

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

In the Matter of

WC Docket No. 18-141

Petition of USTelecom for Forbearance Pursuant
to 47 U.S.C. § 160(c) to Accelerate Investment in
Broadband and Next-Generation Networks

**REPLY COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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I. Introduction

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these reply comments in response to the Petition of USTelecom – The Broadband Association (“USTelecom”) for Forbearance Pursuant to 47 U.S.C. § 160(c) (“Petition”) filed on May 4, 2018, in the above-captioned proceeding.² The MDTC does not believe that the Petition contains sufficient evidence on which the FCC may grant forbearance. The MDTC agrees with the many commenters, including, the California PUC, the Michigan PSC, the Ohio PUC, the Pennsylvania PUC, the Small Business Association, Granite Telecommunications, INCOMPAS, the ICG CLEC Coalition, and TPx, who state that the Petition does not contain sufficient evidence on which the Federal Communications Commission

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1. The MDTC’s silence on any particular issue raised in the Petition should not be construed as support or opposition to that issue.

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband & Next-Generation Networks*, WC Docket 18-141 (May 4, 2018) (“*Petition*”).

(“Commission”) may grant forbearance. Accordingly, the Commission should deny the Petition.³

II. USTelecom’s Petition and its Lack of Empirical Analysis of Economic and Other Data

USTelecom’s petition for nationwide forbearance from portions of Sections 251, 252, 271, and 272 of the Communications Act seeks to reverse major tenets of the 1996 Telecommunications Act.⁴ Section 251 of the Communications Act (“Act”) requires telecommunications carriers or Incumbent Local Exchange Carriers (“ILECs”) to open their facilities to competitors without unreasonable or discriminatory conditions, allow access to the poles, ducts, conduits and rights-of-way, and abide by other requirements designed to ensure that competitors have fair access to the ILECs’ networks and equipment.⁵ Section 252 of the Act requires regional bell operating companies (“RBOCs”) and ILECs to offer interconnection, services, and unbundled network elements (“UNEs”) to competitors upon the same terms and conditions.⁶ Section 271 of the Act guides interconnection agreements and the behavior of RBOCs with respect to interconnection agreements and long distance calling service.⁷ Section 272 of the Act requires RBOCs to use a separate affiliate for certain long distance services.⁸

³ The MDTC supports the Motions for Summary Denial filed in this proceeding to the extent they are consistent with these reply comments. *See, e.g.*, INCOMPAS, et al. Motion for Summary Denial (Aug. 6, 2018).

⁴ *See generally* Petition.

⁵ *See* 47 U.S.C. § 251.

⁶ *Id.* § 252.

⁷ *Id.* § 271.

⁸ *Id.* § 272.

USTelecom seeks nationwide forbearance without empirical or theoretical evidence for its claims regarding network investments or consumer benefit.⁹ The mandated wholesale market is key to the business service market, even accepting the Commission’s forbearance from most price cap regulation. USTelecom does not provide evidence that forbearance from the provisions establishing this wholesale market will strengthen broadband networks or encourage innovation.¹⁰ USTelecom cites to various explanations of the costs of unbundling but does not offer empirical evidence of those costs or explain how those costs will be transferred toward broadband investment. USTelecom also relies upon its description of the changes in the voice market that have occurred since passage of the Telecommunications Act of 1996, without offering any empirical evidence. USTelecom argues that forbearance is required because the continued presence of these portions of Sections 251, 252, 271, and 272 of the Act are distorting “incentives to invest in broadband infrastructure.”¹¹ However, USTelecom fails to provide evidence that investment in broadband infrastructure is being harmed or how, exactly, forbearance “*could* result in more jobs and more economic growth.”¹²

III. The MDTC Agrees that the Commission Should Deny the Petition

The Petition does not provide sufficient evidence to accomplish its goal of undoing through forbearance major tenets of the Telecommunications Act of 1996 (“Act”). As a result, the Commission should deny the Petition. To grant forbearance from any provision of the Act, the Commission must determine that: (1) the provision is not necessary to ensure that the

⁹ *Petition* at 23, 26-28, 31-32.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 19.

¹² *Id.* (emphasis added).

charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) the provision is not necessary for the protection of consumers; and (3) forbearance from applying the provision is consistent with the public interest.¹³ In analyzing whether forbearance is consistent with the public interest, the Commission must consider whether such forbearance “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹⁴

The MDTC agrees with Commenters that the Petition does not provide sufficient evidence to permit the Commission to make these determinations. USTelecom generally describes broad changes in the national voice market that have occurred since passage of the Act and, based on this, requests forbearance from major portions of the Act for all ILECs and in every market.¹⁵ As the MDTC has stated previously, however, the telecommunications marketplace cannot be painted with such broad strokes.¹⁶ Other commenters generally agree with this. The Pennsylvania PUC, for example, stated that the Commission “must carefully scrutinize the merits of the relevant facts and arguments with the appropriate geographic, and hence company-specific, focus. USTelecom provided no geographic, company-specific and

¹³ 47 U.S.C. § 160(a).

¹⁴ *Id.* § 160(b).

¹⁵ *Petition* at 4-19.

