



# FCC Forbearance Overview, Memorandum Opinion And Order

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*“The PSTN is headed toward an inevitable sunset. We find that the public interest is no longer served by maintaining these legacy regulatory obligations and their associated cost.”*

(FCC, WC Docket No. 18-141)

## The FCC Forbearance

On August 2, 2019, the FCC issued Order 19-72A1 removing the requirement for LEC's (Local Exchange Carriers) to maintain the copper analog TDM lines. Furthermore, February 2nd, 2020 was the deadline for prospective copper-line clients to order these services under the 1996 Telecommunications Act. The recommendation for those with current POTS lines to find an alternate solutions is August 2, 2022. Data-Remote, Inc. is solving that paradigm shift of expensive stranded legacy devices moving to IP even though they are designed to be for analog connectivity.

## Projected Impacts

This order puts an aggressive upward pressure on pricing for all copper lines. The cost to operate and maintain these lines are very costly. As a result, the increased cost comes with lesser services since these companies are no longer expected or obligated to maintain, repair or upkeep the analog lines. Lastly, companies that resell will also have to seek to transition their services to a substitute solution by the August 2nd 2022 deadline. The POTS IN A BOX<sup>®</sup> is the only certified POTS-line emulation replacement solution in the market.

## Consumer Alternatives

Customers can adjust to the FCC order and move away from these costly analog lines with the POTS IN A BOX solution. DataRemote, Inc., the leader in enhanced POTS line replacement, offers customers plug-and-play solutions that are simple, durable and cost-effective. To request a quote, please go to [www.DataRemote.com/Contact-Us](http://www.DataRemote.com/Contact-Us). For more information on our services please call 305-521-7400 or email us at [Sales@DataRemote.com](mailto:Sales@DataRemote.com). Let us show you how we can reduce your costs by up to 50% or more.



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

In the Matter of )
)
Petition of USTelecom for Forbearance Pursuant to ) WC Docket No. 18-141
47 U.S.C. § 160(c) to Accelerate Investment in )
Broadband and Next-Generation Networks )
)

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2019

Released: August 2, 2019

By the Commission: Commissioner Starks concurring in part, dissenting in part and issuing a statement;
Commissioner Rosenworcel dissenting and issuing a statement.

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I. INTRODUCTION

1. Before Congress passed the Telecommunications Act of 1996 (the 1996 Act),<sup>1</sup> local telephone companies (known as incumbent local exchange carriers or incumbent LECs) held a monopoly on local telephone service—one often legally granted by the state.<sup>2</sup> Congress passed the deregulatory and pro-competitive 1996 Act to open these local markets to competition, preempting state-granted monopolies and requiring incumbent LECs to unbundle and open their networks to competitors at cost-based rates.<sup>3</sup> At the same time, Congress recognized that new competition and technology could render these provisions unnecessary and thus required the Commission to forbear from these and other regulatory obligations should circumstances warrant.<sup>4</sup>

<sup>1</sup> The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

<sup>2</sup> See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al., First Report and Order, 11 FCC Rcd 15499, 15505, para. 1 (1996) (subsequent history omitted) (First Local Competition Order).

<sup>3</sup> See 47 U.S.C. §§ 251(c)(3), (c)(4), 252(d)(1).

<sup>4</sup> See 47 U.S.C. § 160(a); see also Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended, Report and Order, 24 FCC Rcd 9543, 9546, para. 5 (2009) (citing legislative history).

2. Today, in response to a petition from incumbent LECs to forbear from these regulatory obligations,<sup>5</sup> we confront two narrow regulatory obligations imposed on price cap incumbent LECs<sup>6</sup> to give competitors a foothold in the market for local telephone service using a legacy technology known as Time Division Multiplexing (TDM) over traditional copper wires.<sup>7</sup> One requires price cap incumbent LECs to unbundle two-wire and four-wire analog voice-grade copper loops, including the attached TDM equipment (UNE Analog Loops);<sup>8</sup> the other requires price cap incumbent LECs to offer for resale at wholesale rates telecommunications services that the incumbent LEC offers at retail to non-carrier customers (Avoided-Cost Resale).<sup>9</sup>

3. Given the sweeping changes in the communications marketplace since the passage of the 1996 Act, including the increasing migration of consumers of all sorts and sizes away from TDM technology, copper loops, and local telephone service toward newer, any-distance voice services over next-generation wireline and wireless networks and the wide range of competitors offering facilities-based voice service alongside over-the-top Voice over Internet Protocol (VoIP) services, we find that the public interest is no longer served by maintaining these legacy regulatory obligations and their associated costs. Rather than a foothold for new entrants into the marketplace, they have become a vice, trapping incumbent LECs into preserving outdated technologies and services at the cost of a slower transition to next-generation networks and services that benefit American consumers and businesses.

## II. BACKGROUND

4. *Market-Opening Provisions of the 1996 Act.* Prior to the 1996 Act, incumbent LECs held a monopoly on local telecommunications service.<sup>10</sup> Through local market-opening provisions designed to facilitate competition, the 1996 Act required incumbent LECs to unbundle and open their networks to competitors at cost-based rates for the provision of telecommunications services.<sup>11</sup> The Commission observed that these provisions are “not to ensure that entry shall take place irrespective of costs, but to remove both the statutory and regulatory barriers and economic impediments that inefficiently retard entry, and to allow entry to take place where it can occur efficiently.”<sup>12</sup> These unbundling obligations,

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<sup>5</sup> We take this action in response to a petition for forbearance filed by USTelecom—The Broadband Association (USTelecom) in 2018. *See generally* Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (Petition); *see also* *Pleading Cycle Established for Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, Public Notice, 33 FCC Rcd 4614-15 (2018).

<sup>6</sup> The terms “price cap LECs” and “price cap incumbent LECs” refer to incumbent LECs, as defined in section 251(h) of the Act, 47 U.S.C. § 251(h), that are subject to price cap regulation pursuant to our rules. *See* 47 CFR § 61.41.

<sup>7</sup> *See, e.g.*, RAND Corp., U.S. Consumer Preferences for Telephone and Internet Services at iii (2016), [https://www.rand.org/pubs/research\\_reports/RR1382.readonline.html](https://www.rand.org/pubs/research_reports/RR1382.readonline.html).

<sup>8</sup> 47 CFR § 51.319(a)(1).

<sup>9</sup> 47 U.S.C. § 251(c)(4).

<sup>10</sup> *See* *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 et al., Report and Order on Remand and Memorandum Opinion and Order, FCC 19-66, at para. 4 (rel. July 12, 2019) (*UNE Transport Forbearance Order*); *see also* *First Local Competition Order*, 11 FCC Rcd at 15505, para. 1.

<sup>11</sup> *See* 47 U.S.C. §§ 251(c)(3), 252(d)(1).

<sup>12</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14177, para. 12 (1996) (*Local Competition NPRM*); *see also* Declaration of Harold Furchtgott-Roth at 4, Attach. to Letter from Patrick R. Halley, Sr. V.P., Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 21, 2019) (Furchtgott-Roth Declaration).

embodied in section 251(c)(3) of the Act, resulted in a list of unbundled network elements (UNEs), including copper loops, that competitive LECs can lease from incumbent LECs to provide their own retail services.<sup>13</sup> UNE Analog Loops are one type of copper loop that incumbent LECs must make available to competitors under the Commission's rules implementing section 251(c)(3).<sup>14</sup> Notably, UNE Analog Loops are capable of providing only legacy TDM voice service, often referred to as plain old telephone service, or "POTS."<sup>15</sup> UNE Analog Loops, by definition, are not capable of providing or supporting digital communications, including modern IP-based services or even digital subscriber line (DSL) service.

5. In addition to unbundling obligations, the 1996 Act included Avoided-Cost Resale obligations as a means of market entry for competitors.<sup>16</sup> Under the Avoided-Cost Resale obligations in section 251(c)(4) of the Act, incumbent LECs must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."<sup>17</sup> Congress prescribed the method for determining the wholesale rate as "retail rates . . . excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."<sup>18</sup> Avoided-Cost Resale obligations are almost exclusively, if not entirely, used by competitive LECs to provision legacy TDM voice service to business customers.<sup>19</sup> The Avoided-Cost Resale obligations in section 251(c)(4) go beyond the resale requirement

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<sup>13</sup> 47 CFR § 51.319(a)(1). Over the 23 years since the passage of the 1996 Act, the Commission has expanded and contracted its list of UNEs, as well as combinations of UNEs, that incumbent LECs must make available to competitors, largely in response to court remands requiring different approaches to implementing the section 251(d)(2)(B) obligation that the Commission consider whether lack of access to the UNE would "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2); *see, e.g., First Local Competition Order*, 11 FCC Rcd at 15616-775, paras. 226-541; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*) (subsequent history omitted); *Unbundled Access to Network Elements*; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) (*Triennial Review Remand Order*).

<sup>14</sup> 47 CFR § 51.319(a)(1).

<sup>15</sup> *See, e.g.,* CALTEL Comments at 14; TPx Opposition at 3, 17; Letter from Patrick R. Halley, Sr. V.P., Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 8 (filed May 6, 2019) (USTelecom May 6, 2019 *Ex Parte* Letter); Letter from Curtis L. Groves, Assoc. General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed July 20, 2018); Letter from AJ Burton, V.P., Federal Regulatory, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed July 11, 2018); Letter from Thomas W. Whitehead, V.P., Federal Government Affairs, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed July 12, 2018).

<sup>16</sup> 47 U.S.C. § 251(c)(4); *see also First Local Competition Order*, 11 FCC Rcd 15499, 15930, para. 863; 47 CFR § 51.605.

<sup>17</sup> 47 U.S.C. § 251(c)(4).

<sup>18</sup> 47 U.S.C. § 252(d)(3). As a practical matter, incumbent LECs implement this Avoided-Cost Resale obligation by incorporating in their interconnection agreements with competitive LECs discounted rates established by each state for the incumbent LECs' telecommunications services. *See First Local Competition Order*, 11 FCC Rcd at 15930, para. 864; 47 CFR §§ 51.607-51.609; *see also* Letter from Thomas Jones et al., Willkie Farr & Gallagher LLP, Counsel for Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 26 nn.130, 132 (filed Nov. 8, 2018).

<sup>19</sup> *See, e.g.,* Granite Opposition at 3, 5; MetTel Opposition at 7; TPx Opposition at 3; Granite Reply at 2, 11-12; Petition at 26-27; Letter from Patrick R. Halley, Sr. V.P., Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 5 (filed June 14, 2019) (USTelecom June 14, 2019 *Ex Parte* Letter).

in section 251(b)(1) of the Act, which applies to incumbent and competitive LECs alike and does not include a wholesale discount rate mandate.<sup>20</sup>

6. *Forbearance Under Section 10 of the Act.* Section 10 of the Act, as amended by the 1996 Act, requires the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier or telecommunications service if and only if the Commission determines that: (1) enforcement of the requirement “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 that requirement “is not necessary for the protection of consumers;” and (3) “forbearance from applying that requirement is consistent with the public interest.”<sup>21</sup> Forbearance is warranted only if all three criteria are satisfied and required whenever all three criteria are satisfied.<sup>22</sup>

7. *USTelecom Forbearance Petition.* On May 4, 2018, USTelecom filed a petition seeking “nationwide forbearance from outmoded regulatory mandates that distort competition and investment decisions.”<sup>23</sup> Among the requirements for which USTelecom seeks forbearance are UNE Analog Loop obligations and Avoided-Cost Resale obligations.<sup>24</sup> USTelecom argues that incumbent LECs face

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<sup>20</sup> 47 U.S.C. § 251(b)(1); *First Local Competition Order*, 11 FCC Rcd at 15981-82, para. 976-77. USTelecom’s Petition does not seek relief from obligations under section 251(b)(1).

<sup>21</sup> 47 U.S.C. § 160(a). In making the public interest determination, the Commission must also consider, pursuant to section 10(b) of the Act, “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.” *Id.* § 160(b).

<sup>22</sup> *Id.* § 160(a) (stating that 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” the three criteria set forth in that paragraph are met (emphasis added)); *Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (*CTIA*) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

<sup>23</sup> Petition at 1. In its Petition, USTelecom stated that forbearance “[r]elief is sought for all [BOCs] or all ILECs, depending on the class to which the specific obligation at issue applies.” *Id.* at 2 n.3. The specific regulations and the associated relief that USTelecom sought in its Petition, as well as a list of pending proceedings in which USTelecom has taken a position regarding relief that is identical to, or comparable to, the relief sought in its Petition, are detailed in Appendix A to the Petition. *Id.* The Commission subsequently approved USTelecom’s unopposed May 24, 2019 request to narrow the scope of relief sought “for section 251(c)(3) and (4) unbundling and resale requirements and related mandates” to the nationwide footprints of price cap LECs only. *See UNE Transport Forbearance Order*, FCC 19-66, n.172; Letter from Patrick R. Halley, Sr. V.P., Advocacy and Regulatory Affairs, USTelecom, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 n.11 (filed May 24, 2019) (USTelecom May 24, 2019 *Ex Parte* Letter).

<sup>24</sup> Petition at 2 n.3. The Commission acted on USTelecom’s request for forbearance from certain section 271 and 272 obligations as well as its request for forbearance from DS1 and DS3 transport unbundling obligations, and USTelecom withdrew the other requests for forbearance identified in Appendix A of its Petition. *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Memorandum Opinion and Order, FCC 19-31, at paras. 16, 30, 42 (rel. Apr. 15, 2019) (*USTelecom 271/272 Forbearance Order*); *UNE Transport Forbearance Order*; Letter from Patrick R. Halley, Sr. V.P., Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 17, 2019); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Order, DA 19-573 (WCB June 18, 2019); Letter from Patrick R. Halley, Sr. V.P., Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed July 1, 2019); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Order, DA 19-622 (WCB July 2, 2019). As a result, Cox’s Motion for Partial Summary Denial with respect to forbearance from section 251(c)(3) unbundling obligations related to 911 and E911 databases, operations

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significant intermodal competition for voice service, and that the availability of UNEs (including UNE Analog Loops) and Avoided-Cost Resale in such an environment actually distorts competition by favoring competitors that are not investing in their own facilities over those that are.<sup>25</sup>

8. Several parties oppose USTelecom's request for forbearance from unbundling requirements, including UNE Analog Loop obligations, as well as its request for forbearance from Avoided-Cost Resale obligations. Opponents argue that USTelecom has not demonstrated that competition is as geographically widespread and significant as USTelecom alleges and thus does not support nationwide relief.<sup>26</sup> They also assert that forbearance will have a detrimental impact on competitive LEC customers by reducing service offerings, eliminating choice in providers, increasing prices, and reducing service quality.<sup>27</sup>

### III. DISCUSSION

9. We forbear from UNE Analog Loop and Avoided-Cost Resale obligations for price cap incumbent LECs throughout their local service areas. This forbearance relief is warranted in light of overwhelming evidence demonstrating the increasing migration from legacy TDM voice service to IP-based and wireless voice communications capabilities provided by multiple intermodal providers.<sup>28</sup> We find it is no longer necessary to require price cap LECs to bear these once-upon-a-time market-opening obligations that today amount to disparate regulatory burdens that frustrate the transition to advanced communications services offered over next-generation networks.<sup>29</sup> Our forbearance actions here further the Commission's efforts to encourage and facilitate the ongoing technology transitions and to promote broadband deployment and its emphasis on such infrastructure improvements.<sup>30</sup> We condition this

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support systems, and subloops for multiunit premises wiring is moot. Motion for Partial Summary Denial and Comments of Cox Communications, Inc., WC Docket No. 18-141 (filed Aug. 6, 2018).

