



November 8, 2018

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, D.C. 20554

RE: 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), *Ex parte presentation*

Dear Ms. Dortch:

On October 10, 2018, the National Association of State Utility Consumer Advocates (“NASUCA”)¹ filed an ex parte letter in this docket, presenting NASUCA’s reasons why the petition for forbearance filed by USTelecom – The Broadband Association (“USTelecom”) should not be granted. The failure of USTelecom and its allies to meet the burdens under 47 U.S.C. § 160(c) for forbearance,² and specifically the harm to the public interest that would come from forbearance from the section 251(c)(3) and (4) unbundling and resale and related requirements, were reiterated. NASUCA supported and relied on filings by state utility commissions opposing the USTelecom petition.

Then on October 12, 2018, AT&T met with Wireline Competition Bureau staff, to inform the Commission of “AT&T’s plans to begin discussions with wholesale customers on a proposed commercial product to replace DS0 unbundled loops, *in the event the Commission grants USTelecom’s petition for forbearance* from certain regulatory obligations imposed on ILECs.”³ AT&T expects to begin discussions with its wholesale customers about its proposed commercial

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 See 14-192, NASUCA Comments (December 5, 2014) at 5-9.

³ AT&T ex parte (October 15, 2018) (emphasis added).

product – “in the event that” the Commission grants USTelecom’s petition – as early as November.⁴

Pursuant to statute⁵ and prior FCC decisions, AT&T and Verizon are required to provide competitors with copper loops. No such requirement applies to whatever “commercial product” AT&T intends to offer. Under Sec. 252, states have a crucial role in ensuring fair UNE prices and provisioning, including ruling on arbitration agreements, and UNE (and wholesale) pricing.

AT&T’s plans highlight the need to deny the petition. Eliminating UNEs would leave one of the most market-power-heavy network owners (e.g., AT&T), consistent with the very definition of “market power,” to use its commercial weight against competitors. Small competitors would be at even more of a disadvantage in negotiations. Under the current requirements, processes are in place to ensure non-discriminatory treatment.⁶ AT&T’s plans are unenforceable; commercial arrangements would allow market-dominant AT&T to change its terms – and especially its prices – at will. They would also allow the dominant carrier to even further neglect its network because the obligation to provide UNES carries with it specific service quality requirements.

In the absence of UNEs and their supporting rules, the Commission will have no basis to control AT&T’s wholesale prices, or those of any other network owner to which the forbearance applies. Competition, and consequently CLEC customers, will suffer.⁷

Equally, this freedom will allow AT&T and others to dictate the functionalities of the networks, regardless of whether they negatively impact wholesale and retail customers. In the not-too-distant past, for example, Verizon responded to Superstorm Sandy by attempting to force customers on Fire Island to move to the inferior service VoiceLink; only after consumer and legislative outcry and regulatory involvement was a fiber network deployed there.⁸ Verizon has

⁴ Id.

⁵ 47 U.S.C. § 253(c).

⁶ E.g., § 253(f).

⁷ See NASUCA Resolution 2014-05, Calling for Policies that Bring Reasonable Rates, Reliable and High Quality Service, Competition and Consumer Protection to All Customers of Telephone and Broadband Services, (Nov. 18, 2014); NASUCA Resolution No. 2012-02, Urging the FCC to Retain “Legacy” Regulations and Affirm State Authority to Enact and Enforce COLR and ETC Obligations (June 24, 2012); NASUCA Resolution No. 2012-01, Retention of Traditional Regulatory Oversight of all Voice Telephone Services (June 24, 2012).

⁸ See, e.g., <https://money.cnn.com/2013/07/22/technology/verizon-wireless-sandy/index.html>. Other Verizon Sandy areas ended up with VoiceLink. (In the end, Verizon did provide fire stations and possibly other first responders with copper landlines due to the concerns about battery back-up and reliability. See NASUCA/Md OPC Reply Comments (May 1, 2014), Docket Nos. 13-5, et al., at 1-8. See also 2015 Power Restoration Report by the Staff of the NJ Board of Public Utilities, which discusses communication failure issues, such as loss of fiber voice and wireless service, for Atlantic City Electric (“ACE”) following a 2015 storm which delayed power restoration to customers. ACE was unable to contact its repair crews, in addition to being unable to communicate with customers. ACE had to resort to a 2-way mobile radio system as backup once fiber and wireless went out. This shows the precariousness for the public of not maintaining the copper infrastructure, at the very least for first responders, utilities, hospitals and government buildings.

adopted this strategy in other states.⁹ Under AT&T's proposal, network owners would also have the power to decide where and when in their territories they would make these commercial offerings available.¹⁰

These issues are especially important for public safety. First responders (and the people they serve) rely on tried and true serviceable networks, and lines should not be replaced absent the ability of public safety agencies to verify that a proposed replacement service is reliable. Chairman Pai has expressed concern about the network owners' responses to Hurricane Michael just this month.¹¹ Communications network reliability is crucial, including during instances when electric utilities de-energize power lines during periods of high fire danger.¹²

Customers served by competitors have a stake in ensuring that the provisions of § 252 remain in place. As noted above, a generic nationwide forbearance ignores the market-by-market variations among cities, towns, and rural areas, for AT&T and other incumbents. This granular review would best be undertaken by the states, and should not take place behind closed doors.

The Commission should deny the USTelecom petition, and preclude AT&T from carrying out its commercial product plans. Neither consumers nor the public interest would benefit from those plans.

Respectfully submitted,
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⁹ See May 12, 2014 Letter To Julie A Veach, Chief, Wireline Competition Bureau, from Public Knowledge, The Utility Reform Network, NASUCA, the Office of the People's Counsel District of Columbia, Maryland Office of People's Counsel, State of New Jersey, Division of Rate Counsel, Appalshop, Inc., The Benton Foundation, The Center for Media Justice, The Center for Rural Strategies, Kentucky Resources Council, Inc., The National Consumer Law Center, on Behalf of its Low-Income Clients, and the Rural Broadband Policy Group, in GN Docket No. 12-353, et. al., and Exhibits A- P documenting the practices of Verizon to deliberately allow its copper network to deteriorate.

¹⁰ See 14-192, NASUCA Comments (December 5, 2014) at 11-14.

¹¹ See <https://docs.fcc.gov/public/attachments/DOC-354609A1.pdf>.

¹² See <https://www.sacbee.com/latest-news/article220029605.html>;
<https://www.sacbee.com/news/state/californiafires/article220089830.html>.