¹⁶ *See In re U.S. Telecom Assoc. Petition for Declaratory Ruling that Incumbent Local Exch. Carriers are Non-Dominant in the Provision of Switched Access Servs.*, WC Docket No. 13-3, MDTC Comments (Feb. 25, 2013).

disaggregated analysis to support the relief requested in its Petition on a national basis.”¹⁷

Granite Telecommunications also argues that the Petition is facially insufficient because it does not undertake a proper analysis of the level of market competition in different parts of the U.S.¹⁸

Moreover, even the national data the Petition contains lacks sufficient detail and empirical analysis to enable the Commission to determine that the provisions are not necessary to protect consumers or to ensure that the charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory.¹⁹ This is particularly so with respect to business customers.²⁰

Further, the MDTC agrees that USTelecom has not established that the requested forbearance will be consistent with the public interest, particularly in light of the required consideration of whether such forbearance “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”²¹ USTelecom states that forbearance will be in the public interest because it will promote competition by encouraging carriers to invest in their broadband networks, which will “strengthen our broadband networks and encourage innovation.”²² This claim falls short for a number of reasons. First, USTelecom does not provide evidence in the

¹⁷ Pa. PUC Comments at 8-9. *See also* Cal. PUC Comments at 7-10; Granite Telecommunications Comments at 13 (noting the Petition’s avoidance of using appropriate geographic markets); INCOMPAS, et al. Motion for Summary Denial at 7-8; Mich. PSC Comments at 2.

¹⁸ *See* Granite Telecommunications Comments at 3.

¹⁹ *See id.* at 31; Manhattan Telecommunications Comments at 2. Granite Telecommunications is headquartered in Massachusetts and provides services throughout the U.S. and Canada. GRANITE TELECOMMUNICATIONS, <http://granitenet.com/> (last visited Aug. 15, 2018).

²⁰ *See* Granite Telecommunications Comments at 32-34.

²¹ 47 U.S.C. § 160(b).

²² Petition at 4, 32-33.

Petition making this connection. While USTelecom claims that forbearance will free capital for increased broadband deployment, this assertion is without empirical or theoretical evidence.²³ Second, any freed capital would come entirely at the expense of competing providers. This burden would come in the form of higher prices from either businesses that subscribe to competitive carriers or customers of those businesses.²⁴ Alternatively, the freed capital could come from the bottom line of the competitive carriers themselves, making their competing network investments significantly less likely. Either way, the claim that this freed capital will result in both increased competition *and* the protection of consumers defies logic. Further, where the Petition attempts to quantify consumer benefits related to next generation services, the Petition makes no effort to relate those benefits to forbearance.²⁵ Indeed, in the Petition's three-sentence attempt to explain how the provisions are not necessary to protect consumers, the Petition neglects to mention the negative financial impact forbearance would have on consumers.²⁶

Finally, the MDTC is concerned that the requested forbearance would actually decrease competition in Massachusetts.²⁷ Unbundled elements bring variety and choice to all Massachusetts businesses, even where competing communications networks are not present. Additionally, unbundled elements provide a market-based defense against the imposition of

²³ See *id.* at 23, 26-28, 31-32.

²⁴ See Granite Telecommunications Comments at 6, 28, 34. USTelecom cites to various explanations of other costs of unbundling but does not offer empirical evidence of those costs or explain how those costs will be transferred toward broadband investment. *Petition* at 7.

²⁵ See *Petition* app. B at 16-17, 31-32.

²⁶ *Petition* at 31.

²⁷ See 47 U.S.C. § 160(b) (requiring the Commission to consider whether the requested forbearance will promote and enhance competition).

unreasonable prices by any provider, as a provider would risk near immediate UNE-based competition should it overcharge any customer. Commenting competitors show how the requested forbearance would hinder their competitive offerings to the detriment of the overall communications market. Granite Telecommunications specifically describes its reliance on the protections that USTelecom seeks to reverse by stating that absent these protections, ILEC wholesale prices will increase.²⁸ Granite further describes that an increase in ILEC wholesale prices will harm business customers.²⁹ Because Granite serves many large business customers in Massachusetts, the MDTC opposes USTelecom’s request as something that could harm those businesses. Further, a number of commenters state that the requested forbearance would decrease competition in the telecommunications services market.³⁰ At the very least, the MDTC agrees with commenters such as the Michigan PSC that USTelecom has not demonstrated that its request “will enhance competition among providers of telecommunications services,” or “promote competitive market conditions.”³¹

IV. Conclusion

In creating its Office of Economics and Analytics, the Commission’s goal was to “help ensure that economic analysis is deeply and consistently incorporated as part of the agency’s regular operations.”³² The MDTC’s support for decision-making based on empirical analysis of economic and other data is one of the main reasons the MDTC opposes this Petition. Petitioners make little attempt to provide empirical evidence, and fail to link what little data is presented to

²⁸ See Granite Telecommunications Comments at 5-6.

²⁹ See *id.* at 6.

³⁰ See *id.* at 31; TPx Comments at 25.

³¹ 47 U.S.C. § 160(b); Mich. PSC Comments at 6-7.

³² Press Release, FCC, FCC Votes to Establish Office of Economics & Analytics (Jan. 30, 2018).

the forbearance sought. Based on the dearth of evidence and analysis in the Petition, and the potential detrimental effects on competition, businesses, and consumers in Massachusetts, the MDTC respectfully requests that the Commission deny the Petition.

Respectfully submitted,

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