<sup>25</sup> Petition at 25; USTelecom Reply at 30.

<sup>26</sup> See, e.g., INCOMPAS et al. Opposition at 38-42, 52-55, 57-64; Granite Opposition at 3, 13; Access Point et al. Opposition at 10-13; Public Knowledge et al. Opposition at 5-10; MetTel Opposition at 1-3; California PUC Comments at 7-10; ICG CLEC Coalition Comments at 2-3; First Communications Opposition at 9-13; Public Knowledge et al. Reply at 2-3 & n.6; CALTEL Reply at 27; INCOMPAS et al. Reply at 10.

<sup>27</sup> See, e.g., Letter from John T. Nakahata and Henry Shi, Harris, Wiltshire and Grannis LLP, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed June 3, 2019). Opponents also moved to have the Commission dismiss the Petition on the grounds that it was not complete as filed, in violation of section 1.54 of our rules, and for summary denial of the Petition. See, e.g., Motion to Dismiss of INCOMPAS, WC Docket No. 18-141 (filed May 11, 2018); INCOMPAS et al. Opposition at 64-65; Opposition of Public Knowledge at 1; INCOMPAS et al. Reply at 8; Letter from John T. Nakahata and Henry Shi, Harris, Wiltshire and Grannis LLP, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed Mar. 13, 2019) (INCOMPAS Mar. 13, 2019 *Ex Parte* Letter); INCOMPAS May 9, 2019 Comments at 16-18; Sonic May 9, 2019 Comments at 2-3; INCOMPAS Motion for Summary Denial (filed Aug. 6, 2018). We have previously rejected the arguments raised in each of these motions. See *UNE Transport Forbearance Order*, FCC 19-66, at paras. 70, 76.

<sup>28</sup> *Communications Marketplace Report et al.*, Report, 33 FCC Rcd 12558, 12668-69, paras. 203-07 (2018) (*2018 Communications Marketplace Report*); see also Letter from Patrick R. Halley, Sr. V.P., Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (filed June 20, 2019) (USTelecom June 20, 2019 *Ex Parte* Letter).

<sup>29</sup> This action is also consistent with the 1996 Act's goal to "encourage technological developments." *Local Competition NPRM*, 11 FCC Rcd at 14172, para. 1.

<sup>30</sup> See, e.g., *2018 Communications Marketplace Report*, 33 FCC Rcd at 12729, para. 335; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018); *Accelerating Wireless Broadband Deployment by Removing Barriers*

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forbearance on an appropriate transition period to facilitate a seamless move to alternative voice service arrangements by end users that rely on legacy TDM voice service provided via UNE Analog Loops or Avoided-Cost Resale in spite of more modern and efficient voice service availability. Enabling robust intermodal voice competition without regulations that unjustifiably subsidize and entrench outdated technologies benefits consumers and businesses alike. This puts downward pressure on rates,<sup>31</sup> improves access to high-speed broadband, and makes available to consumers the benefits of new, innovative protective technologies such as voice call authentication that are only available over IP-based networks.<sup>32</sup>

#### A. Forbearance from UNE Analog Loop Requirements

10. We find that forbearance from UNE Analog Loop obligations for price cap LECs is warranted.<sup>33</sup> When Congress established unbundling obligations in 1996, TDM constituted the dominant technology for the provision of voice telecommunications services, and incumbent LECs were the dominant providers of all local voice service.<sup>34</sup> The record reflects, however, that TDM voice service—particularly that provided over copper—is rapidly becoming obsolete.<sup>35</sup>

11. Consumers and businesses are rapidly transitioning away from legacy TDM switched access voice services to interconnected VoIP, mobile and fixed wireless, and an innumerable array of over-the-top voice applications.<sup>36</sup> Today, residential and business consumers communicate by voice via a

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to *Infrastructure Investment et al.*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) (*Wireless Infrastructure Order*) (adopting small cell siting reforms); *FCC Announces the Establishment of the Broadband Deployment Advisory Committee and Solicits Nominations for Membership*, Public Notice, 32 FCC Rcd 1037 (2017); *see also* Uniti Fiber Reply at 2; CALTEL Reply at 7.

<sup>31</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*, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6192, para. 60 (2015) (*2015 USTelecom Forbearance Order*).

<sup>32</sup> *See Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Notice of Proposed Rulemaking, FCC 19-51, at para. 80 (rel. June 7, 2019), <https://docs.fcc.gov/public/attachments/FCC-19-51A1.pdf>.

<sup>33</sup> 47 CFR § 51.319(a)(1). We clarify that the type of loop we forbear from today is *only* an analog voice-grade copper loops that can *only* provide TDM voice service, obviating any confusion caused by USTelecom's reference to only two types of loops in its Petition, i.e., "analog loops" and "digital loops." *See* Petition Appx. B, at 12, 15-16; USTelecom May 6, 2019 *Ex Parte* Letter at 3; *see also, e.g.*, Sonic May 28, 2019 Reply at 6-7; Letter from Tamar E. Finn and Patricia Cave, Morgan, Lewis & Bockius LLP, Counsel for U.S. TelePacific Corp. et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1-2, Attach. 2 (filed June 13, 2019) (TPx June 13, 2019 *Ex Parte* Letter). We do not address in this item the separate requirement under section 51.319(a)(1) of the Commission's rules to provide conditioned loops (used for broadband services) on an unbundled basis. *See* Letter from John T. Nakahata, Harris, Wiltshire and Grannis LLP, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 18-141, at 1 (filed July 18, 2019) (INCOMPAS July 18, 2019 *Ex Parte* Letter).

<sup>34</sup> *See, e.g., Technology Transitions et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9373, para. 1 (2015) (*2015 Technology Transitions Order*); *see also* Petition at 12.

<sup>35</sup> *See, e.g.*, Petition, Appx. B, at 7, Figure 1; Verizon Comments at 16 n.58; CenturyLink Reply at 7-8; USTelecom Reply at 5; AT&T Reply at 8; Letter from James P. Young, Sidley Austin LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed Dec. 28, 2018) (AT&T Dec. 28, 2018 *Ex Parte* Letter).

<sup>36</sup> For example, according to recent FCC Form 477 data, there were 54.7 million traditional "switched access" lines in service, 64.5 million interconnected VoIP subscriptions, and 336 million mobile subscriptions in the United States as of June 2017. Staff calculations based on FCC, Voice Telephone Services: Status as of June 30, 2017 (2018) (2018 Voice Telephone Services Report), at 2 Fig. 1 (Retail Voice Telephone Service Connections 2014-2017), at 8 Table 1 (Voice Subscriptions - Total for US). The 2018 Voice Telephone Services Report is available at <https://docs.fcc.gov/public/attachments/DOC-355165A1.pdf>, and historical data included in that Report is available

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plethora of alternative voice capabilities provided over networks built using a variety of technologies.<sup>37</sup> Commission data reflect that between December 2008 and June 2017, the TDM share of all wireline voice telephone connections, including both switched access lines (POTS) and interconnected VoIP, fell from 82% to 37%, while the number of interconnected VoIP connections increased by almost 300% over the same period.<sup>38</sup> Further, residential reliance on traditional switched access services fell by 71%, while residential interconnected VoIP subscriptions increased by 104%.<sup>39</sup> Similarly, over this same time period, business reliance on traditional switched access services fell by 49%, while business interconnected VoIP subscriptions increased by over 1,062%.<sup>40</sup> This is due to a number of factors, including a shift in both consumer and supplier choice to migrate to other types of communications networks such as fiber or wireless.<sup>41</sup>

12. Indeed, consumers and businesses are leaving the voice offerings of incumbent LECs generally. As of June 2017, incumbent LECs served a minority of both wired residential connections (48%) and wired business connections (43%).<sup>42</sup> These shares represent substantial declines from December 2008 when they were 74% and 70%, respectively.<sup>43</sup> Further, high rates of wireless adoption and declining wireline subscribership, generally, evidence a desire for communications services other than wireline service.<sup>44</sup> The total number of mobile telephone voice connections increased 28% between December 2008 and June 2017, while the proportion of households subscribing only to a mobile wireless service increased from approximately 20% to almost 53% over this same time.<sup>45</sup> As the Commission

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at [http://www.fcc.gov/sites/default/files/vts\\_june17\\_hist.zip](http://www.fcc.gov/sites/default/files/vts_june17_hist.zip). Since 2008, there has been an annual growth rate of 13.6 percent for interconnected VoIP subscriptions and 3 percent for mobile voice subscriptions, while retail switched access lines declined 10.5 percent. See Staff calculations based on FCC, Voice Telephone Services: Status as of June 30, 2017 (2018) (2018 Voice Telephone Services Report), at 2 Fig. 1 (Retail Voice Telephone Service Connections 2014-2017), at 8 Table 1 (Voice Subscriptions - Total for US). The underlying data that formed the basis for Granite's switched access line numbers was not included in the record; thus, we cannot verify their accuracy. See Granite et al. May 28, 2019 Reply at 13-16.

<sup>37</sup> See, e.g., USTelecom June 20, 2019 *Ex Parte* Letter at 2-3; Letter from Eduardo R. Guzman, Squire Patton Boggs (US) LLP, Counsel for Puerto Rico Tel. Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 4 (filed July 18, 2019) (Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter).

<sup>38</sup> Staff calculations based on 2018 Voice Telephone Services Report. This trend, as well as all other trends cited herein, which reference June 2017 data are confirmed by the Commission's preliminary data for December 2017.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., 2018 *Communications Marketplace Report et al.*, 33 FCC Rcd at 12668, para. 205, 12669, para. 206; 2018 Voice Telephone Services Report at 2 Fig. 1 (Retail Voice Telephone Service Connections 2014-2017), at 8 Table 1 (Voice Subscriptions - Total for US); Steven J. Blumberg & Julian V. Luke, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2018 (2019), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf>; FCC, Voice Telephone Services: Status as of June 30, 2017; see also Petition at 8; USTelecom Reply at 5.

<sup>45</sup> Staff calculations based on 2018 Voice Telephone Services Report, Table 1 (Percentage of households, adults and children by household telephone status and date of interview: United States, January 2015-2018); Steven J. Blumberg & Julian V. Luke, Wireless Substitution: Early Release of Estimates From the National Health Interview survey, July-December 2008, Table 1 (2009) (Percentage of households, adults and children by household telephone status and date of interview: United States, January 2005-2008). We have insufficient information to determine business' reliance on mobile voice services.

acknowledged late last year, “[a]lthough the public switched telephone network used to be the only means to connect, there now exists a multitude of other voice service options for consumers.”<sup>46</sup> It is thus no surprise that, in 2016, the Commission declared that incumbent LECs are no longer the dominant carriers in the switched-access voice market.<sup>47</sup>

13. And as consumers and the market have moved past legacy services to new forms of intermodal competition, as evidenced by the relative growth in IP-based voice and wireless services, competitors have largely moved on from relying on UNE Analog Loops to compete. Of the 454.9 million active voice subscriptions in the United States as of June 2017, only 55.8 million were provided by incumbent LECs. Of the remaining 399.1 million subscriptions offered in competition with these traditional networks, 335.7 million of them relied on wireless networks, 43.5 million relied on facilities-based VoIP, 7.6 million relied on over-the-top VoIP, 4.2 million relied on their own built-out facilities (such as competitive fiber), 5.3 million relied on resale arrangements with other wireline carriers,<sup>48</sup> and only 1.8 million relied on unbundled network loops, including UNE Analog Loops.<sup>49</sup> What is more, reliance on UNE Analog loops (and other unbundled network loops) has not just declined in relative terms, but absolutely. Over just one year, from June 2016 to June 2017, voice subscriptions relying on unbundled loops dropped from 2.6 million to 1.8 million, a more than 30% drop.<sup>50</sup> Indeed, competitive LECs that use UNE Analog Loops admit that they—and their customers—have alternative options at lower cost.<sup>51</sup>

14. In contrast to the substantially diminished benefit of the UNE Analog Loop mandate in today’s communications marketplace, the costs of the mandate are high and rising. For one, the continued maintenance of the UNE Analog Loop mandate requires incumbent LECs to maintain outdated TDM equipment even when they no longer desire to offer those services to their customers.<sup>52</sup> This requirement to maintain both TDM-based and IP-based technological “networks” over copper facilities deters incumbent LECs from investing in next-generation network infrastructure and casts a regulatory cloud over long-term network planning regarding the transition to IP-based fiber networks that rely on VoIP.

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<sup>46</sup> 2018 *Communications Marketplace Report*, 33 FCC Rcd at 12668, para. 203.

<sup>47</sup> *Technology Transitions et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8291-97, paras. 21-39 (2016) (*2016 Technology Transitions Order*) (declaring “incumbent LECs as non-dominant in their provision of interstate switched access service”).

<sup>48</sup> When the Commission’s 2018 Voice Telephone Services Report data refers to “resale,” it refers to services resold by a variety of means, not only Avoided-Cost Resale. See FCC, FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions, at 21-22 (2016).

<sup>49</sup> Staff calculations based on 2018 Voice Telephone Services Report.

<sup>50</sup> *Id.*

<sup>51</sup> Letter from Thomas Jones et al., Willkie Farr & Gallagher LLP, Counsel for Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 (filed June 26, 2019) (Granite et al. June 26, 2019 *Ex Parte* Letter).

<sup>52</sup> Incumbent LECs can relieve themselves of unbundling requirements by retiring copper. See generally 47 U.S.C. § 251(c)(5); 47 CFR §§ 51.319, 51.333. Indeed, competitive LECs have acknowledged that incumbent LECs are retiring and will continue to retire copper, and thus, that they will have to deploy their own facilities as expeditiously as possible. See, e.g., Report of David E.M. Sappington at 16, Attach. 1 to INCOMPAS et al. Opposition (Sappington Report); Declaration of William Zarakas at para. 18, Attach. 2 to INCOMPAS et al. Opposition. However, our rules do not permit relief from unbundling obligations with respect to copper loops when incumbent LECs continue to maintain their copper facilities and upgrade their networks to transition their customers entirely to IP-based services such as VoIP.

