

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554**

In the Matter of:)	
)	WC Docket No. 12-61
Petition of US Telecom for Forbearance)	
Under 47 U.S.C. § 160(c) From Enforcement)	
of Certain Legacy Telecommunications)	
Regulations.)	
_____)	

**REPLY COMMENTS OF
THE MICHIGAN PUBLIC SERVICE COMMISSION**

On February 16, 2012, 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 forbearance from enforcement of certain “legacy telecommunications regulations.” See US Telecom’s Petition, p. 3. On March 8, 2012, 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.

The MPSC’s Reply Comments respond to certain positions advanced by the various commenting parties in their Comments filed by April 9, 2012. The MPSC notes that the comments filed in response to US Telecom’s Petition addressed a number of specific claims and a variety of different interests. The MPSC’s silence with respect to any issue not addressed in these Reply Comments should not be interpreted as indicating agreement with the proponent of that issue.

STANDING

US Telecom's forbearance request is extensive, falling into seventeen separate categories, and the requested changes are sweeping. However, in order for its Petition to be granted, US Telecom must have standing to obtain its requested relief. In this case, based on its Petition, US Telecom must demonstrate that it has standing on behalf of all incumbent local exchange carriers (ILECs) or all price cap ILECs. The MPSC questions whether US Telecom has standing to seek its requested relief and agrees with the Comments filed by COMPTTEL and Broadview Networks *et al* that standing has not been sufficiently demonstrated. See COMPTTEL's Comments, pp. 2-3; Broadview's Comments, p. 2.

The Act specifies who may make a forbearance request to the Commission. Section 10(c) of the Telecommunications Act, 47 USC §160(c), provides that "[a]ny telecommunications carrier, or class of telecommunications carriers, may submit a petition" requesting that the Commission exercise its forbearance authority "with respect to that carrier or those carriers, or any service offered by that carrier or carriers." US Telecom is not a carrier but an organization that represents carriers. The Petition did not provide any evidence that "all ILECs" or "all price cap ILECs" agree with US Telecom's forbearance request. In fact, the Petition does not appear to be signed on to by any carrier. More notably, only four carriers filed comments in support of the forbearance request. See Alaska Communications' Comments, Centurylink's Comments, Verizon's Comments, and Cincinnati Bell's Comments.

The apparent lack of support by “all ILECs” or “all price cap ILECs” calls into question US Telecom’s ability to request forbearance for such a broad classification.

STANDARD FOR GRANTING FORBEARANCE

US Telecom’s Petition appears not to meet the FCC’s standard for granting forbearance. The Commission has a three-part test for determining whether forbearance shall be granted. Section 10(a) provides in pertinent part:

...the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that--

- (1)** enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2)** enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3)** forbearance from applying such provision or regulation is consistent with the public interest. [47 USC §160(a).]

Additionally, when making a decision under Section 10(a), the Commission takes into consideration “...whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.” 47 USC §160(b). The Petitioner bears the burden of proving that it meets the Commission’s standard.

A number of parties' comments addressed US Telecom's inability to meet the statutory forbearance standard, and the MPSC agrees with the assessment of these commenters. See, e.g., COMPTTEL's Comments, pp. 4-6; Ad Hoc's Comments, pp. 2-5; NASUCA's Comments, pp. 6-10. A cursory review of US Telecom's Petition demonstrates that the requested relief is sweeping, and the reasoning behind the request is broad. US Telecom has made no showing of any individualized evidence of the affected ILECs or demonstration of the extent competition has impacted the carriers. In fact, US Telecom did not provide any reliable or verifiable evidence to support a forbearance determination.

The lack of supporting evidence is particularly evident when reviewing US Telecom's requested forbearance from the rules described as Category 8 and Category 14. The Petition's requested forbearance from the Category 8 rules demands that the Commission "forbear from application to all covered carriers of Section 43.21(c), which requires common carriers that exceed a specified revenue threshold to file with the Chief of the 'Common Carrier Bureau' a letter reflecting its operating revenues for that year and the value of its total communications plant at the end of the year." US Telecom's Petition, p. 54. While the relief requested is specific, the Petition itself is extremely vague and provides little support. Although the MPSC agrees that aspects of the rule are outdated, US Telecom does not appear to have met the burden of proof nor has it provided enough reasoning to eliminate the applicability of this rule completely. For example, the costs generated by a cost study are not based on the existing plant but instead on a newly built, least cost, most efficient theoretical network, total plant in service is still used for some parts

of cost studies. Thus, this information is still relevant to regulators and keeping this requirement only imposes a minimal burden on carriers.

