



April 22, 2015

**Ex Parte notice**

Ms. Marlene H. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete Incumbent ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25

Dear Ms. Dortch:

On behalf of the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), the undersigned hereby submit this *ex parte* communication in the above-referenced proceedings. Ad Hoc urges the Commission to follow standard procedures and take no further action in other dockets on the portions of the USTelecom petition that are still pending in WC Docket No. 14-192, the proceeding expressly created to address the petition.

On October 6, 2014, the Commission received a “USTelecom Petition for Forbearance Pursuant to 47 U.S.C. §160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks.”<sup>1</sup> The petition is unusually broad in scope; it requests forbearance from over 20 rules and regulations and would apply, in varying degrees, to every ILEC nationwide that is subject to the FCC’s jurisdiction.

Pursuant to a Public Notice issued November 5, 2014,<sup>2</sup> the Commission solicited public comment on the petition and has since received extensive input from the public through comments and reply comments. Indeed, a diverse group of retail and wholesale customers, public interest groups, state regulators, and public advocates

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<sup>1</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192 (filed Oct. 6, 2014) (“USTelecom Forbearance Petition”).

<sup>2</sup> *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance From Certain Incumbent ILEC Regulatory Obligations*, WC Docket No. 14-192, Public Notice, 29 FCC Rcd 13535 (2014) (“Public Notice”).



thoroughly debunked the petition's claims and identified such substantial analytical defects and factual gaps in the petition that Ad Hoc concluded its individual participation was unnecessary to protect the interests of enterprise customers like Ad Hoc's members.<sup>3</sup>

Shortly after receiving comments but before the date for interested parties to file reply comments, the Commission adopted a Report and Order on December 11, 2014, in two other dockets (*Connect America Fund*, WC Docket No. 10-90, and *ETC Annual Reports and Certifications*, WC Docket No. 14-58) in which it also acted on one of the numerous requests in USTelecom's forbearance petition.<sup>4</sup> Specifically, the Commission granted the portion of USTelecom's petition that requested forbearance from the enforcement of section 214(e)(1)(A) where a price cap carrier receives no high-cost support.<sup>5</sup>

Because of the Commission's unorthodox departure from its usual processes and procedures, which short-circuited consideration of reply comments, Ad Hoc is concerned that the Commission might grant other portions of the *USTelecom Forbearance Petition* that are unsupported by the current state of the record in the petition's docket or inconsistent with the record under development in other proceedings.

Ad Hoc is particularly concerned by the group of USTelecom forbearance requests identified as "Category 7" in the FCC's Public Notice:

Rules prohibiting price cap incumbent LECs' use of contract tariffs for business data services in all regions. And, if necessary, the requirement that packet-switched or optical transmission services be subject to price

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<sup>3</sup> For example, the December 5, 2014 Comments of Comptel (at 36-41), XO (at 10-16) and the consolidated comments of Birch, BT Americas, Integra, and Level 3 (at 16 – 22), among others, comprehensively addressed Ad Hoc's concerns regarding the lack of competition in the special access market, protection from unjust and unreasonable prices and practices, and the damaging impact of premature deregulation upon competitors (and, by extension, customers).

<sup>4</sup> *Connect America Fund*, Docket WC Docket 10-90; *ETC Annual Reports and Certifications*, WC Docket 14-58; *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket 14-192, Report and Order, 29 FCC Rcd 15644 (2014).

<sup>5</sup> *Id.* at para. 51. Specifically, the Commission decided to forbear "from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) census blocks that are determined to be low-cost, (2) all census blocks served by an unsubsidized competitor, as defined in our rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where a subsidized competitor – i.e., another ETC – is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations." *Id.*



cap regulation in order to be eligible for pricing flexibility (47 C.F.R. §§ 61.3(o), 61.55(a), 69.709(b), 69.711(b), 69.727(a), 69.705).<sup>6</sup>

The forbearance USTelecom seeks in this category is an attempt to end-run the record evidence that the Commission has compiled in the special access investigation – a proceeding that Ad Hoc has participated in since the docket was established a decade ago.<sup>7</sup> The Commission initiated that comprehensive evaluation of its special access rules in response to indications that the rules fail to ensure just and reasonable rates, terms, and conditions for end users and fail to promote competition, investment, and access to dedicated business communications services.<sup>8</sup> The Commission has only recently been able to collect the data it needs to complete its analysis in that docket. Now that it has collected the data, the Commission is finally in a position to evaluate its rules and the state of competition in the market for special access services. But the data has only recently arrived and the analysis of it is not likely to be completed within the statutory timeframe for the pending forbearance review.

USTelecom’s attempt to use a forbearance petition to moot the long-standing and highly complex market analysis at issue in the special access investigation raises grave concerns regarding the integrity and efficacy of the Commission’s processes. Ad Hoc urges the Commission to reject this attempt. Given USTelecom’s inadequate evidentiary showing in support of its petition, the most prudent course of action for the Commission would be to immediately deny those portions of *USTelecom Forbearance Petition* that seek *de facto* preemption of the issues currently under consideration in WC Docket 05-25/RM-10593. Doing so would remove any uncertainty among providers and customers – who have devoted considerable resources and years of effort to producing a detailed record in the special access proceeding – that their participation in that proceeding could become a wasted (and wasteful) exercise thanks to an ill-advised disposition of the issues in the context of USTelecom’s omnibus forbearance petition.

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<sup>6</sup> Public Notice at 2.

<sup>7</sup> *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593.

<sup>8</sup> *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012); Report and Order, 28 FCC Rcd 13189 (2013); Order on Reconsideration, 29 FCC Rcd 10899 (2014); *Commission Moves Forward with Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, 29 FCC Rcd 10014 (2014). See also Notice of Office of Management and Budget Action, OMB Control No. 3060-1197 (Aug. 15, 2014), available at <http://www.reginfo.gov/public/do/DownloadNOA?requestID=254209> (OMB approval of the Data Collection with change); Special Access Proceeding; Effective Date for Data Collection, 79 Fed. Reg. 57810 (Sept. 26, 2014), available at <http://www.gpo.gov/fdsys/granule/FR-2014-09-26/2014-22864> (announcing that the information collection requirement contained in the Data Collection Order is effective September 26, 2014).



Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is being filed electronically in the above-referenced proceedings. Please feel free to contact the undersigned with any questions or concerns regarding this filing.

Respectfully submitted,

A handwritten signature in black ink that reads "Colleen Boothby". The signature is written in a cursive, flowing style.

Colleen Boothby  
Counsel, Ad Hoc Telecommunications Users  
Committee

Susan B. Gately  
Economic Consultant