15. For another, the continuance of the UNE Analog Loop mandate distorts competition in the voice market by imposing unnecessary costs on one class of competitors (price cap LECs) and those competitors alone. There is a “substantial expense associated with offering and providing these regulated products,”<sup>53</sup> one that “unfairly give[s] an advantage” over incumbent LECs to other market participants that “operate incumbent networks used to provide . . . voice services, yet are subject to no similar regulation requiring that they provide subsidized access to their networks.”<sup>54</sup> We agree with commenters that “[t]his distortion further imposes costs on the industry” in the fiercely competitive market for voice services<sup>55</sup> and that by “removing the requirement that carriers . . . subsidize artificial competition, the Commission can better enable them to compete on a level-playing field.”<sup>56</sup>

16. But perhaps the greater cost comes from the disincentive that continued unbundling mandates create for competitors to invest in their own facilities-based networks and transition their customers to next-generation services. By requiring incumbent LECs to offer UNE Analog Loops at below-market rates, the “[u]nbundling requirements induce competitive carriers to deter facilities-based investments by increasing the profitability of offering services through UNEs at subsidized, below-market rates, relative to the capital investment necessary to provide facilities-based, next-generation services.”<sup>57</sup> Indeed, there is little doubt that “[t]he subsidies provided by the unbundling mandates artificially distort the relative price between leasing UNEs in providing legacy services, and leasing other wholesale services at market rates. Thus, despite the cost and performance advantage of next-generation services, the subsidy distorts the incentive of competitive carriers in continuing to offer legacy services based on UNEs.”<sup>58</sup> This is especially problematic because a “primary purpose of the Act [is] the promotion of facilities-based competition.”<sup>59</sup>

17. That is why the courts, the Commission, and economists have long noted the impropriety of maintaining unbundling mandates in competitive markets. For example, the D.C. Circuit has found that “[w]here competitors have access to necessary inputs at rates that allow competition not only to survive but to flourish, it is hard to see any need for the Commission to impose the costs of mandatory unbundling.”<sup>60</sup> And the D.C. Circuit has noted it would be “antithetical” to the 1996 Act’s goals to “mandate unbundling in a market that already has intense facilities-based competition.”<sup>61</sup> The Commission in turn has rejected unbundling “in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling.”<sup>62</sup> And as some economists have found, in a competitive market, mandatory unbundling leads to market distortions,

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<sup>53</sup> CenturyLink Reply at 27.

<sup>54</sup> Verizon Reply at 14-15.

<sup>55</sup> *Id.* at 15.

<sup>56</sup> Frontier May 27, 2019 Reply at 9.

<sup>57</sup> Verizon Comments at 22-23 (quoting Exh. A, Andres V. Lerner, An Economic Analysis of the Impact of Forbearance from 251(c)(3) on Competition and Investments (filed Aug. 6, 2018) (Verizon Comments Exh. A)); AT&T Dec. 28, 2018 *Ex Parte* Letter at 12 (“[R]egulated access to UNE loops, to the extent that such access is mandated at below-market prices, unambiguously creates disincentives to build fiber networks, because such regulated access encourages CLECs to remain on UNE-based services.”).

<sup>58</sup> Verizon Comments at 22-23 (quoting Exh. A).

<sup>59</sup> *Triennial Review Remand Order*, 20 FCC Rcd at 2563, para. 52; *see also id.* at 2535, para. 2 (citing policy of “encourag[ing] the innovation and investment that come from facilities-based competition”).

<sup>60</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004).

<sup>61</sup> *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002).

<sup>62</sup> *Triennial Review Remand Order*, 20 FCC Rcd at 2552, para. 34 (internal citation omitted).

including “reduc[ing] incumbent carriers’ and facilities-based entrants’ incentives to invest in new services,” that outweigh any potential benefits.<sup>63</sup>

18. In light of marketplace changes, UNE Analog Loops can no longer be justified as relevant or necessary local market-opening inputs essential for ensuring that end users have access to competitive voice services. Mandating continued unbundling of this network element—which is capable only of provisioning legacy, TDM voice service—is unnecessary and counterproductive in light of technology transitions, the competitive landscape for voice communications services and capabilities, including especially interconnected VoIP, and other existing regulatory protections.

19. We expect that competitive LECs currently reliant on UNE Analog Loops will be able to lease unregulated alternatives to those inputs. For example, USTelecom’s members either currently offer,<sup>64</sup> or have made commitments to make available commercial analog loops to competitive LECs.<sup>65</sup> These commercial offerings will enable competitive LECs to continue the provision of TDM voice service while consumers and businesses continuing to use such services embrace the transition to IP-based alternatives and eventually make that transition. We are persuaded that price cap LECs have an incentive to develop reasonable commercial wholesale arrangements with these competitive LECs in response to facilities-based competition from cable provider VoIP services and wireless alternatives.<sup>66</sup> Such wholesale arrangements enable price cap LECs to continue earning revenues from their networks rather than lose any revenue opportunity altogether if the competitive LEC’s customer migrates to a different intermodal provider.<sup>67</sup> This expectation is borne out by our past observations regarding incumbent LECs’ response to intermodal competition in the voice marketplace.<sup>68</sup> It is further supported by the limited competitive role played by UNE Analog Loops today, coupled with the lack of evidence that any detrimental effects occurred from prior forbearance grants from requirements that competitors

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<sup>63</sup> See USTelecom Reply at 1 n.2 (quoting Robert W. Crandall & Hal J. Singer, *An Accurate Scorecard of the Telecommunications Act of 1996: Rejoinder to the Phoenix Center Study No. 7*, CRITERION ECONOMICS, LLC, 13 (Jan. 5, 2003)).

<sup>64</sup> See, e.g., USTelecom Reply, Exh. A, *Assessing the Impact of Forbearance from 251(c)(3) on Consumers, Capital Investment, and Jobs – Reply to Comments*, at n.32 (USTelecom Reply, Exh. A); Frontier May 28, 2019 Reply at 8.

<sup>65</sup> See, e.g., Letter from Patrick R. Halley, Sr. V.P., Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (filed May 10, 2019) (USTelecom May 10, 2019 *Ex Parte* Letter); Letter from James P. Young, Sidley Austin LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed Feb. 21, 2019) (AT&T Feb. 21, 2019 *Ex Parte* Letter); Frontier May 28, 2019 Reply at 8; CenturyLink May 28, 2019 Reply at 2-3.

<sup>66</sup> See USTelecom June 20, 2019 *Ex Parte* Letter at 2; Petition at 29; see also *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6192, para. 60.

<sup>67</sup> See USTelecom June 20, 2019 *Ex Parte* Letter at 2; Letter from AJ Burton, V.P., Federal Regulatory, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed June 28, 2019) (Frontier June 28, 2019 *Ex Parte* Letter); Letter from Frederick Moacdieh, Executive Director, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 n.4 (filed June 26, 2019) (Verizon June 26, 2019 *Ex Parte* Letter).

<sup>68</sup> See, e.g., USTelecom Reply, Exh. A at n.32 (“CenturyLink offers a DS0 alternative in the Omaha wire center, where all of its unbundling obligations have been eliminated. Verizon offers Special Access 64k voice grade service as a substitute for DS0 analog . . . .”); Frontier May 28, 2019 Reply at 8 (stating that Frontier “already offers a voice grade DS0 special access service throughout its footprint, which is a substitute for analog DS0s and represents a DS0 freely available at a commercial rate”); see also *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3584-85, para. 292 (2017) (*BDS Order*), (with regard to declining to continue requiring the Interim Wholesale Platform, finding that “neither Granite nor others have shown that prices or availability of TDM-based UNE-P replacement services have changed as a result of the forbearance”).

alleged provided important negotiating leverage for commercial wholesale agreements.<sup>69</sup> We fully expect USTelecom's members and other price cap LECs to have incentives to make such offerings available to the extent they continue to operate copper networks, consistent with their demonstrated willingness on multiple prior occasions to offer commercial substitutes for services that they are no longer obligated to provide.<sup>70</sup>

20. In addition to alternative wholesale inputs that competitive LECs can use to continue to offer TDM voice services in the absence of UNE Analog Loop availability,<sup>71</sup> the widespread availability of VoIP and wireless voice services will also discipline voice service availability and rates for consumers. Finally, certain regulatory protections remain to guard against unjust and unreasonable rates for price cap LEC voice telecommunications services. These include section 251(b)(1) resale availability;<sup>72</sup> the prohibitions against unjust and unreasonable charges and unjustly or unreasonably discriminatory practices in sections 201 and 202 of the Act and the complaint process under section 208 of the Act;<sup>73</sup> section 214 legacy voice service discontinuance oversight;<sup>74</sup> and Eligible Telecommunications Carrier requirements to offer voice telephony at rates reasonably comparable to national average urban rates.<sup>75</sup>

21. We note that granting forbearance here is just one of several actions the Commission has taken to enable all service providers and consumers to embrace the benefits afforded by more modern IP networks. These actions have eliminated or reduced artificial regulatory barriers hindering the transition to next-generation networks and services.<sup>76</sup> In late 2012, the Commission formally acknowledged the technology transitions that were underway.<sup>77</sup> This began a series of Commission efforts to accelerate the

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<sup>69</sup> AT&T Reply at 13, 26 (discussing negotiation of commercial wholesale agreements following the elimination of the UNE platform under section 251(c)).

<sup>70</sup> See USTelecom May 10, 2019 *Ex Parte* Letter at 2-3; Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter at 5. For this reason, we conclude that it is not necessary to create an enforcement mechanism for USTelecom members' commitment to make available commercial analog loops, as suggested by TPx. See TPx May 28, 2019 Reply at 1-4.

<sup>71</sup> See, e.g., Verizon June 26, 2019 *Ex Parte* Letter at 2, 4.

<sup>72</sup> 47 U.S.C. § 251(b)(1).

<sup>73</sup> 47 U.S.C. §§ 201, 202, 208.

<sup>74</sup> See generally *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 5660, 5672-80, paras. 29-43 (2018) (*Wireline Infrastructure Second Report and Order*) (discussing the analytical approach to discontinuance approval for legacy TDM-based services that customers still are purchasing); see also 47 CFR § 63.60 *et seq.*

<sup>75</sup> See, e.g., 47 CFR § 54.309(a) (describing this requirement for Connect America Fund Phase II); *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 19-8, para. 25 (rel. Feb. 15, 2019) (recipients of 'phase-down' high-cost universal service support must "certify annually that they have and will use the support they continue to receive in the relevant high-cost and extremely high-cost areas to provide voice telephony service throughout the relevant census blocks at rates that are reasonably comparable to comparable offerings in urban areas"); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17694, para. 84 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (discussing the reasonable comparability benchmark). The reasonable comparability benchmark for voice services applies to mainland providers and those in Alaska.

<sup>76</sup> See, e.g., *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5660-61, paras. 1-2; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11129-30, paras. 1-3 (2017) (*Wireline Infrastructure First Report and Order*); *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6158-59, para. 2.

<sup>77</sup> See *Ex Parte Meetings with the Technology Transition Policy Task Force*, Public Notice, 28 FCC Rcd 105 (2013); *Pleading Cycle Established on AT&T and NTCA Petitions*, Public Notice, 27 FCC Rcd 15766 (2012); see also

(continued...)

transition of consumers from TDM voice service over legacy copper networks to next-generation networks.<sup>78</sup> More recently, the Commission streamlined the process for incumbent LECs to retire their legacy copper networks and replace them with fiber or other advanced technologies.<sup>79</sup> And last year, the Commission adopted a streamlined process for carriers seeking to discontinue legacy TDM voice service provided such carriers offer a facilities-based interconnected VoIP service replacement and at least one other voice service is available in the service area.<sup>80</sup> In doing so, the Commission explained that facilities-based interconnected VoIP service embodies the same managed service quality and underlying network infrastructure, disabilities access, and 911 access requirements found in legacy TDM voice service.<sup>81</sup>

22. Beginning in 2011, with respect to its universal service obligations under the Act, the Commission began the process of shifting its high-cost universal service program<sup>82</sup> from legacy copper networks and TDM voice services to next-generation broadband networks and IP-based voice services for price cap LECs.<sup>83</sup> More recently, the Commission has taken similar steps with regard to non-price cap LECs, which serve predominantly rural areas.<sup>84</sup> In embracing the evolution of technological change in communications networks and services, recipients of the Commission's transformed universal service Connect America Fund (CAF) must make both voice and broadband service available over their CAF-funded networks. Significantly, however, there is no longer any requirement that such voice service be provided via legacy TDM technology.<sup>85</sup>

23. *Transition Period.* We condition our grant of forbearance from UNE Analog Loop obligations for price cap LECs on a two-part transition. First, we permit competitive LECs to order new

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*Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, Public Notice, 28 FCC Rcd 6346 (2013).

<sup>78</sup> See, e.g., *Technology Transitions et al.*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433 (2014); *2015 Technology Transitions Order*, 30 FCC Rcd at 9373, para. 1; *2016 Technology Transitions Order*, 31 FCC Rcd at 8285-86, paras. 4-7; *Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd 8677 (2015) (*2015 Backup Power Order*).

<sup>79</sup> See *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11129-30, paras. 1-3; 47 CFR § 51.333.

<sup>80</sup> See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5672-79, paras. 29-40; 47 CFR § 63.71(f)(2)(ii).

<sup>81</sup> See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675, para. 34; see also *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6861, para. 47, 6877, n.274 (2015) (noting that interconnected VoIP service is becoming a replacement for traditional telecommunications services); Letter from Craig J. Brown, Asst. Gen. Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 4-6 (filed July 1, 2019) (CenturyLink July 1, 2019 *Ex Parte* Letter).

<sup>82</sup> 47 U.S.C. § 254.

<sup>83</sup> See generally *USF/ICC Transformation Order*, 26 FCC Rcd at 17712-38, paras. 127-93.

<sup>84</sup> See *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3090-91, para. 4 (2016). The Commission continues to take further actions to expand opportunities to elect A-CAM funding. See, e.g., *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, 32 FCC Rcd 842 (WCB 2017); *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403 (2018) (*A-CAM Rate-of-Return BDS Order*).

<sup>85</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17692-93, paras. 77-78.

UNE Analog Loops for an additional six months after the effective date of this order.<sup>86</sup> This timeframe will enable competitive LECs to continue to execute short-term business plans and honor contractual obligations with new or existing customers, including small businesses, while they determine which alternative voice service option will best serve their customers' needs.<sup>87</sup> Second, we adopt a three-year grandfathering period for all competitive LEC customers. The three-year transition timeframe within which all UNE Analog Loops (including any new UNE Analog Loops ordered during the first six months) must be transitioned to alternative arrangements will commence on the effective date of this order. This three-year period is consistent with transition timeframes the Commission has previously adopted in light of changes in the regulatory environment, and should provide more than enough time for competitive LECs and their customers to transition to alternative TDM or new IP-based voice service arrangements.<sup>88</sup> We find this period sufficient for competitive LECs to replace their embedded base of legacy TDM customer premises equipment or other increasingly obsolete TDM-based peripheral devices with new IP-capable equipment.<sup>89</sup> Competitive LECs will also need time to make similar logistical arrangements to change out equipment in their collocation spaces to convert from using UNE Analog Loops to alternative arrangements, independent of the type of voice service they decide to offer end users over such loops at the end of the transition.<sup>90</sup> This three-year timeframe also will enable competitive LECs using UNE Analog Loops as part of Enhanced Extended Links (EELs) to transition the loop portion of the EEL in the same timeframe as the unbundled DS1 transport portion from wire centers subject to forbearance.<sup>91</sup>

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<sup>86</sup> See TPx Opposition at 27; TEXALTEL Reply at 9-10. *But see* Letter from Jonathan Banks, Sr. V.P., Law & Policy, USTelecom et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (filed June 21, 2018) (USTelecom June 21, 2018 *Ex Parte* Letter) (proposing that no new orders be permitted after the effective date of any forbearance grant).

