BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

In the Matter of:	)	
	)	WC Docket No. **14-192**
Petition of US Telecom for Forbearance	)	
Pursuant to 47 U.S.C. § 160(c)	)	
From Obsolete ILEC Regulatory	)	
Obligations that Inhibit Deployment of	)	
Next-Generation Networks.	)	
	)	

REPLY COMMENTS OF THE
MICHIGAN PUBLIC SERVICE COMMISSION

On October 16, 2014, the United States Telecom Association (US Telecom) filed a petition under Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. §160(c), requesting that the Commission forbear from enforcing "various outdated regulatory requirements applicable to incumbent local exchange carriers," claiming that the relief requested will "promote the deployment of next-generation high-speed networks . . . expanding infrastructure investment and increasing competition for services that have become central to Americans' daily lives." US Telecom's Petition, pp. 1-2. On November 5, 2014, the Federal Communications Commission (FCC or Commission) established a pleading cycle for comments on US Telecom's Petition. In accordance with the FCC's directive, the Michigan Public Service Commission (MPSC) submits the following Reply Comments. While the MPSC has general concerns about other requests for forbearance in the petition, the MPSC focuses its comments specifically on two categories: Category 1, the Bell Operating Companies' (BOCs) request for forbearance of their obligations under

Sections 271 and 272 of the Federal Telecommunications Act (FTA); and Category 4, concerning US Telecom's request for forbearance of Section 214(e) of the FTA on behalf of the price cap carriers, which asked to be relieved of their duties to provide voice services in an area in which no high cost Connect America Fund (CAF) funding is received.

Category 1 – Remaining Sections 271 and 272 obligations, equal access rules, and the nondiscrimination and imputation requirements set out in the Section 272 Sunset Order.

The MPSC shares some of the concerns expressed by the competitive local exchange carriers (CLECs) in their initial comments, specifically regarding the remaining Sections 271 and 272 obligations and the adverse consequences that could result from eliminating regulations that are designed to encourage competition and reasonable rates. The obligations required under Section 271 opened the door to competition and ensured that CLECs would have nondiscriminatory access to networks at just and reasonable rates. These obligations were voluntarily agreed to by the BOCs in order to receive consent to provide InterLATA long distance service. They also agreed to performance metrics and remedy plans that are a key part of interconnection agreements currently in place.

Many providers also rely on the "competitive checklist" items from Section 271(c)(2)(B) to ensure that they can provide competitive services. "Numerous competitive LECs rely on Section 271 checklist items, often in combination with UNEs provided pursuant to Section 251(c)(3), to bring competition to the business

market where it would otherwise not exist." Comptel Comments, p. 6. The MPSC also agrees with Comptel's statement that "Section 272(e)(1) and (3) remain key to preventing the BOCs from abusing their control of last-mile transmission facilities by ensuring that competitors can obtain wholesale inputs at rates and levels of service quality equivalent to what the BOC provides itself."

Several CLECs (Comptel, Granite, Full Service Network, and the Joint Commenters) provided comments that focused on the importance of preserving competition. "Full Service Network and other providers relying on commercial agreements provide essential competition and need the Commission to preserve section 271 to protect that competition." Full Service Network Comments, p. 3. The dominant carriers should not be granted permission to discontinue their wholesale services that rely upon time division multiplexing (TDM) circuit switching without providing a sufficient transition of the offering to an equivalent service with the same rates to those competitive providers that rely on those wholesale products.

Even though many CLECs have their own facilities, they still rely on BOCs for last mile facilities. The MPSC is concerned that granting US Telecom's petition would leave CLECs without nondiscriminatory access to the last mile facilities at just and reasonable rates. Lacking competition from the CLECs, the incumbent local exchange carriers (ILECs) may lose incentives to perform at the levels customers currently expect. As stated by Granite, "[t]he Petition should be denied because the obligations under Section 271 remain vital to preserving and advancing competition. Granite and other CLECs rely on access to switching under Section

271 in order to obtain a combination of DS-0 loop, switching and transport, that it uses to provide voice service to business customers, including business customers in remote and rural locations." Granite Comments, p. 3. The MPSC also agrees with the Joint Commenters' (Birch Communications, Inc., BT Americas Inc., Integra Telecom, Inc., and Level 3 Communications, LLC) assessment that the provisions that US Telecom seeks forbearance from "serve an important role in ensuring that competitive LECs are able to obtain inputs needed to provide local and long-haul data services to business customers." Joint Comments, p. 2. They also added that "Sections 271 and 272 and the associated federal and state regulations establish protections to prevent the BOCs from exercising their control over these inputs to raise their rivals' costs and inhibit their ability to compete." Joint Comments, p. 6.

Further, US Telecom has failed to meet the Commission's three part test for determining whether forbearance shall be granted. Several commenters addressed US Telecom's inability to meet the statutory forbearance standard set forth in Section 10a, and the MPSC agrees with the assessment of these commenters (Comptel, Granite, Full Service Network, and the Joint Commenters). Granite Telecommunications specifically states that:

> USTA has not met its burden to support its request for forbearance with convincing evidence and analysis. Consistent with this lack of analysis of discrete product and geographic markets, USTA's petition fails to identify geographic areas where RBOCs face extensive facilities-based competition from more than two competitors. In particular, USTA's petition is deficient because it conducts no separate analysis of the business market, including the small business market in which competitors such as Granite rely on Section 271 in order to obtain the wholesale inputs necessary to serve customers. [Granite Comments, p. 12.]

Category 4 – Request from forbearance for all remaining Section 214(e) obligations where a price cap carrier does not receive High Cost Universal Service Support, including 47 C.F.R. Section 54.201(d). And, the Commission's determination that an Eligible Telecommunications Carrier is required to provide the "supported" services throughout its service area regardless of whether such services are actually "supported" with high-cost funding throughout that area.