Likewise, US Telecom did not provide sufficient evidence to support its forbearance request from the Category 14 rules. While requesting forbearance from future applications of the "Cash Working Capital Allowance" requirement for all price cap carriers, the Petition supports its request with the assertions that the rules are "time consuming" and "serves no substantive regulatory purpose." US Telecom's Petition, p. 68. While indicating that performing the required calculation is time consuming, US Telecom did not provide any factual data or analysis to support its argument. Due to the lack of evidentiary support, the MPSC believes that the Petition provides, at best, a weak argument in support of its request, and as such, the burden of proof does not appear to have been met.

In addition to aspects of the Petition lacking evidentiary support, the MPSC notes that Broadview claims that the FCC has various ongoing proceedings that would be affected by US Telecom's Forbearance Petition. Broadview's Comments, p. 2. The MPSC agrees with Broadview that the Commission should not grant forbearance for the rules while various ongoing proceedings would be affected. Broadview's Comments, p. 2.

Based on these facts alone, the MPSC believes that US Telecom has trouble meeting the statutory forbearance requirements.

Category 2: Open Network Architecture and Comparably Efficient Interconnection Requirements, Enhanced Services Structural Separation Rule (47 C.F.R. §64.702), and All-Carrier Computer Inquiry Rules

The Alarm Industry Communications Committee (Alarm Industry) has filed Comments opposing US Telecom's requested forbearance from the Category 2 rules. The Comments claim that the alarm industry is "still dependent upon narrowband services and facilities provided by the BOCs, and will continue to be for some time." Alarm Industry's Comments, p. 2. This is in direct contrast to US Telecom's Petition, which alleges that "the telephone network is rarely used by customers to reach information service providers." US Telecom's Petition, p. 29. The Alarm Industry maintains that it does not "rarely" use the telephone network to reach customers, but instead "mainly does so." Alarm Industry's Comments, p. 3.

The MPSC has some concerns regarding the elimination of Category 2 rules and the effect that it would have on customers who require access to the telephone network for their alarm and home security systems. US Telecom has provided minimal information or technical analysis to support its Petition with respect to these rules. As such, the FCC should not determine that forbearance is in the public interest without reviewing such information.

US Telecom is seeking forbearance on behalf of all covered carriers from the "All-Carrier" *Computer Inquiry* Rule. US Telecom's Petition, pp. 24-31. COMPTTEL asserts that these requirements and rules "were adopted by the Commission to prevent the BOCs and other ILECs from using their exclusionary market power to impede competition in the information services market. US Telecom has failed to

demonstrate that the ILECs no longer possess exclusionary market power in any or all of their service territories, so the Commission must assume that they do and that their exercise of such market power could lead to rates, terms and conditions that are unjust, unreasonable and unjustly and unreasonably discriminatory.”

COMPTEL’s Comments, p. 18. Because US Telecom did not properly demonstrate and document that the ILECs no longer possess exclusionary market power, MPSC agrees with COMPTEL that forbearance to Category 2 rules should not be granted under US Telecom’s current petition.

Category 3: Cost Assignment Rules

The MPSC agrees with COMPTEL that if the FCC does grant forbearance to Category 3 rules, then the forbearance application to the additional price cap ILECs must be conditioned on the filing and approval of compliance plans by those ILECs. COMPTEL’s Comments, p. 19. In the past, the FCC has only granted forbearance from the Cost Assignment Rules with the carrier’s agreement to maintain its Part 32 of the Uniform System of Accounts (USOA) and contingent on the carrier providing the USOA accounting data to the FCC upon request. These conditions were imposed on AT&T, Verizon, and Qwest when the Commission granted their forbearance requests. If the FCC determines that forbearance from the Cost Assignment Rules should be granted to all other price cap carriers, then the MPSC recommends that the Commission also impose the same conditions that were imposed on AT&T, Verizon, and Qwest; as well as the requirement that they submit

compliance plans to the Commission for approval prior to the forbearance becoming effective.¹