<sup>87</sup> See *UNE Transport Forbearance Order*, FCC 19-66, at para. 61; *BDS Order*, 32 FCC Rcd at 3533, para.167.

<sup>88</sup> See *id.* Competitive LECs that have provided record information about the length of their customer contracts have typically referenced contract lengths of a minimum of three years with business or government customers. See, e.g., Letter from Thomas A. Jones, Willkie Farr & Gallagher, Counsel for Granite Telecommunications et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 4 (filed June 14, 2019) (Granite et al. June 14, 2019 *Ex Parte* Letter); Letter from Thomas A. Jones, Willkie Farr & Gallagher, Counsel for Granite Telecommunications et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed July 18, 2019); Letter from Patricia Cave, Morgan, Lewis & Bockius LLP, Counsel for U.S. TelePacific Corp. et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed June 27, 2019) (TPx June 27, 2019 *Ex Parte* Letter); Letter from H. Edward Wynn, Exec. Chairman, and Christopher Surdenick, CEO, Call One Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (filed July 10, 2019) (Call One July 10, 2019 *Ex Parte* Letter) (both customer and supplier contracts). To the extent competitive LECs have entered into longer-term contracts with their customers without securing long-term contracts with their suppliers, they have done so at their own risk like any other business does, and we see no reasonable basis for accommodating that risk.

<sup>89</sup> TPx June 13, 2019 *Ex Parte* Letter at 2.

<sup>90</sup> *Id.* The transition timeframe will enable competitive LECs to change out equipment on a rolling basis in a manner that avoids across-the-board new equipment costs that would more likely result in the need to pass on more of these costs to their customers. Indeed, given this timeframe, customers might well choose to upgrade to an IP-based voice service, an upgrade they likely would in any case need to make at some point in the future when the underlying copper network is retired. This three-year transition period, including the six-month period in which UNE Analog Loops can continue to be ordered, adequately addresses arguments that USTelecom's proposed transition period would disrupt service to consumers because it is too short and does not allow for any new UNE orders. See *UNE Transport Forbearance Order*, FCC 19-66, at para. 71.

<sup>91</sup> See INCOMPAS July 18, 2019 *Ex Parte* Letter at 1; see also *UNE Transport Forbearance Order*, FCC 19-66, at para. 61.

24. During the relevant transition period for any competitive LEC customer, any UNE Analog Loops that a competitive LEC leases as of the effective date of this order shall be available for lease from the incumbent LEC at regulated UNE rates.<sup>92</sup> Of course, the transition mechanism we adopt is simply a default process, and competitive LECs and price cap LECs remain free to negotiate different arrangements superseding this transition period and replacing UNE Analog Loop arrangements with negotiated commercial arrangements at any earlier time. Further, competitive LECs will be able to obtain maintenance and replacement loops at regulated UNE rates during the entirety of the transition period. We find this will ensure an orderly transition for end-user customers of affected competitive LECs by mitigating any immediate rate shock that could otherwise be suffered by these end users if current rates for these UNE Analog Loops were immediately eliminated,<sup>93</sup> including if the competitive LEC requires a replacement loop to avoid degradation or loss of service to its customer.<sup>94</sup> The transition timeframes we adopt will work to ensure that consumers do not experience any undue service disruption as a result.

25. *Section 10(a)(1)*. We conclude that price cap LEC UNE Analog Loop obligations are unnecessary to ensure that the charges for voice services are just and reasonable.<sup>95</sup> We find that the existence of alternative voice service options in the marketplace will put pressure on price cap LEC rates—not only in areas where competition is most robust, but also in any areas where competition might be less robust. This is because we see no basis to conclude that price cap LECs could price discriminate based on the relative magnitude of competition present in narrow geographic areas.<sup>96</sup> General market trends away from incumbent LEC wireline voice offerings, particularly TDM offerings, indicate that a number of services, provided by a variety of means,<sup>97</sup> put pressure on incumbent LEC offerings.<sup>98</sup> And even if price cap LECs' voice service rates do differ somewhat from rates that particular end-user

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<sup>92</sup> Such rates are established either through negotiated interconnection agreements or through state-commission-arbitrated rates applying certain Commission-developed pricing formulas. See 47 U.S.C. §§ 251, 252; 47 CFR § 51.501 *et seq.* Our forbearance action is not intended to upset pre-existing interconnection agreements or other contractual arrangements that may currently exist nor pre-existing state-commission-arbitrated rates during the transition period (including any already-adopted state commission scheduled changes in UNE rates), which should quell concerns of those fearing near-term price increases for UNE Analog Loops resulting from this Order. See *Triennial Review Remand Order*, 20 FCC Rcd at 2613-14, para. 145; see also TEXALTEL Reply at 9-10; TPx Opposition at 27; USTelecom June 21, 2018 *Ex Parte* Letter at 1; Letter from John T. Nakahata, Harris, Wiltshire and Grannis LLP, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed June 28, 2019).

<sup>93</sup> See *Triennial Review Remand Order*, 20 FCC Rcd at 2613-14, para. 145; see also TEXALTEL Reply at 9-10.

<sup>94</sup> See TPx June 27, 2019 *Ex Parte* Letter at 2.

<sup>95</sup> See, e.g., 47 U.S.C. § 160(a)(1). Section 10(a) requires that we find that rates are not only just and reasonable, but also not unjustly or unreasonably discriminatory. To the extent our findings here protect against rates, charges, practices, and classifications that are not just and reasonable, it logically follows that it also protects against charges, practices, and classifications that are unjust and unreasonable. Thus, to whatever extent the enforcement of the obligation to provide UNE Analog Loops is not necessary to ensure just and reasonable rates, it necessarily follows that it prevents the opposite from occurring, that is, unjust and unreasonable rates. Further, no party has advanced a theory under which incumbent LECs could engage in unreasonable practices and classifications regarding UNE Analog Loops without also being able to charge unjust and unreasonable rates. See *USTelecom 271/272 Forbearance Order*, FCC 19-31, at 16 n.110.

<sup>96</sup> Our observation about this current lack of evidence of a practical ability to price in such a manner is not intended to prejudge any federal or state cause of action relating to unjust and unreasonable discrimination. See, e.g., 47 U.S.C. § 202(a).

<sup>97</sup> See *2018 Communications Marketplace Report*, 33 FCC Rcd at 1268-69, paras. 203-07.

<sup>98</sup> See *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 387-88, para. 130 (2017) (appeal pending) (*Restoring Internet Freedom Order*); USTelecom Reply at 7; AT&T Reply at 5; CenturyLink July 1, 2019 *Ex Parte* Letter at 6; see also Verizon Comments, Exh. A at para. 45.



customers have been paying for TDM voice services, that does not demonstrate that such rates are unjust or unreasonable—particularly in the face of the competitive alternatives and regulatory protections that will exist post-forgiveness.

26. Even to the extent that alternative arrangements for competitive LECs result in them paying somewhat higher prices than they are paying today for the inputs they use to provide voice service, this does not persuade us that it would result in unjust or unreasonable charges. What is necessary to ensure just and reasonable rates can account for a range of policy concerns, including balancing competing policy considerations.<sup>99</sup> Although some commenters focus on the rates for wholesale service inputs,<sup>100</sup> our concern is not for the fate of particular competitors but of competition and, more fundamentally, end users.<sup>101</sup> In light of the available alternative voice service options, we are not persuaded that forgiveness will result in unjust or unreasonable voice service rates. We decline to maintain inefficient network use merely because removing a legacy unbundling obligation that no longer serves the purpose for which it was adopted would harm the profits of a competitive LEC operating an outmoded business model.<sup>102</sup> Thus, to the extent that some competitive LECs may experience a decrease in their profit margins because they may be unable to pass on any cost increases to their customers, that in

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<sup>99</sup> *EarthLink v. FCC*, 462 F.3d 1, 8-9 (D.C. Cir. 2006) (accepting policy trade-offs regarding competition in the forgiveness analysis) (*Earthlink*); see also, e.g., *Cellco Partnership v. FCC*, 357 F.3d 88 (D.C. Cir. 2004) (in a decision addressing section 11 of the Act, recognizing that the term “necessary” is ambiguous); *CTIA*, 330 F.3d at 512-13 (deferring to the Commission’s reasonable interpretation of the term “necessary” in section 10(a)(2) under *Chevron* step two); *Capital Network System, Inc., v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994) (with respect to section 201(b), holding that “[b]ecause ‘just,’ ‘unjust,’ ‘reasonable,’ and ‘unreasonable’ are ambiguous statutory terms, this court owes substantial deference to the interpretation the Commission accords them”).

<sup>100</sup> See, e.g., TPx Opposition at 27; Blackfoot Communications Comments at 14; Letter from Michael S. Durkin, Pres., Raw Bandwidth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 6 (filed June 28, 2019). Even if some portion of any cost increases are passed on to end-user customers, however, we still are not persuaded that is problematic in this particular context.

<sup>101</sup> See, e.g., *Stratos Global Corp.*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 21328, 21355, para. 62 (2007) (evaluating concerns about marketplace conduct “from the point of view of possible effects on industry competition and consumer welfare and *not* simply the possible effects on individual *competitors*” (emphasis in original)); *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995) (explaining that “[t]he Commission is not at liberty, however, to subordinate the public interest to the interest of ‘equalizing competition among competitors’”); see also, e.g., USTelecom Reply at 27-28; USTelecom May 28, 2019 Reply at 7-8; AT&T Reply at 23; AT&T Dec. 28, 2018 *Ex Parte* Letter at 13. In other contexts, the Commission has accounted for potential trade-offs of countervailing benefits to end-user consumers, finding the net effects on end-user customers sufficient to satisfy section 10(a)(2), notwithstanding potential detrimental effects on particular competitors. See *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7902, para. 254 (2015) (noting that requiring incumbent LECs to offer Lifeline-discounted services at wholesale rates under section 251(c)(4) is not necessary because “the consumers will be better protected because all providers of Lifeline will be required to comply with state and Federal Lifeline rules and be subject to direct USAC oversight”).

<sup>102</sup> See, e.g., *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12817, para. 116 (2015) (citing generally *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) (subsequent history omitted) (finding that the public interest benefits of creating appropriate economic incentives for carriers to reduce their costs by becoming more efficient justified the departure from strict rate-of-return regulation)); see also USTelecom May 28, 2019 Reply at 7; Letter from Christopher T. Shenk, Sidley Austin LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 (filed June 26, 2019) (AT&T June 26, 2019 *Ex Parte* Letter).

itself does not persuade us that rates are unjust or unreasonable.<sup>103</sup> In practice, UNE Analog Loops are used to offer TDM voice service at rates that are set at currently low levels by regulation. To the extent that eliminating UNE Analog Loop requirements reduces or eliminates artificial discounts that these end-user customers have received for TDM services, that will have the salutary effect of eliminating artificial and unreasonable incentives to delay making the inevitable transition to new technologies.<sup>104</sup>

27. *Section 10(a)(2)*. We also find that it is unnecessary to maintain price cap LEC UNE Analog Loop requirements for the protection of consumers under section 10(a)(2) of the Act.<sup>105</sup> For the reasons discussed above, we find that forbearance will not result in unjust or unreasonable rates for consumers, nor will consumers risk losing service given the multiple voice service options, including VoIP and mobile wireless, in the marketplace and given that competitive LECs will continue to have other means by which to offer consumers voice service.

28. Moreover, regulations that subsidize end-user customers to remain on legacy services and technologies run counter to the Commission's goal of facilitating technology transitions to the long-term benefit of all consumers. As end users transition from TDM to new technologies and services as a result of the forbearance we grant today, they will experience the benefits the Commission has recognized as flowing from that transition. These include not only the benefits from the technologies themselves<sup>106</sup> but also from the vibrant competition associated with next-generation voice services.<sup>107</sup>

29. *Section 10(a)(3)*. Further, we find that forbearing from UNE Analog Loop obligations for price cap LECs is in the public interest under section 10(a)(3) of the Act.<sup>108</sup> By reducing reliance on outdated technology only capable of carrying stand-alone legacy TDM-based voice service, our forbearance encourages competition based on next-generation networks and broadband services. While some customers remain cautious about moving away from legacy TDM service, we find it inappropriate to maintain unnecessary regulations that slow the TDM-to-IP transition because of such reticence. We must ensure that our rules reflect rather than tamp down competitive market pressures driving the replacement of old technologies. Here, we do so by removing a requirement that price cap LECs provide an outmoded network element to competitors at regulated prices. This requirement was adopted more than two decades ago for a dramatically different purpose—to open monopoly local telephone markets to competitors. This market is undeniably open today.

30. In sum, we find forbearance from UNE Analog Loop obligations creates a level playing field in the voice market, encourages the transition to next-generation networks, eliminates costly mandates that deter investment by incumbent LECs and competitive LECs alike, maintains just and

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<sup>103</sup> See, e.g., Petition at 12 & Attach. at 15-16, 20, 30; AT&T May 28, 2019 *Ex Parte* Letter at 5-6; Letter from Christopher T. Shenk, Sidley Austin LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 5-6 (filed June 12, 2019); see also TPx May 28, 2019 Reply at 3. The Commission previously found, however, that for competitors focusing on multi-location businesses, “it is plausible that they could absorb a loss to serve some customer locations yet still find serving that customer worthwhile.” *BDS Order*, 32 FCC Rcd at 3583, para. 290.

<sup>104</sup> See, e.g., Verizon Comments, Exh. A at paras. 47-48, 52; CenturyLink Reply at 22.

<sup>105</sup> See 47 U.S.C. § 160(a)(2).

<sup>106</sup> See, e.g., *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11129, paras. 1-2 (noting the “new and better” and “innovative” service offerings available over next-generation networks); CenturyLink July 1, 2019 *Ex Parte* Letter at 2.

<sup>107</sup> See, e.g., *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11129-30, para. 3 (noting that by eliminating regulatory barriers to investment in next-generation network deployment, competition will increase and bring with it “such benefits as lower prices to consumers”).

<sup>108</sup> 47 U.S.C. § 160(a)(3).

reasonable rates for telephone services, protects consumers, and reduces market-distorting regulations that all Americans pay for through more costly and less efficient networks.

31. We disagree with commenters who argue that we should not grant UNE Analog Loop forbearance because of the desire of certain subscribers to continue to receive legacy TDM-based services,<sup>109</sup> particularly over copper.<sup>110</sup> The record confirms that TDM voice service from incumbent LECs and competitive LECs (through commercial wholesale agreements and section 251(b)(1) resale) will remain for customers desiring such service so long as copper networks or TDM services exist at those customer locations.<sup>111</sup> Moreover, we are not persuaded that existing TDM end users are legitimately unable to migrate to next-generation voice technology.<sup>112</sup> Insofar as particular end users steadfastly remain reliant on TDM as a matter of preference, we likewise are not persuaded that the Commission must “protect” every preference some customers might have, especially in the face of alternative options for obtaining voice services. Independently, the record neither provides a basis to affirmatively identify all such end-user customers or administratively structure forbearance to exclude all such end users.

