



October 12, 2018

The Honorable Ajit Pai, Chairman
The Honorable Michael O’Rielly, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Brendon Carr, Commissioner

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Ex Parte: *In The Matter Of Petition Of USTelecom For Forbearance Pursuant To 47 U.S.C. § 160 To Accelerate Investment In Broadband And Next Generation Networks, WC Docket 18-141*

Dear Chairman Pai and Commissioners: The National Association of State Utility Consumer Advocates (“NASUCA”)¹ submits the following for the consideration of the Federal Communications Commission (“FCC”) in this proceeding.

In this proceeding, on May 4, 2018, USTelecom – The Broadband Association (“USTelecom”) filed a petition for forbearance from multiple sections of the Telecommunications Act of 1996 (the Act) pursuant to 47 U.S.C. § 160(c).² Among other

¹ NASUCA is a voluntary association of 54 consumer advocate offices in 43 States and D.C., incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates for utility ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

² Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

sections, USTelecom sought forbearance of section 251(c)(3) and (4) (unbundling and resale) and related requirements under other sections of the Act. On May 8, the FCC issued a public notice in this docket seeking comment on the USTelecom petition.³

Comments have been from carriers, both incumbent and newer entrants.⁴ More importantly, however, comments have come from states and state commissions,⁵ those with “boots on the ground” in the continuing dynamic between carriers and their customers. The public interest groups make arguments that support the state commissions.⁶ In NASUCA’s view, the issues associated with the petition have been thoroughly and fairly addressed by state commissions in their initial and reply comments.⁷ (NASUCA was unable to file comments of its own.)

The CalPUC stresses the need for a market specific evaluation of competition – needed in order to determine whether forbearance from these rules is allowed⁸ – and demonstrates the lack of effective competition in many areas of California.⁹ CalPUC also shows how doing away with unbundling, which USTelecom requests, will affirmatively harm competition, and thereby harm consumers.¹⁰ The PaPUC supports these points.¹¹

In the 1996 Telecom Act, Congress opened telecom services to competition. Congress recognized that competition could come from competitors building all their own facilities. Recognizing the cost of such commitments, Congress also provided for unbundling of network elements¹² and for resale.¹³ It should be clear that, in the current state of markets in the Nation, doing away with unbundling and resale will harm competition –and consumers.¹⁴

³ See PUCO Comments at 1.

⁴ E.g., Verizon, <https://ecfsapi.fcc.gov/file/10806185620003/2018%2008%2006%20-%20Verizon%20Comments%20-%20REDACTED.pdf>; California Association of Competitive Telephone Companies (“CALTEL”), <https://ecfsapi.fcc.gov/file/108061479018212/Final%20CALTEL%20FCC%20Comments%20USTelecom%20Forbearance%20Petition%20PUBLIC%20REDACTED%208-6-18.pdf>.

⁵ E.g., CalPUC, PaPUC.

⁶ See, e.g., Public Knowledge, et al., Comments (passim); New America’s Open Technology Institute, et. al., Comments at 1-15; Electronic Frontier Foundation Comments at [2]; New Networks Institute/IRREGULATORS Comments at 4.

⁷ See, e.g., Comments of the California Public Utilities Commission (“CalPUC”) (passim).

⁸ 47 U.S.C. § 160(a), (b).

⁹ CalPUC Comments at 7-10; 10-18.

¹⁰ Id. at 19-27.

¹¹ See, e., PaPUC Comments at 2 (granularity); see also id. at 3-6 (importance of impairment standard).

¹² 47 U.S.C. § 251(c)(3).

¹³ 47 U.S.C. § 251(b)(1).

¹⁴ See PaPUC Comments at 10-13.

As shown by the comments and reply comments, neither USTelecom nor its supporters – individually or collectively – meet their burden under 47 U.S.C. § 160(c) to show that forbearance is allowed. The competitive showing to meet the forbearance standard is not made.¹⁵ The comments of consumer-supportive parties show that forbearance would actively harm consumers throughout the Nation.¹⁶ USTelecom and its supporters have failed to meet the public interest showing required by both 47 U.S.C. § 160(a)(3) and (b), especially with regard to the effect of forbearance on competition.¹⁷ The USTelecom Petition should be denied.

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¹⁵47 U.S.C. § 160(a)(1). See CalPUC Comments at 10-18.

¹⁶ 47 U.S.C. § 160(a)(2); see PaPUC Comments at 10-13.

¹⁷ See CalPUC Comments at 7-10.