US Telecom has also requested forbearance from being required to provide service in an area where a price cap carrier may not receive funding from the Connect America Fund. The MPSC agrees with the National Association of State Utility Consumer Advocates' (NASUCA) comments, which argued that a lack of CAF funding should not be tied to a lack of need for the eligible telecommunications carrier (ETC) obligations. NASUCA Comments, p. 11.

US Telecom contends that voice over internet protocol (VoIP) and wireless competition has made the Section 214(e) requirements unnecessary. However, consistent with positions previously taken, the MPSC maintains that VoIP and wireless services are not functional equivalents to wireline voice service. As demonstrated by NASUCA in its comments, federal courts and the FCC have supported this determination as well. The MPSC agrees that "US Telecom's reliance upon both wireless and VoIP as a substitute for wireline lacks empirical support." NASUCA Comments, p. 7. Moreover, the MPSC notes in Sprint's comments that:

> It is true that competition for certain services (e.g., wireless services) does exist at the retail level. However, at the wholesale level, ILECs -- the RBOCs in particular -- continue to wield overwhelming market power. ILECs dominate the market for special access services (TDM-based facilities as well as IP-based facilities such as Ethernet) that are

> critical inputs to broadband services provided by non-ILECs to enterprise customers, and as backhaul for wireless services. ILECs also dominate the provision of IP-based broadband services to enterprise customers because of their access to commercial locations. This dominance has translated into equal dominance in other services. ILECs and their affiliates now account for approximately 73% of wireless telecommunications operating revenues. [Sprint Comments, p. 2.]

NASUCA has filed comments opposing US Telecom's request for forbearance from the obligations of 47 USC § 214(e). NASUCA states that "[a]lmost none of the 'competitors' referenced by US Telecom – wireline or wireless – offer the stand-alone basic service described in the CFR" and that "[t]he consumer protection purposes for the ETC requirements is that there is required to be a carrier providing the supported services in a particular area – price cap or not." NASUCA Comments, pp. 11-12. The MPSC agrees with NASUCA that the ETC and Carrier of Last Resort (COLR) requirements serve as important consumer protections that guarantee the availability of at least basic local exchange service to all areas regardless of the competitive landscape in a particular market. This vital role must continue.

While US Telecom argues that "there is no situation in which it is necessary for a price cap carrier not receiving support for a given area to be required to continue providing voice telephony service in that area." (US Telecom Petition, p. 66), it ignores the possible scenario of a price cap carrier declining CAF Phase 2 support in order to avoid the statewide broadband commitment that is required. In this situation, it is possible that a price cap ILEC that declined CAF support could discontinue voice service in an area that does not have a competitor.

The FCC has published a map that shows which areas of the United States are served by price cap carriers and which are served by those under rate of return regulation.[1] As the map clearly shows, a large percentage of the country is served by price cap ILECs and not all of these areas are densely populated urban areas, and these rural areas are less likely to have competitive carriers providing voice service. If an ILEC were to decline CAF support, it could then discontinue voice service to these areas leaving the customers there with no voice service at all. As stated by NASUCA, "[w]ithout COLR, all the carriers in the area could deny service to a customer and that would be legal. And, in fact, there wouldn't have to be any carriers at all in a specific area; that would also be legal." NASUCA Comments, p. 12. In addition, while it is more likely that there will be competitors in an area that are not eligible for high cost support, the MPSC does not agree with US Telecom's assertion that "the operation of the market guarantees that consumer interests will be protected in these areas." US Telecom Petition, p. 65. The fact that costs may be low enough in an area to disqualify it for CAF support does not guarantee competitive entry into the market. That is a business decision to be made by individual carriers and those carriers may choose not to enter a market despite low costs. The MPSC agrees with NASUCA in that "214(e) was designed to protect consumers **against** the vagaries of the marketplace." NASUCA Comments, p. 13.

[1] http://www.fcc.gov/maps/regulatory-type-holding-company-level-study-area

The MPSC also concurs with NASUCA that "[b]y law, then, ETC designation applies whether or not the ILEC requests or receive universal service ('USF') funding." NASUCA Comments, p. 10. The ETC designation and its associated obligations, including 214(e) are separate from receiving high cost support. In addition, as stated by NASUCA, there is already a mechanism in place under Section 214(e) to allow a carrier to relinquish its designation as an ETC that ensures that another ETC must be in a given area before a carrier can discontinue service, and this process has not been shown to be unduly burdensome. NASUCA Comments, pp. 12-13.

Section 214(e) requirements are still necessary to ensure that all consumers have access to reasonably priced voice telephony service and that consumer protections do not change when a price cap ILEC does not receive high cost support. The MPSC does not believe that US Telecom has met its burden of proof under the forbearance standards of Section 160(a) for the reasons previously stated as well as the arguments presented in NASUCA's comments. As such, the MPSC encourages the FCC to deny forbearance on this issue.

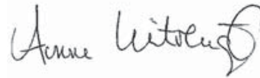
Not only would granting forbearance of Section 214(e) to the price cap carriers be detrimental to end users on its own, granting forbearance in conjunction with the BOC's request for forbearance from Sections 271 and 272 wholesale obligations would also contribute to the elimination of wireline competition in these areas. Furthermore, the MPSC has concerns about the impact that forbearance from the statutory provisions and regulations in Categories 1 and 4 would have on

competitors and their customers who are still utilizing the ILEC's network. As such, the MPSC asks the Commission to deny US Telecom's requests for forbearance.

The MPSC appreciates the opportunity to provide input on US Telecom's Petition and requests that the FCC take under consideration the MPSC concerns as stated in its Reply Comments.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION



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