**Category 4: Part 32 Uniform System of Accounts
(47 U.S.C. §220(a)(2), 47 C.F.R. §§32.1- 2.9000)**

In its Petition, US Telecom seeks forbearance for all price cap ILECs from Part 32 of the USOA. US Telecom’s Petition, p. 34. Similar to the position of the California Public Utility Commission (CPUC), the MPSC opposes US Telecom’s request to the extent that these rules are necessary to properly reform the separations process. CPUC’s Comments, pp. 7-8.

On March 15, 2012, the FCC issued a Further Notice of Proposed Rulemaking seeking comment on extending the current freeze of jurisdictional separations category relationships and cost allocation factors in Part 36 of the FCC’s rules for two years. *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking (rel. Mar. 15, 2012) at para. 1 (*Separations FNPRM*). The current freeze was implemented pending comprehensive reform of the jurisdictional separations process. *Id.* at para. 5; see also *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11386, at para. 5 (2001) (*Separations Freeze Order*). The *Separations FNPRM* notes that a number of jurisdictional separations reform issues were

¹ Because US Telecom is requesting forbearance from Category 4 rules regarding Part 32 of the Uniform System of Accounts, FCC approval of the forbearance petition would not be consistent with its previous rulings and the reporting requirements imposed on AT&T, Verizon, and Qwest.

referred to the Federal-State Joint Board to prepare a recommended decision and that the recent comprehensive reforms of the universal service and intercarrier compensation systems may significantly affect the Joint Board's analysis of interim and comprehensive reform. Accordingly, the *Separations FNPRM* requests comments on whether an additional two-year freeze would provide sufficient time for the Joint Board to complete its review and recommendations. *Separations FNPRM*, at paras. 11-12.

The Federal-State Joint Board is still considering reforms to the separations process, and the FCC should consider what reporting information may still be needed from carriers. Because the Joint Board is still reviewing and considering revisions to the separations process, it is unknown at this point what reports may still be required to implement any reforms. For this reason, the MPSC believes it is premature to consider US Telecom's request, and asks the FCC to refrain from granting forbearance at this time.

US Telecom's Petition claims that "as a result of the recent reforms adopted by the Commission, intercarrier compensation will migrate to bill and keep, and high cost universal service support for broadband will 'rely upon incentive-based, market-driven policies, including competitive bidding,' which obviates any purported need for Part 32 data for universal service purposes." US Telecom's Petition, p. 39. The FCC's access and intercarrier compensation reforms provide for a transition period to move towards the bill and keep methodology. The transition period will not be completed until 2020. As the transition process is ongoing, the

Commission's Category 4 rules should remain in effect. Furthermore, the FCC's USF/ICC reforms are currently under court challenge, and it would be premature to move forward with this sweeping forbearance until the reforms have passed judicial review.

Moreover, US Telecom has not demonstrated how the Commission could properly and successfully accomplish its statutory responsibility to ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory without access to the ILEC's USOA accounting data. Without further details or information as to how the FCC would be able to access this information, the FCC should deny the Petition for forbearance of the Category 4 rules.

The Petition also claims that "carriers would continue to be subject to countless other Federal and state requirements that are intended to protect consumers. For example, carriers would continue to adhere to Generally Accepted Accounting Principles (GAAP) (or a successor regime) in keeping their books and reporting their financial performance. Likewise, the Sarbanes-Oxley Act enacted in 2002 imposes significant recordkeeping requirements by expanding the scope of work that an auditor must perform and by requiring management and auditors to assess, document, and report on the effectiveness of financial reporting internal controls.... These additional, overarching obligations protect consumers and obviate any continued need for the legacy telecommunications regulations addressed in USTelecom's Petition." US Telecom's Petition, p. 17. But, the Petitioners neglect to mention that they have had great success in the individual states, and other

jurisdictions, in reducing their reporting and regulatory requirements by arguing that the USOA accounting information is all reported at the federal level and the state commissions can obtain information from the federal entity. If the FCC were to grant forbearance to eliminate these reporting requirements at the federal level, this would leave little to no oversight in place and the states would be unable to obtain this information.

