, certain entities that AT&T and Verizon identify as competitors are subject to more stringent federal regulation than incumbent LECs. See 47 C.F.R. §§ 9.5 (imposing specific E911 requirements on interconnected voice over IP providers, including customer notices that are not required for incumbent LECs); 20.18 (imposing 911 requirements on commercial mobile radio service providers).

¹⁷ AT&T notes the existence of the new rules, but does not acknowledge that the glide path set in the *ICC-USF Transformation Order* obviates the need for any action as to the most significant elements of dominant carrier regulation. AT&T Comments at 4 n.7. See Cox Comments at 6 (discussing need to permit *ICC-USF Transformation Order* process to be completed).

¹⁸ AT&T Comments at 3-4 (arguing that applying regulation to incumbent LEC IP-to-IP interconnection would be inappropriate in light of market share changes and stating that the Commission's mere consideration of such rules for incumbent LECs reflects "the indirect effects of dominant carrier regulation").

¹⁹ See, e.g., Comments of Cox, GN Docket No. 12-353 (filed Jan. 28, 2013) at 9-11; Comments of Sprint Nextel Corp., GN Docket No. 12-353 (filed Jan. 28, 2013) at 12-13 (incumbent LECs retain market power because they control access to most customers); Comments of XO Communications, Inc., GN Docket No. 12-353 (filed Jan. 28, 2013) at 5-6 (even after the transition to IP, incumbent LECs will remain as the essential interconnecting parties).

here shows that it would use a declaration of non-dominance in this proceeding as a means to attack competitors' interconnection rights.

In light of these facts there would be no reason to grant the Petition even if it were not procedurally defective. The Commission certainly should not spend its scarce resources pursuing the USTelecom request any further.

III. Conclusion.

For all of these reasons, the Commission should deny the Petition.

Respectfully submitted,

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