COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTelecom") respectfully submits these comments in response to the Commission’s request for input on additional steps the Commission should take to facilitate broadband deployment by removing “barriers to infrastructure investment” and promoting “competition.”

USTelecom is the nation’s oldest and largest association for providers of wired communications, and the overwhelming majority of its members offer broadband in rural and urban areas across the United States. USTelecom and its members strongly support policies that promote continued broadband deployment so that broadband services are accessible to all Americans.

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In deploying broadband in rural and urban areas across the country, USTelecom’s members have experienced firsthand barriers to infrastructure investment. These barriers include: (1) outdated legacy regulations that apply only to a subset of wireline telecommunications providers that divert substantial resources away from next generation networks; (2) restrictive local rules and regulations that hamper the roll-out of broadband services; (3) the inability to deploy fiber facilities to multi-dwelling units (“MDUs”) due to uncooperative building owners; and (4) the lack of financial support necessary to subsidize broadband deployment in high-cost areas that are otherwise uneconomic to serve. The Commission can and should take at least four steps to eliminate these barriers, which would help ensure that “advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. § 1302(b).

First, the Commission should grant the petition that USTelecom filed in October 2014 that seeks forbearance from various outdated regulatory requirements applicable only to incumbent local exchange carriers (“ILECs”). \(^2\) As USTelecom explained in its Forbearance Petition, unlike most broadband providers – including cable, wireless, and competitive fiber providers – ILECs are not free to focus their expenditures on next-generation networks designed to deliver the higher-speed broadband services customers increasingly crave; instead they “must direct a substantial portion of their expenditures to maintaining legacy networks and fulfilling regulatory mandates whose costs far exceed any benefits.”\(^3\)

Because investment resources are finite, USTelecom’s Forbearance Petition gives the Commission the opportunity to eliminate a barrier to broadband investment by forbearing from


\(^3\) See id. at 3.
outdated and costly regulations, specifically: (1) provisions in sections 271 and 272, and the related equal access rules; (2) Rule 64.1903 structural separation requirements; (3) the requirement that an ILEC provide an unbundled 64 kbps voice channel where it has replaced a copper loop with fiber; (4) Section 214(e)(1) eligible telecommunications carrier requirements where a price cap carrier does not receive high-cost universal service support; (5) the remaining Computer Inquiry rules; (6) the Section 224 and 251(b)(4) requirement that ILECs share newly deployed entrance conduit; and (7) rules prohibiting the use of contract tariffs to offer special access and high capacity data services in the absence of pricing flexibility. Forbearance from these antiquated legacy regulations would allow ILECs to redirect investment from legacy telephone networks to next-generation broadband networks, which would help the Commission achieve its broadband deployment objectives.

Second, the Commission should take steps to reform the wide range of state and local rules and regulations that impede a provider’s ability to roll out broadband services. As Commissioner Pai pointed out when discussing Google Fiber’s deployment in Kansas City, “too

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4 See USTelecom Forbearance Petition at 6-7.

5 FCC, Connecting America: The National Broadband Plan at 59 (Mar. 2010) (“Regulations require certain carriers to maintain POTS - a requirement that is not sustainable - and lead to investments in assets that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services.”) (“National Broadband Plan”); Tom Wheeler, Chairman, FCC, Prepared Remarks at Silicon Flatirons, University of Colorado Law School, Boulder, Colorado at 5 (Feb. 10, 2014) (“Due in part to outdated rules, the majority of the capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all”), available at http://transition.fcc.gov/DailyReleases/DailyBusiness/2014/db0210/DOC-325531A1.pdf; Ajit Pai, Commissioner, FCC, Remarks at IX International Regulatory workshop, Cartagena de Indias, Colombia, at 6 (Sept. 1, 2014) (“Right now, FCC regulations often require telephone companies to maintain two networks: a legacy network based on copper lines and a new, IP-based network. This is inefficient, and it deters high-speed broadband deployment. For every dollar spent to maintain the infrastructure of the past is a dollar that can’t be used to build and expand the networks of the future.”), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329112A1.pdf.
many providers who try to obtain [rights of way] are confronted with daunting sets of federal, state, and/or municipal regulations that often delay and sometimes deter infrastructure investment and broadband deployment.”

According to the National Broadband Plan, “the expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment.”

The negative effects of these local barriers are well documented. For example, providers have encountered substantial hurdles in their efforts to expand the availability of broadband in their service territories. AT&T, for one, experienced considerable regulatory interference with the roll-out of its U-Verse service at the hands of localities in California and Connecticut—among others. In the wireless context, the Commission has recognized that local processes can slow network “deployment substantially, even in cases that do not present significant concerns.”

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7 National Broadband Plan at 109.