Category 5: Property Record Rules
(47 C.F.R. §§32.2000(e), (f))

US Telecom’s Petition asserts that “[r]egardless of whether the Commission forbears from applying its Part 32 to price cap carriers, the Commission should forbear from application to price cap carriers of its property record requirements in Section 32.2000(e) and (f) of the Commission's rules.” US Telecom’s Petition, p. 43. In support of the Petition, Cincinnati Bell Telephone Company (Cincinnati) asserts that “[w]ith rates no longer tied to costs, there is no reason to require price cap carriers to maintain such detailed property records.” Cincinnati’s Comments, p. 11. The MPSC disagrees. The property records forbearance request is directly related to Category 4 rules that US Telecom is requesting forbearance from, and the Category 4 rules are correlated to the cost allocations which separate out the interstate and intrastate portions of the company’s assets, and revenues and expenses, all of which are used to develop a company’s total element long run incremental cost (TELRIC). These results, which are used by state and federal regulators to set rates, both retail and wholesale, are used by competitive providers in order to allow customers to have choices in providers and services.

Even though some states have deregulated retail rates, several still have that authority and most, if not all states, have authority to set wholesale rates to prevent predatory pricing and other anti-competitive behaviors. The property records are a necessary part of the process and should not be eliminated from review by state and federal regulators. While agreeing that the process can be streamlined, the MPSC maintains that all ILECs should not be granted forbearance from these rules.

Category 7: ARMIS Report 43-01

On behalf of all ILECs, US Telecom requests forbearance relief from filing the ARMIS Report 43-01. US Telecom's Petition, p. A-10. COMPTEL maintains that such a request is unwarranted and to the extent the Commission grants forbearance from the ARMIS Report 43-01, the FCC must "...limit that relief to price cap carriers and require those carriers to submit compliance plans to the Commission for approval." COMPTEL's Comments, pp. 22-23. The MPSC agrees with COMPTEL.

The MPSC notes that in 2008 the ARMIS reporting was significantly reduced in order to reduce the burden on carriers. The reduced ARMIS reporting should continue as a resource to state and federal regulators. The MPSC has filed comments in several FCC dockets concerning forbearance from ARMIS reporting requirements. See WC 07-139 filed 8/20/07, WC 07-273 filed 2/1/08, and WC 08-190 filed 11/13/08. As noted previously in these comments, in recent years, the providers have had great success in individual states in reducing the state's

regulatory requirements and reporting practices, making these reporting requirements all the more critical to states. For this reason, the MPSC feels that the FCC should not grant forbearance to the Category 7 rule requirements, and any forbearance granted from filing ARMIS Report 43-01 should be conditional.

**Category 9: Rules Governing Notices of Network Changes
(47 C.F.R. §§51.329(a)(2), 51.333(a)-(f), 52.333(b))**

The MPSC cautions the FCC on granting forbearance to the Network Change Notification Rules. A number of commenters have raised concerns indicating that eliminating this requirement also eliminates the opportunity for customers and providers to comment on any adverse effects. Additionally, COMPTTEL raises further concern about the need to protect customers from possible service interruptions or outages. COMPTTEL's Comments, p. 19.

US Telecom seeks forbearance on behalf of all ILECs from Sections 51.329(a)(2) and 51.333(a)-(f) of the Commission's rules arguing that the public notice and notification is redundant. US Telecom's Petition, p. 57. The Petitioner's argument is weak at best. COMPTTEL raises concerns regarding this in its comments, urging the FCC to deny forbearance from the Category 9 rules because "the Bureau's Public Notices of network changes provide critical information that is not included on the carriers' web postings of the network changes." COMPTTEL's Comments, p. 13. The MPSC echoes COMPTTEL's concerns regarding the forbearance of Category 9 rules and the result it could have on customers and competition. For this reason, the MPSC does not support forbearance from Category 9 rules.

