

May 6, 2013

Ex Parte Letter

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61 (Category 2)

Dear Ms. Dortch:

On May 2, 2013, Louis T. Fiore, Chairman, Alarm Industry Communications Committee; Ben H. Dickens, and Sal Taillefer, Jr., Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP; and Jim Falvey, Eckert, Seamans, Cherin & Mellott, LLC, on behalf of Full Service Network LP (collectively, the “Parties”) met with Bill Dever, Jodie May, and Jennifer Prime, Wireline Competition Bureau. In the meeting the Parties expressed their concerns regarding the Forbearance Petition filed by USTelecom in the above-reference proceeding (“Petition”).

During the meeting, AICC discussed the alarm industry’s dependence upon Bell Operating Company (BOC) services offered pursuant to Open Network Architecture (ONA) requirements, such as Line Security, and the lack of IP-based alternatives. Specifically, AICC noted the BOCs’ refusal to offer services consistent with NFPA 72, such as Managed Facilities-Based Voice Network standards. AICC further addressed the threshold failure of USTA, CenturyLink, and others to demonstrate how USTA’s petition for ONA forbearance meets the statutory forbearance standard; their failure to provide any product and geographic market analyses in accordance with the FCC’s *Phoenix Order*¹; and their failure to rebut relevant facts in AICC’s April 3, 2013 ex parte statement. Finally, AICC discussed the difficulties associated with positioning the alarm industry to transition from ONA-protected network elements in the event that, should forbearance from ONA requirements be granted, the BOCs elect to withdraw or otherwise inflate the costs associated with using those elements for unaffiliated entities. Such loss of services is a particular concern of the alarm industry, AICC noted, given current BOC entry into the alarm industry. A handout prepared by AICC and distributed in the meeting is attached.

As a reseller with approximately 10,000 resale lines in the Pittsburgh metro area, Full Service Network LP (“Full Service Network” or “FSN”) shares AICC’s concern that forbearance

¹ *In re Petition of Qwest Corp. for Forbearance*, 25 FCC Rcd. 8622, 8623 (2010).

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would have a significant adverse impact on competition. The experience with the elimination of unbundled switching demonstrated that the first recourse of the BOCs in response to deregulation is to raise the rate of critical network inputs that competitors rely upon to compete. This not only has adverse consequences for competitors but also for consumers. As discussed in FSN's previous ex parte,² ONA rate increases could also lead to the elimination of resale competition altogether. Resale pursuant to Section 251(c)(4) is one of the principal means of competitive entry established by the Telecom Act and the Commission should not support BOC efforts to curtail or eliminate this critical means of competitive entry.³

USTA has not provided any data in order to meet the statutory standard for forbearance, while AICC and FSN have presented into the record concrete facts. Based on those facts, there is every reason to believe that the CEI/ONA regime is necessary to prevent discrimination, in that without tariffed pricing for ONA elements, BOCs will be able to offer different rates to different CLECs. USTA has therefore not met its burden pursuant to 47 U.S.C. §160(a)(1). There is also every reason to believe that eliminating the CEI/ONA regime would have an adverse impact on consumers, as discussed above, and USTA has therefore not met its burden under 47 U.S.C. §160(a)(2). As detailed by FSN in previous ex partes,⁴ there has been no demonstration that there will not be an adverse impact on competition, as required by 47 U.S.C. §160(a)(3) and §160(b). In fact, the evidence presented herein by AICC and Full Service Network demonstrates that there will in fact be an adverse impact on competition.

Accordingly, given that USTA and the other parties to this proceeding have not presented the granular evidence necessary to meet the forbearance standard, the Commission should deny forbearance of the CEI/ONA rules requested by USTA in order to continue to foster pro-consumer competition.

² See Ex Parte Letter from James C. Falvey, Counsel to Full Service Network, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3 (Mar. 29, 2013).

³ Likewise, the Commission should not entertain CenturyLink's recommendation that the resale industry be placed on the defensive, constantly in need of resorting to the Section 214 process to preserve access to ONA elements that have been proven to support local competition. Ex Parte Letter from Timothy M. Boucher, CenturyLink Associate General Counsel, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, 4, 5 (Apr. 12, 2013).

⁴ See Ex Parte Letter from James C. Falvey, Counsel to Full Service Network, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2-4 (May 1, 2013).

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This ex parte letter is filed to summarize the parties' meeting with Commission staff on Thursday, May 2, consistent with 47 C.F.R. 1.1203(c). As required by Section 1.1206(b), this ex parte notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ Benjamin H. Dickens

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Open Network Architecture in the 21st Century

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Who Is AICC?

- Committee of the Central Station Alarm Association (CSAA)
- Members from 3 principal trade associations representing 3 industry sectors:
 - Alarm monitoring industry (CSAA);
 - Alarm dealers and installers (Electronic Security Association);
 - Manufacturers (Security Industry Association);
 - Individual members (e.g., ADT, Tyco, Inc., Honeywell, Inc., and Security Network of America, Inc. and most prominent alarm equipment manufacturers).

Alarm Metrics (Approximate)

- 3,000 U.S. Central Stations, including proprietary stations;
- 650 central stations listed by Underwriters' Laboratories;
- 13,000 installing companies (some overlap with central stations);
- 250,000 employees;
- 25 manufacturers making equipment within the U.S.

The BOC Network

- BOC networks are still utilized extensively by the alarm industry.
- BOC entry into alarm industry happening now.
- AICC's concern about anti-competitive behavior remains relevant today.

Continued Importance of ONA

- Department of Justice expert found that 80-90% of alarm related costs remain "highly susceptible to misallocation."
- Ameritech attempted to withdraw line security-based services from ONA.
- SBC violated Section 275
- Despite FCC finding that state tariffing is essential, almost half of States have deregulated or are considering deregulation.
 - Florida has eliminated all retail regulation.

Opponents Fail to Carry Burden

- No examination of particular geographic markets (see In re Petition of Qwest Corp. for Forbearance, 25 FCC Rcd 8622, 8623 (F.C.C. 2010)(“Phoenix Order”).
- No examination of enhanced service provider markets (i.e., alarm vs. voicemail).
- No data as to alleged cost impositions (see CenturyLink Ex Parte of April 12, 2013).
- No attempt to deal with conflicting facts presented by AICC (compare AICC Ex Parte of April 3, 2013 re: service migration and CenturyLink Ex Parte of April 12, 2013 at p. 7 (“ESPs already have, independent of those rules, access to all the telecommunications services needed to offer their services”).
- No rebuttal of demonstration that line security is being withdrawn.

Conclusion

- The Commission should deny the Petition, with regard to forbearance from ONA.