

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Petition of United States Telecom Association
for Forbearance Under 47 U.S.C. § 160(c)
from Enforcement of Certain Legacy
Telecommunications Regulations

WC Docket No. 12-61

**REPLY COMMENTS
OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
(CCIA)**

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EXECUTIVE SUMMARY

On February 16, 2012 the United States Telecom Association filed a Petition requesting the Commission forbear from enforcing certain “legacy telecommunications regulations.” CCIA requests the Commission undertake a thorough review of the Petition, as well as the continued need for the various data recording and reporting requirements that the Petition requests relief from.

There are currently many open rulemaking dockets addressing the very regulations that USTelecom’s Petition seeks forbearance from. Additionally, the Commission has long relied on mandatory data reporting from incumbent local exchange carriers in order to craft and modify regulations and fulfill its statutory obligations. State regulatory bodies are also reliant on this data. The Commission should determine whether granting the Petition and relieving incumbent local exchange carriers from these requirements will allow the Commission and state regulatory agencies to continue to collect the data needed to serve the public interest and comply with the law. Further, the Commission should also determine whether matters put forth in the Petition would best be addressed through the Commission’s notice and comment rulemaking process – in one or more of the current open dockets – or in new proceedings.

CCIA urges the Commission to reject the Petition for forbearance if the Commission finds that data necessary for it to serve the public interest and satisfy its legal obligations will be more difficult to attain or unavailable if it grants the Petition. Similarly, if the Commission finds that the matters addressed in the Petition can be dealt with in a notice and comment rulemaking process, the Commission should reject the Petition.

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The Computer & Communications Industry Association (“CCIA”),¹ pursuant to the Federal Communication Commission’s (“Commission”) March 8, 2012 Public Notice,² files these Reply Comments regarding the United States Telecom Association’s (“USTelecom” or “Petitioner”) Petition for forbearance (“Petition”) from certain telecommunications regulations.³ CCIA urges the Commission to undertake a thorough review of the public policy implications and public interest impact of approving the Petition. Specifically, the Commission should determine whether the matters at issue in the Petitioner’s request for forbearance would be best addressed through a notice and comment rulemaking process. The Commission should also determine whether granting the Petition would frustrate the Commission’s data collection needs for ongoing proceedings and to meet its statutory requirements.

I. THE COMMISSION SHOULD DETERMINE WHETHER THE PETITIONER’S REQUESTS CAN BE HANDLED THROUGH A NOTICE AND COMMENT RULEMAKING PROCESS

CCIA urges the Commission to carefully consider whether the Petitioner’s requests can be handled through the Commission’s notice and comment rulemaking process. If the Commission

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries.

² WC Docket No. 12-61, *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, Public Notice, DA 12-352 (Mar. 8, 2012) (“Public Notice”).

³ WC Docket No. 12-61, *Petition for Forbearance of the United States Telecom Association* (Feb. 16, 2012) (“Petition for Forbearance”).

can most appropriately address the Petitioner's requests through a rulemaking, the Commission should reject the Petition.

As other parties have asserted, the Commission has a number of open proceedings that address issues related to requests in USTelecom's Petition for forbearance.⁴ Additionally, as the Ad Hoc Telecommunications Users Committee notes, USTelecom itself has acknowledged that the Commission is currently re-examining a number of its legacy regulations in a number of dockets.⁵

CCIA urges the Commission to examine whether it is appropriate for USTelecom to attempt to achieve through the forbearance process what it could have attempted through current, ongoing rulemaking processes. As others have observed, USTelecom could have contributed to the Commission's analyses on rules it believes are obsolete by participating in the ongoing proceedings. Further, if the Petitioner believed the scope of those proceedings was too narrow, it could have petitioned to seek relief beyond that already at issue. Instead, USTelecom chose to file a Petition for forbearance under Section 10 of the Communications Act, triggering an onerous statutory deadline and derailing the Commission's agenda by forcing it to allocate resources to this matter and disrupting progress in existing dockets.⁶

⁴ See WC Docket No. 12-61, Comments of the Ad Hoc Telecommunications Users Committee and Request for Summary Dismissal, at 2 (Apr. 9, 2012) ("Comments of AHTUC"); Opposition of Broadview Networks, MegaPath Corporation, and XO Communications, at 4 (Apr. 9, 2012) ("Opposition of Broadview Networks, et. al."); Comments of CALTEL, at 7-8 (Apr. 9, 2012).

⁵ Comments of AHTUC, at 2 (citing Petition for Forbearance at 3-8, n. 6, 12, 19.).

⁶ *Id.*

The Commission should not reward USTelecom's blatant attempt to short circuit ongoing rulemakings. If the Petitioner's requests can best be addressed through the rulemaking process, CCIA urges the Commission to reject the Petition and continue its work within existing dockets.⁷

II. THE COMMISSION SHOULD DETERMINE WHETHER GRANTING THE PETITION WOULD FRUSTRATE THE COMMISSION'S NEED TO COLLECT DATA FOR ONGOING PROCEEDINGS, FUTURE PROCEEDINGS, AND TO MEET ITS STATUTORY OBLIGATIONS

CCIA urges the Commission to determine, prior to granting USTelecom's Petition, whether granting the Petition would frustrate the Commission's data collection needs and its ability to meet its statutory obligations. If granting the Petition impedes the Commission's ability either to collect data to complete ongoing or future rulemakings, to craft public policy that best serves the public interest and promotes competition, or to meet its statutory obligations, the Commission must reject the Petition.