8 See Comments of AT&T, WT Docket No. 11-59, at 5-7 (filed July 18, 2011) (noting that “[t]he practices of many local jurisdictions continue to hinder and delay carrier access to rights of way, and other sites needed to expand broadband capacity and coverage”); see also Comments of Verizon & Verizon Wireless, WC Docket No. 11-59, at 16-25 (filed July 18, 2011) (detailing localities’ “abuse [of] their authority over public rights-of-way” and other onerous regulations that “result in unreasonably high compliance costs”).

9 Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd 12865, ¶ 10 (2014); see also Petition for Declaratory Ruling to Clarify Provisions of Section 332(C)(7)(B) to Ensure Timely Citing Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling, 24 FCC Rcd 13994, ¶ 32 (2009) (finding that wireless service providers “often faced lengthy and unreasonable delays [from state agencies] in the consideration of their facility siting applications, and that the persistence of such delays [was] impeding the deployment of advanced and emergency services”); H.R. Rep. No. 104-204, at 94 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 61 (finding that “State and local requirements, siting and zoning decisions” had “created an inconsistent and, at times, conflicting patchwork of requirements” that was “inhibiting the deployment” of wireless communications services).
The Commission’s time would be well spent streamlining state and local processes that broadband providers must navigate in order to facilitate the deployment of broadband infrastructure.

Third, the Commission should ensure that broadband providers are able to deploy fiber facilities in MDUs. The Commission has recognized in other contexts that MDU access is essential to promoting competition and investment. For example, the Commission’s rules prohibit exclusive arrangements for delivering cable television service to MDU properties, given that “[e]xclusivity clauses that run in favor of cable operators typically are a complete bar to entry into MDUs by fiber-deploying LECs such as Verizon, AT&T, and Qwest, as well as [private cable operators].”\textsuperscript{10} In 2007, the Commission sought comment on whether to extend this prohibition to other MVPDs, and, more recently, questioned whether “a landlord could restrict a tenant’s ability to access certain content over the Internet to prevent a tenant from accessing an Internet-based linear video service.”\textsuperscript{11}

“[A] large and growing number of Americans live in MDUs,” which the Commission defines as “apartment, cooperative, and condominium buildings.”\textsuperscript{12} According to the Commission, “The percentage of minorities living in MDUs is larger than that of the general


\textsuperscript{11} MDU Order and FNPRM, ¶¶ 61-62; Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, ¶ 63 (2014).

\textsuperscript{12} MDU Order and FNPRM, ¶ 3.
population.” 13 If residents of an MDU are going to enjoy the benefits of high-speed broadband, broadband providers must have access to their building in order to make fiber upgrades.

Unfortunately, uncooperative building owners routinely deny broadband providers access to MDUs. In some cases, the building owner will demand exorbitant fees from a broadband provider as the price for accessing the premises, while in other cases the building owner will place onerous conditions on building access. Exorbitant fees and onerous conditions effectively prevent providers from installing fiber optic facilities. If broadband providers are unable to access an MDU to install fiber, residents of that MDU will not enjoy the benefits of next generation networks or competitive choices. Thus, in order to achieve its broadband deployment objectives, the Commission should act to ensure that broadband providers have MDU access necessary to make appropriate network upgrades.

Finally, the Commission should continue to promote efficient and carefully targeted broadband deployment in rural areas through the Connect America Fund (“CAF”). 14 The CAF program, which is only now beginning to bear fruit, is properly focused on stimulating investment by making available public funds necessary to deploy broadband in areas that would be otherwise uneconomic to serve. Through these efforts, the CAF offers an efficient, rational means of helping to expand broadband access to all Americans. While the Commission appears close to finalizing offers of model-based support for incumbent price cap carriers, the Commission should move promptly to design and implement the competitive bidding process for CAF Phase II so that the benefits of the program can finally be realized for rural Americans.

13 Id. ¶ 8.
The Commission also must settle on a long-term universal service solution for rate-of-
return carriers sooner rather than later.15 In the absence of a new universal service high-cost
support mechanism for rate-of-return carriers, the benefits of extended and enhanced broadband
service for many rural Americans will be delayed and possibly denied, contrary to Congress’s
directives in Sections 254 and 706. Indeed, for rate-of-return carriers ready to make investments
in broadband infrastructure, many are dissuaded from doing so due to concerns about the lack of
a broadband-focused universal service program attuned to their needs. To address this problem,
the Commission should move quickly to implement a long-term universal service plan for
rate-of-return carriers that will promote broadband investment in rural, high-cost areas.

In sum, by taking each of the steps described above, the Commission can eliminate
substantial barriers to infrastructure investment and promote competition, and thereby accelerate
deployment of advanced telecommunications capability to all Americans.

Respectfully submitted,

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15 See Connect America Fund, Report and Order, FCC 14-190, WC Docket Nos. 10-90,
14-58, 14-192, ¶ 100 (rel. Dec. 18, 2014).