32. Nor are we persuaded by arguments that we should not grant forbearance because of end users’ desire to take advantage of the distinctive line power feature of TDM voice service. These concerns are of substantially diminished significance because the lack of line power for VoIP services<sup>113</sup> can and must be “remedied by use of a back-up power unit, a matter the Commission has previously addressed.”<sup>114</sup> Further, competitive LECs ignore the fact that while IP-based services do not have their own line power, neither do TDM services provided over fiber. Indeed, where the incumbent LEC has retired its copper network, and provides TDM voice over fiber, there is no line power capability.<sup>115</sup>

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<sup>109</sup> See, e.g., Granite Opposition at 16-17; MetTel Opposition at 4-5; TPx Opposition at 3; CALTEL Comments at 13; Letter from Thomas Jones and Mia Guizzetti Hayes, Willkie Farr & Gallagher LLP, Counsel for Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (dated Apr. 24, 2019) (Granite Apr. 24, 2019 *Ex Parte* Letter); see also Public Knowledge et al. Opposition at 20.

<sup>110</sup> See, e.g., Granite Opposition at 16-17; MetTel Opposition at 4-5; Declaration of John Hoehne at 8-9, Attach. 3 to INCOMPAS Opposition; TPx Opposition at 4; Granite et al. May 28, 2019 Reply at 2; INCOMPAS May 28, 2019 Reply at 32.

<sup>111</sup> See Frontier June 28, 2019 *Ex Parte* Letter at 2; AT&T June 26, 2019 *Ex Parte* Letter at 1; USTelecom June 20, 2019 *Ex Parte* Letter at 3.

<sup>112</sup> See, e.g., CenturyLink Reply at 12, 17-18; AT&T June 26, 2019 *Ex Parte* Letter at 2-3; Verizon June 26, 2019 *Ex Parte* Letter at 4-5; Letter from Tony Thomas, President and Chief Executive Officer, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed May 23, 2019); AT&T Dec. 28, 2018 *Ex Parte* Letter at 2-3, 7-8; Letter from Nicholas G. Alexander, Assoc. Gen. Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed Aug. 1, 2018).

<sup>113</sup> See, e.g., CALTEL Comments at 13; Declaration of Larry G. Antonellis, Attach. A. to Granite Opposition, at 4, para. 9, 5-6, para. 12, 7-8, paras. 15-17; INCOMPAS et al. Opposition at 33; Liberty Cablevision Comments at 15; Declaration of Sean J. Sullivan at para. 19, Attach. to MetTel Opposition; INCOMPAS et al. Reply at 5-6.

<sup>114</sup> *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11147, para. 46; see also generally *2015 Backup Power Order*. And while the *2015 Backup Power Order* governs obligations specific to residential customers that are more likely to rely on back-up battery capability in the event of a power outage, see Letter from Thomas Jones et al., Willkie Farr & Gallagher LLP, Counsel for Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 n.4 (filed July 15, 2019) (Granite et al. July 15, 2019 *Ex Parte* Letter), business and government customers meet the need for backup power by maintaining generators or uninterrupted power supplies to ensure ongoing business operations for all equipment needing uninterrupted power supply during power outages. See, e.g., CenturyLink July 1, 2019 *Ex Parte* Letter at 5; AT&T Dec. 28, 2018 *Ex Parte* Letter at 7.

<sup>115</sup> See, e.g., *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11148, para. 46.

33. We further disagree that we should not grant forbearance because particular customers—such as government users—rely on TDM-based services.<sup>116</sup> The Commission’s copper retirement and legacy TDM-service discontinuance regime reflects the expectation that carriers will work with their government and enterprise customers “to ensure that they are given sufficient time to accommodate the transition to [next-generation services] such that key functionalities are not lost during this period of change.”<sup>117</sup> And the Commission has taken steps to permit earlier discussions between incumbent LECs and potentially affected entities to occur at the earliest possible date by eliminating the prohibition on incumbent LEC discussions with other parties about potential network changes, including copper retirements, that will affect customer service.<sup>118</sup> Outside narrow circumstances where the Commission already has acted to adopt protections related to public safety or other issues in connection with the currently ongoing technology transitions where it has deemed such protections justified,<sup>119</sup> the Commission otherwise has recognized that marketplace demand is likely to lead providers to meet the needs of customers in connection with technology transitions.<sup>120</sup>

34. Finally, we disagree with several alternative proposals and arguments in the record regarding the appropriate transition period for the forbearance we grant today. Although USTelecom recognizes the need for some transition period, we find its proposed transition period of 18 months insufficient.<sup>121</sup>

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<sup>116</sup> See, e.g., INCOMPAS et al. Opposition at 6, 44-45; Granite Opposition at 19-20, 34-35; MetTel Opposition at 9-10; Access Point et al. Opposition at 28-29; CALTEL Reply at 11-12; Granite Reply at 10; INCOMPAS Reply at 4; Granite et al. May 28, 2019 Reply at 4-9. One dissent suggests that for “businesses that have nationwide locations where each location needs one or more line-powered voice lines,” competition “depends on the availability of voice-grade copper loops in regions throughout the country to meet customer demand for this exact product.” Separate Statement of Commissioner Starks at 1 (concurring in part and dissenting in part). We disagree in several respects. For one, the record does not support a finding that such a narrow market segment constitutes its own market, and elsewhere the Commission has found that consumers and businesses of all stripes are turning to next-generation technologies that are not line-powered (and sometimes choosing to rely on alternative backup power sources and other times relying on alternative technologies like mobile phones for such situations, see, e.g., *2015 Backup Power Order*, 30 FCC Rcd at 8683-84, para. 19). For another, the record reflects that the vast majority of competition in that market does not in fact rely on UNE Analog Loops (nor the Avoided-Cost Resale discussed below) but instead on facilities-based competition and privately negotiated and unregulated resale agreements. See *supra* para. 19; see *infra* paras. 38, 42. For yet another, to the extent the dissent is suggesting these rules are necessary to ensure line-powered voice lines remain available to certain customers, it misses the mark. Nothing about the rules at issue in this order require carriers to maintain line-powered copper loops—whether those loops may be retired is a subject of our copper retirement rules, see 47 C.F.R. § 51.333, and beyond the scope of this proceeding.

<sup>117</sup> *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11149, para. 48; *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5678, para. 38.

<sup>118</sup> See *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11139-41, paras. 26-29.

<sup>119</sup> See, e.g., *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675-76, para. 34; *2015 Backup Power Order*, 30 FCC Rcd at 8678, para. 3.

<sup>120</sup> See, e.g., *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675-76, 5678, paras. 34, 38; *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11139-40, 11142, n.90, para. 33; AT&T Dec. 28, 2018 *Ex Parte* Letter at 2; CenturyLink Reply at 13-14; see also CenturyLink July 1, 2019 *Ex Parte* Letter at 4 (noting that “if properly configured, IP-based services are much more reliable than their TDM counterparts today”).

<sup>121</sup> See *UNE Transport Forbearance Order*, FCC 19-66, at para. 71. USTelecom proposes grandfathering currently-provided UNEs until February 4, 2021 at current rates, but with no new orders being accepted. See Letter from USTelecom June 21, 2018 *Ex Parte* Letter at 1; see also Letter from Patrick R. Halley, Sr. V.P., Advocacy and Regulatory Affairs, USTelecom, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 18-141, at 2 (filed Feb. 11, 2019) (“USTelecom has committed to a transition that would keep existing UNEs in place until February 4, 2021.”).

35. We also reject Uniti Fiber’s proposed zone-based transition plan and its mandatory “off ramps” for already-purchased UNEs, the shortest of which is seven years and the longest of which is twelve years.<sup>122</sup> This proposal, which has no end date, is not appropriate where our forbearance applies to arrangements involving TDM-based voice services and alternative voice service options remain available to legacy TDM customers from their existing competitive LEC or alternative voice service providers. Similarly, we do not find the five- and seven-year or three- and five-year bifurcated transition periods or the 18-month and four-year bifurcated new order periods proposed by other competitive LECs to be necessary.<sup>123</sup> Although some competitive LECs argue that some customers will not be prepared to transition from TDM to IP-based services until after the transition period expires, they misunderstand the purpose of a transition period. Nothing we do here requires any customer to transition from one technology to another on any particular timeline. Rather, this transition period is designed to allow competitive LECs that entered into long-term contracts with their customers but not their suppliers to make alternative arrangements—which could of course include long-term contracts for TDM services to those same customers at market rates.<sup>124</sup> But the fact that some customers may desire a longer transition period than others is no reason to extend an artificial subsidy to them to remain on last-generation technology.<sup>125</sup>

36. Further, we address WorldNet’s argument that the circumstances in Puerto Rico following Hurricanes Maria and Irma, as well as the ongoing economic instability on the island, warrant special consideration for Puerto Rico when it comes to forbearance from unbundled loop obligations. Specifically, WorldNet requests that the Commission either carve out Puerto Rico from any mainland forbearance, or in the alternative, grant an extended transition period similar to or longer than the

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<sup>122</sup> See Uniti Fiber Reply at 6-9.

<sup>123</sup> See TPx June 13, 2019 *Ex Parte* Letter at 3; Granite et al. July 15, 2019 *Ex Parte* Letter at 6.

<sup>124</sup> We note that the National Telecommunications and Information Administration (NTIA) has previously acknowledged that a “sufficiently long” grandfathering period “could provide federal customers a useful preview of the options available to them after a particular service is discontinued.” NTIA *Ex Parte*, WC Docket No. 17-84, at 5 n.13 (filed Oct. 27, 2017). We expect those carriers serving government customers directly to make sufficient arrangements to continue service for such customers as needed, as it is their responsibility as the contracting party to do so.

<sup>125</sup> Aside from broad assertions, we also find no actual evidence that suggests that large business users require any greater time for transitioning to IP than other users. See Verizon June 26, 2019 *Ex Parte* Letter at 3-6. Although one dissent raises the specter of the General Services Administration’s “Enterprise Infrastructure Solutions” government purchasing contract as a reason to adopt a longer transition, see Separate Statement of Commissioner Starks at 1 (concurring in part and dissenting in part), that contract does not change our analysis. For one, the General Services Administration in fact selected 10 separate vendors—both facilities-based providers and resellers—for the contract: AT&T, BT Federal, CenturyLink, Core Technologies, Granite Telecommunications, Harris Corporation, Level 3, Manhattan Telecommunications, MicroTech, and Verizon. See Enterprise Infrastructure Solutions (EIS), *List of EIS Contractors - RFP* (Aug. 1, 2017), <https://www.fbo.gov/utills/view?id=597270504ab0bd0ded21f9b8e51d1b80>. In other words, this is hardly a market lacking in competition. For another, and to the extent the dissent is in fact concerned about the recent extension of existing telecommunications contracts until 2023, we note that the General Services Administration has only extended such contracts for those federal agencies that have prepared for the transition to the new Enterprise Infrastructure Solutions contract by March 31, 2020 (via task orders) and has required agencies to transition 90% of their services to the new contract by March 31, 2022. See <https://www.gsa.gov/technology/technology-purchasing-programs/telecommunications-and-network-services/enterprise-infrastructure-solutions>. In other words, the General Services Administration expects the transition to be almost complete within the next two years and eight months—i.e., before the transition period we adopt here expires. Finally, competitive carriers serving government customers only rarely rely on the UNE Analog Loops and Avoid-Cost Resale at issue in today’s ruling. Instead, these carriers rely on privately negotiated resale arrangements in the vast majority of circumstances. See AT&T Reply at 22-23 (citing Granite and MetTel filings).

transition period the Commission recently granted for Puerto Rico in the *UNE Transport Forbearance Order*.<sup>126</sup> WorldNet asserts that forbearance will lead to significant market disruption, stranded investment, and increased prices for customers at a time when residents of Puerto Rico are already incurring financial hardship from the effects of the hurricanes.<sup>127</sup> While we are keenly aware of the impact of the hurricanes in Puerto Rico, we are confident that our forbearance actions here will help address the issues Puerto Rico is currently facing by increasing incentives for the deployment of new facilities—exactly what Puerto Rico needs after the destruction of so much infrastructure. Importantly, customers in Puerto Rico will have a number of alternative options that will protect them from unreasonable rates and charges,<sup>128</sup> aided in part by the Commission’s ongoing work to implement the Uniendo a Puerto Rico Fund and ensure that the residents of the island have access to next-generation technologies that are resilient to hurricanes and other natural disasters.<sup>129</sup> And the forbearance relief we grant today should have a limited negative impact. Even after forbearance, WorldNet will still be able to make voice services available to its customers via alternative arrangements such as commercial agreements with the incumbent LECs or other providers and section 251(b)(1) resale.<sup>130</sup> Therefore, we do not find it necessary to exclude Puerto Rico entirely from the scope of the forbearance granted herein.

37. Consistent with our recent *UNE Transport Forbearance Order*, however, we conclude that we should adopt a longer transition period for competitive LECs in Puerto Rico, and we therefore provide a five-year, rather than three-year, grandfathering period. We agree with commenters that the state of the economy in Puerto Rico and the ongoing restoration efforts there resulting from the devastating effects of the hurricanes are special circumstances that warrant different treatment from the mainland.<sup>131</sup> Indeed, the Commission noted in creating the Uniendo a Puerto Rico Fund that “[r]ecovery of the communications networks in Puerto Rico . . . has proven especially challenging, particularly compared to other locations in the United States impacted by [the 2017] season’s hurricanes.”<sup>132</sup> We thus conclude that it is reasonable to provide carriers there with additional time in which to develop business plans and enter into contracts that do not rely on the availability of UNE Analog Loops.

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<sup>126</sup> See Letter from Maria Celeste Colberg-Guerra, Rodríguez Marxuach, P.S.C., Counsel for WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1, 3 (filed July 19, 2019) (WorldNet July 19, 2019 *Ex Parte* Letter).

<sup>127</sup> See WorldNet Comments at 8. Puerto Rico Telephone Company disagrees with these arguments. See Letter from Eduardo R. Guzman and Matthew G. Baker, Squire Patton Boggs (US) LLP, Counsel for Puerto Rico Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed July 2, 2019) (Puerto Rico Telephone July 2, 2019 *Ex Parte* Letter).

<sup>128</sup> See, e.g., Puerto Rico Telephone July 2, 2019 *Ex Parte* Letter at 4; Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter at 2.

<sup>129</sup> *The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404 (2018) (*Uniendo PR and Connect USVI Funds Order and NPRM*).

<sup>130</sup> See Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter at 2-3.

<sup>131</sup> See WorldNet July 19 *Ex Parte* Letter at 3; WorldNet Comments at 2-4, 10, 17; Liberty Cablevision of Puerto Rico LLC Comments at 3-4, 15-16; see also Telecommunications Regulatory Board of Puerto Rico Feb. 12, 2019 *Ex Parte* Letter; Telecommunications Regulatory Board of Puerto Rico Reply at 4; Letter from Richard Davis, Counsel for WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 24, 2019); Letter from Richard Davis, Counsel for WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 25, 2019). The record includes, among other things, evidence of the current role of TDM-based services in ensuring stability during recovery efforts. See, e.g., WorldNet July 19, 2019 *Ex Parte* Letter. We therefore reject PRTC’s argument that we should not extend the transition period for carriers in Puerto Rico due to hurricane recovery because such efforts primarily relate to non-TDM facilities. Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter at 3-4.