As parties in this docket point out, the Commission relies on data reported by individual incumbent local exchange carriers ("ILECs") in order to conduct rulemakings and fulfill statutory obligations.⁸ As Sprint makes clear, both non-ILEC carriers and end users rely on dominant

⁷ Members of USTelecom have themselves recently advocated for addressing matters through rulemaking processes rather than through individualized processes. *See* IB Docket No. 11-149, Reply of AT&T, at 1-5 (Nov. 3, 2011) (arguing that DISH's Network's waiver request regarding the conversion of 2 GHz MSS band spectrum to predominantly terrestrial operations should be rejected and the matter "should be conducted through rulemaking, rather than an *ad hoc* waiver process.").

⁸ *See* WC Docket No. 12-61, Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, and the New Jersey Division of Rate Counsel, at 23-24, 26 (Apr. 9, 2012) ("Comments of Consumer Advocates") (arguing that state regulatory bodies are reliant on the data the Petitioner proposes to discontinue reporting to the Commission); Comments of the National Cable & Telecommunications Association, at 3 (Apr. 9,

facilities and services controlled by ILECs with substantial market power, thus it is imperative that the Commission retain its ability to review cost and other information recorded and reported by ILECs under the Commission's current rules in order to fulfill its statutory obligation of ensuring that customers can obtain service at just and reasonable rates.⁹

In addition to utilizing ILEC-reported data to meet its statutory obligations, the Commission also relies on such data to complete rulemaking proceedings. For example, the Commission has relied on costs recorded by ILECs pursuant to Part 32 and other cost-related rules in order to assess the reasonableness of special access rates.¹⁰ Further, some parties assert that state regulatory agencies also rely on the information the Petitioner proposes no longer reporting to the Commission, and that eliminating data reporting requirements "would be adverse to the public interest and would hamper regulators' ability to fulfill their responsibility to ensure just and reasonable rates, terms and conditions," and to prevent improper cross-subsidization of more competitive unregulated services by regulated ones.¹¹

2012) (citing the Commission's reliance on data in ARMIS 43-01 to calculate cable and telecom pole attachment rates to determine whether rates are reasonable); Opposition of Sprint Nextel Corp., at 4 (Apr. 9, 2012) ("Opposition of Sprint") (citing the Commission's reliance on ILEC reported data to fulfill its statutory obligations under 47 U.S.C. § 201(b).).

⁹ Opposition of Sprint, at 4 (citing the Commission's statutory obligations under 47 U.S.C. § 201(b).).

¹⁰ *Id.* at 6 (citing *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25, RM-10593 (Jan. 31, 2005) ("*Special Access Order and NPRM*").).

¹¹ WC Docket No. 12-61, Comments of Consumer Advocates, at 23-24 (Apr. 9, 2012).

Additionally, as Sprint argues, the Commission is currently in the midst of overhauling its intercarrier compensation regime for switched traffic and reviewing its special access rules.¹² Costs and other data that ILECs are currently required to report under the Commission's rules are relevant to these proceedings, as well as the potential rules and reforms the Commission may adopt. In the past the Commission has used data that is required to be reported by the same provisions from which the Petitioner seeks forbearance in order to determine rates that are just and reasonable.¹³

As has been demonstrated in this docket, the Commission and state regulatory bodies rely on the data that is required to be recorded and reported by the rules from which the Petitioner seeks forbearance. This data allows the Commission to both meet its statutory obligations, as well as to serve the public interest and promote competition through its rulemaking processes. Thus, before the Commission grants the Petitioner's forbearance request, it should consider whether relieving ILECs from these requirements would deprive the Commission and state agencies of the very data it needs to carry out its current rulemakings, meet their statutory obligations, and continue to serve the public interest and promote competition in the future.

¹² Opposition of Sprint, at 2, 5-6 (citing *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) *pets. for review pending sub nom. In re: FCC*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Competition Data Requested in Special Access NPRM*, Public Notice, WC Docket No. 05-25, RM-10593, DA 11-1576 (Sept. 19, 2011); *Special Access Order and NPRM*, WC Docket No. 05-25, RM-10593 (Jan. 31, 2005).).

¹³ *Id.*

CONCLUSION

The Commission should consider whether the matters at issue in the Petitioner's request for forbearance would best be addressed through current or future rulemaking proceedings. If the Commission finds that rulemakings are the appropriate venue to consider such matters, it should deny the Petition. Further, the Commission should consider the impact that relieving ILECs from numerous data recording and reporting requirements will have on the Commission's ability to serve the public interest and promote competition through rulemaking proceedings and to meet its statutory obligations. Should the Commission find that these efforts would be compromised, it should reject the Petition.

April 24, 2012

Respectfully submitted,

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