**Category 10: Service Discontinuance Approval Requirements
(47 U.S.C. §214, 47 C.F.R. §§63.30, 63.61, 63.62, 63.63, 63.71(a)(5),
63.71(c), 63.90(a)(8))**

US Telecom's Petition alleges that the "discontinuance requirements of Section 214 and related rules were intended to prevent a community from losing telephone service 'without adequate public interest safeguards.' However, in the circumstances under which US Telecom is seeking forbearance, customers are not losing service. Instead, customers will be getting service delivered via a new, more technologically advanced platform, specifically an IP network." US Telecom's Petition, p. 60. While the MPSC recognizes that customers are not losing service, there are still concerns regarding the request to remove or forbear from the opportunity to comment. Removal of an opportunity to comment does not serve the public interest and could negatively affect customers.

Moreover, broadband customers require a power source to ensure adequate and consistent service; if the customer loses power, then the customer also loses broadband service. Customers who require a wire line telephone for medical purposes would have no opportunity to comment prior to the transfer from wire line to broadband, and without such, companies, as well as the Commission, may be unaware of these types of issues. This is just one of the many regulatory requirements that US Telecom seeks forbearance from that are still necessary to protect the customer.

The MPSC believes that the public comment period should not be eliminated. The transition to modern all IP networks can still be accomplished as an intended

FCC goal; however, the FCC should not relinquish its authority and oversight of this process. Because this transition is a stated goal of the FCC, the Commission is not likely to delay such a discontinuance and most petitions are automatically granted after 60 (or 31) days unless circumstances can be demonstrated “that neither the present nor future public convenience and necessity will be adversely affected” 47 U.S.C. §214(c). The public comment period is essential and allows the FCC to be made aware of issues and circumstances surrounding a discontinuance of service, take these issues into consideration, and commence further investigation if necessary before allowing such a transition to occur.

In support of its Petition, US Telecom claims that “[b]roadband providers are disadvantaged by having to wait weeks if not months before being able to introduce new services in place of their legacy offerings. Likewise, consumers are harmed by being unable to take advantage of new service offerings sooner rather than later.” US Telecom’s Petition, p. 61. In support of its request, US Telecom calculates the timeline for a discontinuance of service to be about 90 days from the date that an application is filed, and this appears to be the timeline for a dominant carrier such as an ILEC, unless the FCC notifies the applicant that the application will not automatically be granted. See US Telecom’s Petition, p. 61, fn. 94. The MPSC believes that US Telecom’s discontinuance timeframe argument is weak and is not extensive; moreover, the MPSC does not see where US Telecom has demonstrated the harm caused by this requirement. The decision by an ILEC to replace its legacy network is not made instantaneously, and carriers undertake long term and critical

planning when transitioning to broadband. An ILEC should account for the FCC approval time period during the planning process.

Additionally, the New York State Public Service Commission (NYPSC) submitted comments regarding concerns that granting the Petition could have “unintended consequences on low income customers in New York.” NYPSC’s Comments, p. 1. Because the Petition does not make it clear as to whether or not service providers would offer Lifeline services to customers over a broadband network, the NYPSC indicates that it cannot support the request for forbearance at this time, and states that “USTA’s proposal may result in serious implications because providers in New York could potentially discontinue their regulated Lifeline service offerings to low income customers, without prior notice and an opportunity for interested parties to evaluate the consequences of this action. Lifeline customers may not have another option for affordable telephone service; and discontinuance of regulated Lifeline service offerings may adversely affect their access to telecommunications service and to emergency services.” NYPSC’s Comments, p. 3. The MPSC agrees with the NYPSC.

The MPSC is concerned about the transition to broadband services and the effect this transition would have on Michigan’s low-income customers. US Telecom’s proposal does not serve the public interest because while wireless Lifeline offerings may be available in some areas, it is not universally available, and in many cases, it is not a feasible and reliable alternative. As it is not a reliable and feasible alternative, the MPSC agrees with NYPSC that the Petition does not serve

the public interest. Furthermore, the MPSC has concerns about the impact that forbearance from the Category 10 rules would have on competitors and their customers who are still utilizing the ILEC's network as more specifically addressed in COMPTTEL's comments. As such, the MPSC does not support forbearance from Category 10 rules and asks the Commission to deny US Telecom's request.

Conclusion

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 Comments and Reply Comments.

Respectfully submitted,

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