<sup>132</sup> *Uniendo PR and Connect USVI Funds Order and NPRM*, 33 FCC Rcd at 5405, para. 1.

## B. Forbearance from Avoided-Cost Resale Requirements

38. We find that forbearance relief is also warranted from price cap LECs' obligations to offer Avoided-Cost Resale to their competitors. The same marketplace and technological changes that warrant forbearance from UNE Analog Loop requirements justify forbearance from Avoided-Cost Resale obligations. Given the breadth of the voice service marketplace and the number of wholesale input alternatives to competitive LECs seeking to continue serving customers currently served by Avoided-Cost Resale, we must forbear. Avoided-Cost Resale requirements, like UNE Analog Loop requirements, serve only to prolong dependence on legacy TDM voice services rather than pave the way for meaningful facilities-based competition over next-generation networks providing advanced communications capability.<sup>133</sup> The Commission can no longer justify protecting competitive providers' business models that are largely reliant on regulatory mandates to continue offering consumers increasingly obsolete legacy TDM voice services. We believe that our competition policy should no longer encourage business models that rely on supplying legacy TDM services<sup>134</sup> by affirmatively protecting the provision of such services through regulated avoided-cost wholesale pricing.

39. We agree with commenters that continued maintenance of Avoided-Cost Resale is "affirmatively harmful."<sup>135</sup> This regulatory requirement increases the costs of incumbent LECs, who "must maintain systems and dedicate employees to managing those regulated services, which uses resources that could otherwise be used to invest in their networks and service offerings," as well as the costs of competitive LECs and state commissions, who "must expend resources determining the avoided-cost rates, which typically requires months (or longer) of state proceedings, and include experts, witnesses and attorneys to represent the various parties."<sup>136</sup> It distorts competition by imposing "a burdensome cost" on just one component of the industry, incumbent LECs.<sup>137</sup> And perversely, it incentivizes incumbent LECs to increase their retail pricing to create a "pricing cushion"—as Frontier explains, it must "artificially maintain its prices . . . at a level that it could take a 15-18% 'avoided-cost' cut if Granite or another reseller sees the pricing," making it so that "Frontier cannot fully compete on price and market its products as aggressively as it would like or in a manner that is efficient for consumers, without risk of needing to take revenue write downs from existing wholesale customers looking to reduce their costs on the back of this pricing."<sup>138</sup> And what may be worse, it deters the deployment of new, next-generation networks by competitive LECs, thus decreasing facilities-based competition. As AT&T argues, "[o]utdated regulations like avoided-cost resale encourage continued dependence on legacy networks, which creates disincentives for broadband deployment in the same way that excessive regulation of advanced services does."<sup>139</sup>

40. Based on statements in the record from competitive LECs that rely on Avoided-Cost Resale, it is clear that forbearance from this obligation solely affects their ability to purchase legacy TDM voice lines at regulated rates for serving business and government customers.<sup>140</sup> Today, more than 23

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<sup>133</sup> Incumbent LECs assert that Avoided-Cost Resale provides an "insignificant source of competition." Petition at 29; *see also* AT&T Reply at 5.

<sup>134</sup> *See, e.g.*, Granite et al. June 14, 2019 *Ex Parte* Letter at 6; Call One July 10, 2019 *Ex Parte* Letter at 1-2.

<sup>135</sup> AT&T Reply at 24.

<sup>136</sup> *Id.*

<sup>137</sup> Frontier June 28, 2019 *Ex Parte* Letter at 2-3.

<sup>138</sup> *Id.*

<sup>139</sup> AT&T Dec. 28, 2018 *Ex Parte* Letter at 2, 6; *see also* AT&T Reply at 24 (avoided-cost resale rates that are set "too low reduce the incentives of both CLECs and ILECs to invest in their own facilities and to upgrade their existing networks"); Verizon Reply at 14-15.

<sup>140</sup> *See, e.g.*, TPx Opposition at 3; Granite Opposition at 5.

years since the 1996 Act passed, Avoided-Cost Resale has outlived its intended purpose of opening monopoly local telephone service markets to competition. Although the Commission in August 1996 noted that the use of Avoided-Cost Resale, unlike UNEs, might be an important long-term strategy,<sup>141</sup> over these two-plus decades, the Commission has grown increasingly interested in supporting facilities-based competition, particularly through the deployment of next-generation facilities.<sup>142</sup> The Avoided-Cost Resale obligations impede these current objectives by allowing prolonged dependence on the TDM network. This would be less of a concern if competitive LECs used Avoided-Cost Resale as merely an entry strategy, using it to transition to facilities-based competition using next-generation networks. But competitive LECs that are heavily reliant on Avoided-Cost Resale appear to have been relying on this model for a very long time.<sup>143</sup> Avoided-Cost Resale is not a bridging strategy, or even a long-term facilities-based strategy, for such carriers. Rather, it appears to be a permanent strategy.

41. We do not believe Congress intended the Avoided-Cost Resale obligation to remain in place indefinitely.<sup>144</sup> Had it so intended, it could have excepted section 251(c)(4) from the scope of the Commission's authority to forbear under section 10. Congress, however, included only one explicit limitation on the Commission's authority to forbear from the requirements of section 251(c)—that it could not forbear until it determined that those requirements had been fully implemented.<sup>145</sup> Continued enforcement of the Avoided-Cost Resale requirement in price-cap LEC areas as a part of our competition policy is not advancing the public interest and is, instead, artificially delaying the day on which networks migrate to the next generation of technology.

42. Competitive LEC resellers will still be able to provide voice services to their customers by relying on section 251(b)(1) resale or special access services in order to meet their multi-location business customers' preferences for legacy voice services.<sup>146</sup> However, they will not have access to those services at artificially reduced rates mandated by outdated regulations, and their end-user customers thus may be more inclined to transition to next-generation services. Moreover, we expect that commercial wholesale platform services will remain available to competitive LEC resellers—as they have for more than 15 years.<sup>147</sup> Indeed, such services constitute a far more significant percentage of resellers' business

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<sup>141</sup> *First Local Competition Order*, 11 FCC Rcd at 15954, para. 907; *see also* Granite Opposition at 10-11.

<sup>142</sup> *See, e.g., UNE Remand Order*, 15 FCC Rcd at 3701, para. 7; *Triennial Review Order*, 18 FCC Rcd at 16984, para. 3; *Triennial Review Remand Order*, 20 FCC Rcd at 2535, para. 2; *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11129, para. 2.

<sup>143</sup> Indeed, Granite has been making the same arguments it makes here for years. *See, e.g.,* Comments of Granite Telecommunications, LLC, GN Docket No. 13-5 et al. at 3-5, 11-12 (dated Feb. 5, 2015); Opposition of Granite Telecommunications, LLC, WC Docket No. 14-192, at 19-20 (dated Dec. 5, 2014); Letter from Joshua M. Bobeck, Bingham McCutchen LLP, Counsel for Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary FCC, GN Docket Nos. 12-353 & 13-5, at 1 (filed Jan. 25, 2013).

<sup>144</sup> *See, e.g.,* Furchtgott-Roth Declaration at 10.

<sup>145</sup> *See* 47 U.S.C. § 160(d). The Commission has previously found that section 251(c)'s requirements have been fully implemented. *See Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19440, para. 53 (2005) (*Qwest Omaha Order*); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8672 n.283 (2010) (*Qwest Phoenix Order*), *aff'd* *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012); *UNE Transport Forbearance Order*, FCC 19-66, n.46.

<sup>146</sup> *See, e.g.,* CenturyLink July 1, 2019 *Ex Parte* Letter at 3; Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter at 4-5. And carriers can provide IP-based service to multi-location business customers by use of a virtual private voice network. *See* CenturyLink July 1, 2019 *Ex Parte* Letter at 5.

<sup>147</sup> *See, e.g.,* USTelecom Reply at 33.



than Avoided-Cost Resale.<sup>148</sup> We thus are unpersuaded by commenter assertions that forbearance will lead to their inability to continue serving their multi-location business customers or other niche markets not adequately served by incumbent LECs.<sup>149</sup>

43. We note that statutory and regulatory protections will also remain post-forbearance. In particular, sections 201's and 202's prohibitions against unjust and unreasonable charges and unjustly or unreasonably discriminatory practices will remain in effect. Further, the Commission has specifically interpreted section 251(b)(1) of the Act as prohibiting discriminatory provisioning of any telecommunications services for resale.<sup>150</sup> In addition, competitors will be able to avail themselves of the Commission's section 208 complaint process, along with the Commission's Market Disputes Resolution process for rapid resolution of complaints between carriers (including incumbent LECs and their competitor customers). Moreover, section 214 legacy voice service discontinuance oversight<sup>151</sup> and Eligible Telecommunications Carrier requirements to offer voice telephony at rates reasonably comparable to national average urban rates remain as additional protections.<sup>152</sup> These processes afford an additional backstop to prevent unjust and unreasonable prices.<sup>153</sup>

44. *Transition Period.* We condition our forbearance from price cap LEC Avoided-Cost Resale obligations on an appropriate transition period. Competitive LECs using Avoided-Cost Resale to fill in gaps where UNEs are unavailable and where they have not yet deployed their own fiber facilities

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<sup>148</sup> See, e.g., AT&T Reply at 9 n.20 (noting "the CLECs' own comments confirm that CLECs rely overwhelmingly today on commercially negotiated UNE-P replacement services rather than statutory resale"); USTelecom Reply at 33 (asserting "ILECs continue to offer UNE-P replacement offerings more than 13 years after the TRRO eliminated unbundled local circuit switching"); AT&T Dec. 28, 2018 *Ex Parte* Letter at 2 n.5.

<sup>149</sup> See, e.g., Granite Opposition at 32-33; MetTel Opposition at 4-6; Access Point et al. Opposition at 28; INCOMPAS Opposition at 5-7, 16-17; Call One Comments at 6; Granite Reply at 9-11, 13-14; Public Knowledge Reply at 7; GCI Reply at 2; Letter from Thomas Jones et al., Willkie Farr & Gallagher LLP, Counsel for Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 9-10 n.43 (filed Mar. 14, 2019) (Granite et al. Mar. 14, 2019 *Ex Parte* Letter).

<sup>150</sup> In the *First Local Competition Order*, the Commission concluded that complying with the obligation to provision telecommunications service for resale without unreasonable restrictions under section 251(b)(1) entails provisioning service with the same timeliness as it is provisioned to a LEC's subsidiaries, affiliates, and direct customers. See *First Local Competition Order*, 11 FCC Rcd at 15979, para. 970 (in the context of unreasonable restrictions under section 251(c)(4)), 15981, para. 977. We disagree with Call One that section 251(b)(1) permits incumbent LECs to impose restrictions on the resale of long-term promotions and discounted pricing plans that section 251(c)(4) would otherwise prohibit. Call One Comments at 5-6; Letter from H. Edward Wynn, Exec. Chairman, and Christopher Surdenick, CEO, Call One Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (filed June 25, 2019) (Call One June 25, 2019 *Ex Parte* Letter). In implementing sections 251(b)(1) and 251(c)(4), the Commission concluded that the nondiscrimination provisions of such sections are identical and applied the presumption that all resale restrictions are unreasonable with certain *exceptions* created for applying the wholesale discount. See *First Local Competition Order*, 11 FCC Rcd at 14981, para. 977; 47 CFR §§ 51.603, 51.613. Indeed, the Commission has stated that even short-term promotions, which are not subject to the wholesale discount under section 251(c)(4), are subject to the section 251(b)(1) resale obligation (albeit without a wholesale discount). See *Application of Bellsouth Corp., Bellsouth Telecomms., Inc., and Bellsouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, 20779, para. 310 n.977 (1997).

<sup>151</sup> See generally *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5672-80, paras. 29-43 (discussing the analytical approach to discontinuance approval for legacy TDM-based services that customers still are purchasing); see also 47 CFR § 63.60 *et seq.*

<sup>152</sup> See, e.g., 47 CFR § 54.309(a); *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 19-8, para. 25 (Feb. 15, 2019); *USF/ICC Transformation Order*, 26 FCC Rcd at 17694, para. 84.

<sup>153</sup> 47 U.S.C. § 208; 47 CFR §§ 1.720-1.740; see also FCC, Market Disputes Resolution Division, <https://www.fcc.gov/general/market-disputes-resolution-division>.

will need to consider whether they can devote resources to deploying their own network facilities during the transition period or make alternative commercial arrangements. And competitive LECs operating on a purely resale basis will need time to negotiate new pricing arrangements under section 251(b)(1) resale, negotiate entirely new commercial wholesale arrangements, or work with their customers to migrate them to IP-based voice services.

45. Accordingly, we condition our grant of forbearance from price cap LEC Avoided-Cost Resale obligations on the same two-part transition period described above for our grant of forbearance from price cap LEC UNE Analog Loop obligations. First, we adopt a six-month period in which new Avoided-Cost Resale services can be ordered (and be grandfathered until the same date as Avoided-Cost Resale ordered prior to the effective date of this order).<sup>154</sup> This period in which competitive LECs can continue to place new orders will enable competitive LECs that are currently executing business plans to serve existing or new customers via alternative arrangements, whether commercially-negotiated arrangements with incumbent LECs, the use of section 251(b)(1) resale arrangements, or transitioning their customers to services provisioned directly by incumbent LECs or other voice service providers.

46. Second, we adopt a three-year grandfathering period. This transition period will begin on the effective date of this order. During the relevant transition period, any Avoided-Cost Resale services that a competitive LEC purchases as of the effective date of this order shall be available for purchase from the incumbent LEC at regulated rates.<sup>155</sup> As with the transition for UNE Analog Loops, we find this transition period will minimize the impact of any immediate rate increase for end-user customers of affected competitive LECs that could otherwise occur if current pricing for these services were immediately eliminated.<sup>156</sup> The transition timeframe we adopt will work to ensure that end-user customers do not experience any undue service disruption as a result.<sup>157</sup>

47. *Section 10(a)(1)*. We conclude that enforcement of Avoided-Cost Resale obligations is not necessary to ensure just and reasonable rates for voice services.<sup>158</sup> Alternative services, as well as the statutory obligations noted above, serve as sufficient backstops to achieve this result. The growing number of end users turning to VoIP and wireless offerings evidences the breadth and competitiveness of the marketplace in which such competitive LECs operate, further ensuring just and reasonable rates.

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<sup>154</sup> *BDS Order*, 32 FCC Rcd at 3533, para. 167.

<sup>155</sup> Wholesale discounts are established either through negotiated interconnection agreements or through state-commission-Avoided-Cost Resale rate studies applying certain Commission-developed pricing formulas. *See* 47 U.S.C. § 252(d)(3); 47 CFR §§ 51.609, 51.611. Our forbearance action is not intended to upset pre-existing interconnection agreements or other contractual arrangements that may currently exist nor pre-existing state commission wholesale discount rates during the transition period (including any already-adopted state commission scheduled changes in the discount rates), which should quell concerns regarding near-term price increases following forbearance from Avoided-Cost Resale obligations.

<sup>156</sup> Further, as is the case with the transition for UNE Analog Loops, the process that we describe is a default process from which competitive LECs and price cap LECs remain free to deviate pursuant to mutual agreement.

<sup>157</sup> We are not convinced that USTelecom's suggested 18-month maximum transition period for Avoided-Cost Resale obligations would be sufficient to ensure no undue service disruption to end user customers. *See* Letter from Patrick R. Halley, Sr. V.P., Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed July 19, 2019) (USTelecom July 19, 2019 *Ex Parte* Letter).

<sup>158</sup> To the extent competition protects against rates, charges, practices, and classifications that are not just and reasonable, it logically follows that it also protects against charges, practices, and classifications that are unjust and unreasonable. Thus, to whatever extent the enforcement of section 251(c)(4) is not necessary to ensure just and reasonable rates, it necessarily follows that such enforcement prevents the opposite from occurring, that is, unjust and unreasonable rates. *See USTelecom 271/272 Forbearance Order*, FCC 19-31, at 16 n.110.

48. Moreover, the role that TDM-based Avoided-Cost Resale plays in ensuring just and reasonable rates is questionable. In the current marketplace, end users can choose among several competing suppliers of voice services—commonly, cable operators and other facilities-based providers, over-the-top providers, and in some instances, competitive LECs using UNE loops,<sup>159</sup> almost universally at least two competing wireless providers,<sup>160</sup> and incumbent LEC VoIP and TDM offerings.<sup>161</sup> These alternative voice services necessarily limit incumbent LECs’ ability to raise prices for voice services, regardless of whether the Commission continues to enforce the Avoided-Cost Resale obligation. Indeed, competition from these options plays a far more important role in constraining incumbent LEC rates than the continued availability of Avoided-Cost Resale. A competitive LEC that uses Avoided-Cost Resale must cover the cost of acquiring the wholesale input from the incumbent LEC plus its own marketing, billing, and collection costs. While such competition is potentially of value, it cannot substitute for, or have the same effect as, facilities-based competition, as the latter brings competitive pressure to the extent that the competitive LEC has lower costs anywhere in production, including facility investment and network operation. Furthermore, even if the rates paid by competitive LECs to resell voice service were to rise based on our grant of forbearance from Avoided-Cost Resale, there is no reason to believe that end-user rates will be unjust or unreasonable. Given the number of available alternatives for competitors to provide competition to incumbent LECs and incumbent LECs’ demonstrated willingness to offer commercial wholesale services demanded by competitive providers, we conclude that Avoided-Cost Resale does *not* serve to constrain retail rates.

49. *Section 10(a)(2)*. We find that the evolving marketplace and the statutory and regulatory safeguards that work to ensure just and reasonable rates also ensure that consumers will not be harmed by forbearance from enforcement of the Avoided-Cost Resale obligation,<sup>162</sup> particularly in light of the transition period we adopt. Competitive LECs can continue to provide TDM voice service to end-user customers using section 251(b)(1) resale, commercial substitutes for resale, or other alternative arrangements.<sup>163</sup> In addition, these customers will increasingly move to newer services offered over cable, wireless, competitive LEC, or incumbent LEC networks.

50. *Section 10(a)(3)*. Finally, we find that forbearing from Avoided-Cost Resale obligations for price cap LECs is in the public interest. We agree with USTelecom that undue regulatory burdens can stand in the way of competition and innovation.<sup>164</sup> Eliminating outdated and unnecessary regulation serves the public interest by generally reducing “carriers’ costs and, in turn, benefit[ing] consumers through lower rates and/or more vibrant competitive offerings.”<sup>165</sup> Avoided-Cost Resale is used to

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<sup>159</sup> Even when consumers subscribe to over-the-top VoIP service provided over incumbent LEC or other providers’ broadband facilities, it serves as a retail alternative to TDM-based service for customers that would already be purchasing the broadband connection.

<sup>160</sup> See *2018 Communications Marketplace Report*, 33 FCC Rcd at 12592, Fig. A-29; *Restoring Internet Freedom Order*, 33 FCC Rcd at 387-88, para. 130.

<sup>161</sup> See Staff calculations based on 2018 Voice Telephone Services Report at 5, Fig. 2.

<sup>162</sup> Competitive LEC resellers’ customer base is almost exclusively made up of business and government customers. See, e.g., Granite et al. May 28, 2019 Reply at 15. As a result, forbearance from the Avoided-Cost Resale requirement will not impact mass market customers.

<sup>163</sup> See, e.g., Verizon June 26, 2019 *Ex Parte* Letter at 2.

<sup>164</sup> See Petition at 23.

<sup>165</sup> *A-CAM Rate-of-Return BDS Order*, 33 FCC Rcd at 10450, para. 134; see also *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecomm. Regulations*, 28 FCC Rcd 7627, 7651, para. 41 (2013) (*2013 USTelecom Forbearance Order*); Petition at 23. Thus, we disagree with commenters who assert that there is no public interest benefit to granting forbearance. See Center for Democracy & Technology Comments at 10; Public Knowledge et al. Opposition at 28.

provide standalone voice telephone service, a service which is increasingly an anachronism.<sup>166</sup> In fact, on a modern broadband network, voice telephone service is just one application among many. We expect that greater competition and innovation resulting in lower rates will lead to greater demand for broadband facilities and increased adoption of advanced services by consumers and businesses alike. Consequently, we consider it overly burdensome and unnecessary to continue to impose an Avoided-Cost Resale obligation in light of its intended purpose to open local markets to competition for such a narrow service.

51. The Commission has recognized that it is “important not to overregulate, and thereby reduce incentives for competitive entry.”<sup>167</sup> Artificially prolonging reliance on Avoided-Cost Resale is an example of overregulation that could deter deployment of facilities-based competitive alternatives.<sup>168</sup> To be clear, forbearance from Avoided-Cost Resale obligations could cause other would-be competitors to deploy their own voice service facilities to meet the demands of consumers losing access to legacy TDM service provided via Avoided-Cost Resale “subsidies” to certain competitive LECs. And we rely on the continued existence of section 251(b)(1) resale and other regulatory backstops provided by the Act<sup>169</sup> in addition to other available voice service options. In other words, on balance, to the extent prices for legacy TDM services do rise and consumer demand continues shifting toward next-generation services, other competitive LECs may find it has become more economically feasible to deploy in new locations. The Commission has used its predictive judgment to eliminate “extra layer[s]” of traditional dominant carrier rate regulation while leaving in place sections 201, 202, and 208 as regulatory backstops, as we do here, to “better promote competition and the public interest.”<sup>170</sup>

52. If, for some reason, prices for voice services were to increase, which we do not expect them to, such an increase may, in fact, play a role in encouraging more consumers to migrate to alternative technologies. The PSTN is headed toward an inevitable sunset. We thus find that policies that encourage reliance on outmoded legacy services, by carriers and customers alike, serve no beneficial public interest purpose. For this reason, we are unpersuaded by commenter assertions that Avoided-Cost Resale plays an important role “in areas where commercial wholesale platform agreements are not available, and in providing features that are excluded in those agreements or to deliver a more competitively-priced offering to low-usage and low- or no-feature requirement (e.g., measured, alarm,

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<sup>166</sup> Competitive LECs use Avoided-Cost Resale to provision legacy service to business customers. *See, e.g.*, Granite Reply at 2, 11-12; USTelecom June 14, 2019 *Ex Parte* Letter at 5. Many of those customers use legacy TDM service for redundancy purposes. *See, e.g.*, TPx Opposition at 3; Granite Opposition at 17; *see also* INCOMPAS et al. Opposition at 33.

<sup>167</sup> *BDS Order*, 32 FCC Rcd at 3522, para. 135.

<sup>168</sup> *See, e.g.*, USTelecom June 20, 2019 *Ex Parte* Letter at 3 (“[N]othing in Section 10 requires or suggests that *any* short-term harm to *any* group of consumers precludes forbearance – particularly where, as here, forbearance will benefit the great majority of consumers and advance the Commission’s deployment goals in ways that benefit all of them.”).

<sup>169</sup> *See* 47 U.S.C. §§ 201, 202, 208, 251(b).

<sup>170</sup> *BDS Order*, 32 FCC Rcd at 3530, para. 156 (citing *Ad Hoc Telecomms. Users Committee v. FCC*, 572 F.3d 903, 908 (D.C. Cir. 2009)). Given all these regulatory backstops, and our goal to protect competition generally and not just a subset of competitors, we reject the argument that Avoided-Cost Resale is itself most useful as a regulatory backstop that competitive LECs use as leverage in negotiating commercial wholesale offerings with incumbent LECs. *See* Granite Opposition at 26; *see also* MetTel Opposition at 7; Access Point et al. Opposition at 28; Pennsylvania PUC Comments at 11-12; Public Knowledge et al. Opposition at 20; Granite et al. June 14, 2019 *Ex Parte* Letter at 3-4. Indeed, to the extent that Avoided-Cost Resale’s primary value is as a regulatory backstop, it offers even fewer benefits than the Commission and Congress initially envisioned and thus the public interest is even better served by its sunset.

and fax) lines and business customers.”<sup>171</sup> We must take actions that do not impede greater development, deployment, and adoption of alternative, more advanced technologies. While we acknowledge that Avoided-Cost Resale forbearance may lead to higher prices for legacy TDM-based services, whether from incumbent LECs or their competitors, this will naturally cause late adopters to migrate to next-generation services.<sup>172</sup> This, in turn, will allow and spur incumbent and competitive LECs alike to finally move their resources away from continuing to support obsolete technologies and instead to invest in next-generation networks and services.

53. We are also unpersuaded by Granite’s argument that the Commission cannot forbear from Avoided-Cost Resale obligations given the importance of the reseller business model.<sup>173</sup> Granite’s reliance on the D.C. Circuit’s opinion in *National Lifeline Association v. FCC* to support its argument is misplaced.<sup>174</sup> That decision turned on the effect of the *2017 Lifeline Order* on Tribal customers, with the court concluding, among other things, that the Commission failed to consider that its action would eliminate many low-income consumers’ access to affordable telecommunications service if resellers were no longer able to obtain Lifeline certification.<sup>175</sup> Based on the record evidence in this proceeding, including the availability of alternative retail providers and wholesale inputs, competitive pressures in the marketplace, and the declining reliance on TDM, particularly over copper, we conclude that forbearance will not deprive consumers of access to affordable voice services. We are, of course, cognizant of the importance that all Americans have access to affordable services, embodied in the Act’s universal service requirements.<sup>176</sup> But the forbearance we grant today does not eliminate any universal service support. Rather, we simply forbear from pricing requirements imposed on one category of providers at a time when those providers controlled local telephone markets and thus faced no competition. The remainder of the rationale of *National Lifeline Ass’n* pertains to case-specific record evidence or alleged lack thereof, which is not the case with respect to our decision regarding forbearance from Avoided-Cost Resale.

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<sup>171</sup> CALTEL Reply at 11; *see also* CALTEL Comments at 18; INCOMPAS et al. Opposition at 6-7; Access Point et al. Opposition at 28.

<sup>172</sup> Granite et al. appear to assert that the decline in competitive LEC-provided TDM service is largely attributable to incumbent LEC copper retirements. *See* Granite et al. May 28, 2019 Reply at 16. However, the reduction in the number of TDM lines delivered over copper is attributable not only to copper retirements, but also to consumer and supplier choice to migrate to other types of communications networks such as fiber or wireless.

<sup>173</sup> *See* Granite et al. Mar. 14, 2019 *Ex Parte* Letter at 3-4.

<sup>174</sup> *See National Lifeline Ass’n v. FCC*, 921 F.3d 1102 (D.C. Cir. 2019) (*National Lifeline Ass’n*). Granite admits as much. Granite et al. Mar. 14, 2019 *Ex Parte* Letter at 4. That is, Granite admits that the similarity is merely that both the underlying Commission order in *National Lifeline Ass’n, Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475 (2017) (*2017 Lifeline Order*), and USTelecom’s requests (if granted) would be “decision[s] to change the regulations governing resellers.” Granite et al. Mar. 14, 2019 *Ex Parte* Letter at 4.

<sup>175</sup> *National Lifeline Ass’n*, 921 F.3d at 1113. This would be the case if no facilities-based provider (which would, unlike a reseller, qualify for Lifeline certification) were interested in providing service, which the appellants alleged.

<sup>176</sup> *See* 47 U.S.C. § 254. We consider affordability in other contexts, such as when considering carriers’ applications to discontinue, reduce, or impair service to a community or part of a community. *See Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5665 n.38; *2016 Technology Transitions Order*, 31 FCC Rcd at 8303-04, paras. 61-62; *Verizon Tel. Cos. Section 63.71 Application to Discontinue Expanded Interconnection Service through Physical Collocation*, 18 FCC Rcd 22737, 22742, para. 8 (2003). Indeed, the Commission last year declined to forbear from application of its discontinuance requirements for carriers seeking to discontinue legacy voice service because doing so would prevent the Commission from ensuring the affordability of the replacement service. *See Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5679-80, para. 42.

54. We also disagree with competitive LEC claims that they may lose access to certain features and functionalities associated with TDM services if they are required to purchase them through commercial agreements,<sup>177</sup> or that they may not be able to purchase those services at all.<sup>178</sup> These features are available when providing facilities-based competition, to which competitive LECs reliant on Avoided-Cost Resale will have at least three years to transition.<sup>179</sup> This timeframe will provide competitors with a sufficiently long runway to ramp up their own competing services where they are not currently available, including through deployment of their own competitive facilities, should they so choose. In instances in which such a transition cannot be made in time, such competitive LECs will still have section 251(b)(1) resale available to them.<sup>180</sup> We therefore reject commenter claims that a longer transition for Avoided-Cost Resale is warranted for any particular type of customer.<sup>181</sup>

55. To the extent that WorldNet requests that we exempt Puerto Rico from any forbearance relief that we grant elsewhere in the United States,<sup>182</sup> we also reject that request for Avoided Cost Resale obligations. Just as is the case for services provided via UNE Analog Loops, competitive options for services provided via Avoided Cost Resale will continue to exist in Puerto Rico.<sup>183</sup> At the same time, however, we conclude that it is reasonable to provide a five-year, rather than three-year, grandfathering period for competitive LECs in Puerto Rico with respect to Avoided Cost Resale for the same reasons that we provide a five-year grandfathering period with respect to UNE Analog Loops.

### C. The 1996 Act Does Not Prescribe One Mode of Analysis for Forbearance

56. Finally, we reject arguments that the 1996 Act prescribes a particular mode of competition analysis that we must conduct before forbearing from certain economic regulations. Specifically, the Commission relied on a market-power standard when evaluating forbearance from all resale and unbundling obligations in a particular geographic market in the *Qwest Phoenix Order*.<sup>184</sup> Some commenters argue that we must rely on that standard here.<sup>185</sup> They are incorrect.

57. To begin with, we have wide latitude in conducting a forbearance analysis.<sup>186</sup> Neither the Communications Act nor the 1996 Act prescribe a particular mode of competitive analysis for our public interest standard.<sup>187</sup> The language of section 10 requires us to consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions” and “will enhance

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<sup>177</sup> See, e.g., MetTel Opposition at 10; Granite Opposition at 28.

<sup>178</sup> See, e.g., Granite Opposition at 28-29; MetTel Opposition at 8; see also Access Point et al. Opposition at 3.

<sup>179</sup> The record indicates that many of these customers are already purchasing other services that could be provisioned in such a manner, such as broadband service. See, e.g., Granite et al. June 14, 2019 *Ex Parte* Letter at 2.

<sup>180</sup> To the extent that competitive LECs rely on Avoided-Cost Resale to serve government customers, we expect such carriers to use the alternatives available to them and to work with such customers to accommodate any necessary service transition. See *Wireline Infrastructure First Report and Order*, 32 FCC Rcd at 11149, para. 48; *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5678, para. 38.

<sup>181</sup> Granite et al. July 15, 2019 *Ex Parte* Letter at 6; Call One July 10, 2019 *Ex Parte* Letter at 2.

<sup>182</sup> WorldNet Comments at 17.

<sup>183</sup> See Puerto Rico Telephone July 18, 2019 *Ex Parte* Letter at 2-3.

<sup>184</sup> See *Qwest Phoenix Order*, 25 FCC Rcd at 8645-47 paras. 41-43.

<sup>185</sup> See, e.g., Sappington Report at 6; Granite Opposition at 16-17; Public Knowledge et al. Opposition at 7-9; TPx Opposition at 11-16; Socket Comments in Support of Summary Denial at 3-4; Granite et al. Mar. 14, 2019 *Ex Parte* Letter at 4.

<sup>186</sup> See *UNE Transport Forbearance Order*, FCC 19-66, at para. 56.

<sup>187</sup> 47 U.S.C. §§ 160, 201.

competition among providers of telecommunications services,” but does not prescribe how we must do so.<sup>188</sup> Indeed, section 10 appears to give the Commission the authority to forbear from a particular regulation even in the presence of market power, so long as we find that “such forbearance will promote competition among providers of telecommunications services.”<sup>189</sup>

58. So it is unsurprising that the D.C. Circuit has held that section 10 “imposes no particular mode of market analysis or level of geographic rigor” and “allow[s] the forbearance analysis to vary depending on the circumstances.”<sup>190</sup> And it is unsurprising that the Commission has employed a large variety of competitive analyses when assessing whether forbearance of a regulation is in the public interest—whether it be the local presence of a facilities-based competitor,<sup>191</sup> the presence of nearby potential or actual competition,<sup>192</sup> the competitive effects on a nationwide market,<sup>193</sup> or the market-power standard<sup>194</sup>—and indeed often just focuses on whether forbearance will promote competitive market conditions by removing outdated regulatory obligations without conducting any broader competitive analysis.<sup>195</sup> Accordingly, the claimed requirement to follow the market-power standard that was used in just one forbearance case simply does not exist.

59. What is more, the Commission did not purport to adopt one standard to rule them all in the *Qwest Phoenix Order*. For one, the *Order* expressly acknowledged that the Commission has “discretion in determining the analytical approach it will use in evaluating forbearance petitions.”<sup>196</sup> And it recognized that “a different analysis may apply when the Commission addresses advanced services, like broadband services.”<sup>197</sup> Although the particular regulated service here—TDM voice service—may not itself be an advanced service, we find the impact of maintaining these legacy obligations is to deter the deployment of advanced services and the transition to next-generation networks—contrary to the directive of the 1996 Act to “utiliz[e]” forbearance to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”<sup>198</sup>

60. For yet another, the Commission in the *Qwest Phoenix Order* even left the door open for alternative analytical approaches when it comes to legacy services, explaining that “[c]arriers are, of

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<sup>188</sup> 47 U.S.C. § 160(b).

<sup>189</sup> *Id.* (“If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.”).

<sup>190</sup> *Earthlink*, 462 F.3d at 8; *see also* *UNE Transport Forbearance Order*, FCC 19-66, at para. 56.

<sup>191</sup> *See e.g.*, *Qwest Omaha Order*, 20 FCC Rcd at 19417, para. 2 (2005); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) From Resale, Unbundling and Other Incumbent Local Exchange Requirements Contained In Sections 251 and 271 of the Telecommunications Act Of 1996 in the Terry, Montana Exchange*, 23 FCC Rcd 7257, 7263-71, paras. 12-27 (2008); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1962-63, paras. 7-8 (2007).

<sup>192</sup> *BDS Order*, 32 FCC Rcd at 3468, para. 17.

<sup>193</sup> *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, 21505, para. 21 (2004), petition for review denied, *EarthLink*, 462 F.3d at 1.

<sup>194</sup> *Qwest Phoenix Order*, 25 FCC Rcd at 8642-43, paras. 37-38.

<sup>195</sup> *See, e.g.*, *USTelecom Section 271/272 Forbearance Order*, FCC 19-31; *2015 USTelecom Forbearance Order*, 31 FCC Rcd 6157; *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7673, para. 100, 7711, para. 191.

<sup>196</sup> *Qwest Phoenix Order*, 25 FCC Rcd at 8633, para. 24.

<sup>197</sup> *Id.* at 8644, para. 39.

<sup>198</sup> 47 U.S.C. § 1302(a).

course, free to seek forbearance based on factors other than, or in addition to, claimed competition, so long as the section 10 criteria are satisfied.”<sup>199</sup> Indeed, the Commission there read the “request for forbearance [to rest] primarily on claims [the carrier was] subject to effective competition” in a particular geographic market.<sup>200</sup> Because we do not rely on such a narrow basis for forbearance but instead take into account the negative incentives on investment created by the regulations at issue, the Commission’s policy of facilitating the transition to next-generation networks and services, the many, redundant regulatory backstops that remain, as well as our findings of significant and widespread competition in the voice services market, the framework of the *Qwest Phoenix Order* does not apply on its own terms.

61. For yet another, to the extent that opponents of forbearance read the *Qwest Phoenix Order* as saying that a market-power framework is *always* “better suited to analyzing claims that competition in the legacy services market is sufficient . . . with respect to . . . regulatory obligations . . . such as section 251(c)(3) unbundling,”<sup>201</sup> we disavow such a reading. The Commission there was careful to cabin its findings to the particular situation at issue, and any broader reading of the order would contradict its own holding that the Commission has broad “discretion” in choosing a competition analysis. A broader reading would also unduly constrain the Commission’s ability to grant forbearance in cases where the public interest or protection of consumers supported it, based on an extra-textual requirement that the Commission conduct a “market-power” analysis to evaluate competition in every case.

62. What is more, the narrow focus of that order’s market-power standard could not withstand scrutiny today. There, the Commission sharply cordoned off TDM voice service for a separate competitive analysis, setting aside competitive alternatives such as facilities-based interconnected VoIP service, over-the-top interconnected VoIP service, and wireless services (fixed and mobile). But it is obvious from the record and broader marketplace trends that there is ever-declining demand for legacy TDM service and there is sustained growth in intermodal voice capabilities that continue to diminish incumbent LECs’ once-central role in the local voice service marketplace.<sup>202</sup> Indeed, it would be irresponsible of us not to take into account the multiple voice options available today, particularly given the Commission’s recently compiled report to Congress acknowledging that fact.<sup>203</sup> And we need not suggest that all such voice options are perfect substitutes for one another to recognize the competitive role that such services do play, consistent with the Commission’s approach to such services in other contexts—facilities-based VoIP service, in particular.<sup>204</sup>

63. Nonetheless, because we do not read the *Qwest Phoenix Order* as requiring one particular mode of analysis here (and even if another reading were possible, we hereby cabin that *Order* as permitting other approaches for the reasons stated above), we need not otherwise decide arguments that the *Qwest Phoenix Order* took an unduly narrow view of competition, unreasonably excluded competitors, or otherwise was wrongly decided. Nor need we opine on whether the assumption in the *Qwest Phoenix Order*—that it is the incumbent LEC’s burden to prove that it does not have market power

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<sup>199</sup> *Qwest Phoenix Order*, 25 FCC Rcd at 8642-43, para. 37 n.120.

<sup>200</sup> *Id.* at 8645, para. 41.

<sup>201</sup> *See id.* at 8642-43, para. 37; *see also id.* at 8643, para. 38 (finding that a market-power analysis is “consistent with the policies underlying section 251(c)(3)”). Further, although INCOMPAS characterizes the *Qwest Phoenix Order* as a blanket finding that two competitors are insufficient to constrain pricing, we have already rejected that argument elsewhere. *See BDS Order*, 32 FCC Rcd at 3515, para. 121.

<sup>202</sup> *See, e.g., 2018 Communications Marketplace Report*, 33 FCC Rcd at 12574-75, para. 20; 2018 Voice Telephone Services Report at 2.

<sup>203</sup> *See, e.g., 2018 Communications Marketplace Report*, 33 FCC Rcd at 12668, para. 203.

<sup>204</sup> *See, e.g., Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5675-76, para. 34; *see also 2018 Communications Marketplace Report*, 33 FCC Rcd at 12668, paras. 204-05.



rather than an opposing party's burden to prove that an incumbent LEC does have market power—comports with the pro-competitive and deregulatory thrust of the 1996 Act or the rapid evolution of the communications market to a plethora of service offerings using a variety of non-traditional technologies.<sup>205</sup>

64. Furthermore, because we reject use of the *Qwest Phoenix Order* market-power approach, we also reject arguments that we must conduct product and geographic market definition exercises flowing from such an approach in order to grant forbearance here.<sup>206</sup>

#### IV. ORDERING CLAUSES

65. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1-4 and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, and 160, this Memorandum Opinion and Order IS ADOPTED.

66. IT IS FURTHER ORDERED that, pursuant to sections 1-4 and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 160, the Petition for forbearance filed by USTelecom IS GRANTED solely to the extent discussed herein. To the extent it has not been granted herein or in previous orders in WC Docket No. 18-141, the Petition is hereby DENIED.

67. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), this Memorandum Opinion and Order SHALL BE effective upon release. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 CFR §§ 1.4, 1.13, the time for appeal SHALL RUN from the release date of this Memorandum Opinion and Order.

68. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, this proceeding is TERMINATED and the above-captioned docket shall be closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>205</sup> Indeed, were we to confront the issue, we would have to acknowledge the significant lack of evidence in the record that incumbent LECs have market power in the voice service market and those arguing to the contrary would need to address how such a finding could square with the small and dwindling share of the voice services market that incumbent LECs retain.

<sup>206</sup> See, e.g., INCOMPAS Motion for Summary Denial (Aug. 6, 2018); Granite Opposition at 3-4; TPx Opposition at 17; Access Point et al. Opposition at 16; Granite et al. June 26, 2019 *Ex Parte* Letter at 4; Call One June 25, 2019 *Ex Parte* Letter at 1; see also Call One July 10, 2019 *Ex Parte* Letter at 1-2.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL,  
DISSENTING**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket 18-141.*

There was a time, not that long ago, when traditional voice telephony offered over copper loops was the core of our communications system. No longer. The technologies used to provide voice service have expanded and the digital age has brought a whole new range of communications services to homes and businesses across the country.

This change is exciting. But in our haste to make way for the new, I worry we give short shrift to those consumers who depend upon the old. There are still consumers who rely on traditional voice services provided via unbundled copper loops and avoided-cost resale. By ushering these facilities out of the market and erasing their provision under the law, this decision risks cutting off calls and could leave consumers without options at the end of the line. To this end, I am disappointed that this decision did not do more to guarantee a smooth transition for newly-ordered services, especially when it comes to government users that depend on these facilities. I respectfully dissent.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS  
CONCURRING IN PART AND DISSENTING IN PART**

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket 18-141.

By adopting this order, the Commission removes an important part of the competitive landscape from the voice telephone market. Because of the Commission's action, incumbent carriers will no longer be required to make the copper "loops" that connect customer's homes and small businesses to communications networks available at regulated rates to carriers providing voice competition. The provisions that the Commission forbears from in this order are part of the framework put in place in the Telecommunications Act to ensure competition in communications markets. USTelecom filed a petition seeking forbearance from requirements that its members provide voice-grade copper loops connecting customer's homes and small businesses to telecommunications networks.

While these loops don't play the same role in local service competition that they did in the initial years after the Act was implemented, the record reflects that they still play an important role. In particular, availability of these loops under the current regulatory environment plays a key role in providing competition in several markets. One is the market for service to businesses that have nationwide locations where each location needs one or more line-powered voice lines for voice service, credit card processing, and for other purposes. Competition in this market depends on the availability of voice-grade copper loops in regions throughout the country to meet customer demand for this exact product. Another is the market for service to Federal government entities. Like the nationwide business market, Federal government entities frequently have locations throughout the US and have a need for reliable, line-powered service to multiple locations in multiple regions and jurisdictions. Competition in this market is sufficiently important that the Government Services Administration selected two competitive carriers as service providers under the new "Enterprise Infrastructure Solutions" (EIS) government purchasing contract to provide the option of lower prices and better customer service that comes with competition.

Unfortunately, today's order ignores the value of competition in these markets. I do not agree that the competition the order portrays is sufficient to warrant forbearing from the regulations in question altogether. However, I made requests to change the item that would have left the forbearance findings intact and would have only made changes to the transition periods included in the order. Specifically, I requested that the new ordering period for competitive carriers to acquire copper loops for use in serving non-governmental customers be extended to 18 months. This extension would permit companies providing competition in the nationwide business marketplace to make changes needed to prepare for the forbearance the Commission adopts today. Notably, this request did not seek to extend the overall time of the transition for these businesses and did not seek to change any forbearance finding. I also requested changes to the order to allow companies selected as vendors under the new GSA EIS contract to continue to provide competition in the marketplace, as envisioned by GSA. Specifically, the changes I requested would have allowed these companies to acquire new services for the four years remaining until the mandatory transition to the EIS contract takes place in 2023 and would have allowed them to use the copper loop services in question for that time period plus one additional year. Unfortunately, the Chairman's office did not agree with the reasonable and limited changes that I requested to ensure the presence of competition in the nationwide business and Federal government services marketplace. I am disappointed that we were not able to find a consensus path forward and so I respectfully dissent from the Order, except with respect to Puerto Rico, as I discuss below.

I am glad to once again have been able to work with the Chairman's office to negotiate a better path forward for Puerto Rico and concur in that portion of the item. The original draft order did not recognize any differences between Puerto Rico and the rest of the US and applied the same forbearance finding in both places. But, there are real, important, differences. Puerto Rico is still struggling to recover from the

devastation wrought by Hurricane Maria in 2017. Much of Puerto Rico's telecommunications network was destroyed in the storm and people went without communications for months.

As carriers continue the process of rebuilding in Puerto Rico, I believe that a significantly longer transition period before the granted forbearance takes effect is appropriate and I'm glad that this order now includes one. As with the recent order addressing USTelecom's forbearance requests related to transport, this longer transition period – five years instead of three – will give competitive carriers serving in Puerto Rico more time to continue their rebuilding and recovery efforts before the changes that will come with the forbearance have to factor into their business plans. This change will also save money for customers in Puerto Rico who are benefitting from competitive service as the prices for such services in Puerto Rico will not change due to the granted forbearance during the five-year transition period.

I recognize that a forbearance item like this one is complex, and I thank the staff of the Wireline Competition Bureau for their work in preparing it.