**FEDERAL COMMUNICATIONS INDIANA COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Petition of USTelecom for Forbearance | ) | WC Docket No. 12-61 |
| Under 47 USC 160(c) From Enforcement | ) | |
| Of Certain Legacy Telecommunications | ) | |
| Regulations | ) | |

# COMMENTS OF COMMISSIONER LARRY S. LANDIS OF THE INDIANA UTILITY REGULATORY COMMISSION

On February 16, 2012, the United States Telecommunications Association ("USTelecom") filed a petition with the Federal Communications Commission (FCC) for forbearance from a number of FCC rules and requirements.[1] Commissioner Larry S. Landis of the Indiana Utility Regulatory Commission files these comments to identify several areas of concern regarding this petition and to discuss the potential impact granting the petition might have.

USTelecom cites to the FCC's ongoing Data Innovation Initiative in support of its petition but refers only to that portion of the Initiative that may result in elimination of FCC rules.[2] The petition ignores the concurrent goals emphasized by both Chairman Genachowski and the FCC, as a whole, to develop policies that are "fact based" and "data driven."[3] Granting the petition would reduce transparency and would run counter to the spirit of these goals, and likely the letter, as well, in many cases.

[1] Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61.
[2] USTelecom Petition, p. 20.
[3] "FCC Launches Data Innovation Initiative", News Release (FCC: June 29, 2010). *See*, *also*, Om Malik interview with FCC Chairman Julius Genachowski (2009): http://gigaom.com/2009/08/03/the-gigaom-interview-fcc-chair-julius-genachowski/

The petition appears to rely, at least in part, on assumptions about competition in the communications industry, without providing support for any particular level of competition.[4] Even assuming, *arguendo*, that competition is sufficient in certain particular location(s) to justify granting the petition, it does not follow that competition is uniformly of this same magnitude across all product/service and all geographic markets, nor that blanket approval of the petition should automatically be granted for all affected USTelecom members across all product/service and all geographic markets.

One of the rationales given by USTelecom to justify portions of the relief requested in this petition is the existence of competition from wireless, broadband, and VoIP providers. The FCC has tentatively concluded that certain areas of the country are currently unserved or underserved. Without conceding either the validity of the FCC's analytical methodology(ies) or the accuracy of the results, we believe the FCC should at least wait until it has developed a final list of unserved and underserved areas before granting any of the relief requested in this petition, for which the existence of competition is cited as a rationale for a particular request.

Given the request in the petition for the FCC to forbear from enforcing or applying the existing separations[5], accounting[6], and cost assignment rules[7], under certain circumstances, it would be appropriate to refer the request(s) to forbear from enforcing the Part 36 separations rules to the Federal-State Joint Board on Jurisdictional Separations ("Separations Joint Board") prior to considering the petition on its merits. The Separations Joint Board should also be given the opportunity to assess the impact of forbearance from Part 32 and Part 69 rules and certain requirements in Part 64 or other CFR Parts – and the interrelationship between those rules and existing Part 36 rules, and separations reform proposals, as well.

[4] See, e.g., USTelecom Petition, pp. 1 – 5.
[5] *See*, *e.g.*, USTelecom Petition (Appendix), pp. A-3 through A-6.
[6] USTelecom Petition, pp. 34 – 43.
[7] USTelecom Petition, pp. 31 – 34.

One of the claims by USTelecom is that some of the Part 32 accounts or rules either duplicate or are in conflict with General Accepted Accounting Practice (GAAP).[8] USTelecom's assertions should be verified before proceeding to delete any U.S.O.A. accounts or accounting rules. The burden should be on USTelecom to identify which U.S.O.A. accounts or accounting rules or requirements are inconsistent with GAAP and to provide detailed support for such assertions.

USTelecom argues that Part 32 accounts and rules are no longer needed as inputs to the Part 36 jurisdictional separations process because Part 36, itself, is no longer needed.[9] There appears to be an implicit assumption that Part 32 accounts and rules would also be unnecessary if the Part 36 rules were reformed and updated, but not totally eliminated. None of the Part 32 accounts and accounting rules should be eliminated[10] until after final separations reform is accomplished. Only then can both the Federal-State Joint Board on Jurisdictional Separations ("Separations Joint Board") and the FCC accurately evaluate which Part 32 accounts and rules will be needed for jurisdictional separations purposes on a going-forward basis.

Now that the FCC has attempted, pending judicial review, to preempt the states' statutory intrastate ratemaking authority over many aspects of intrastate access charges, without assuming responsibility for the costs, there will be, by definition (if and to the extent the FCC's preemption attempts are upheld), a significant mismatch between jurisdictional responsibility for recovery of costs and expenses and the ratemaking authority to carry out that responsibility. There may also be jurisdictional mismatches between revenue and costs/expenses, themselves. Part 32 data are, at least in part, inputs to the separations process.[11] It is important to preserve the Part 32 account structure and data, while the Joint Board and the FCC consider reforms to the Part 36 (separations) rules and procedures.

[8] USTelecom Petition, p. 35.
[9] USTelecom Petition, p. 38. *See, also*, USTelecom Petition (Appendix), pp. A-3 through A-6.
[10] See, USTelecom Petition, pp. 34 – 43.
[11] USTelecom Petition, p. 38.

I appreciate this opportunity to offer my initial comments in this matter, and look forward to reviewing the comments of other parties at interest.

Respectfully submitted this 9th day of April, 2012.

Larry S. Landis, Commissioner
Indiana Utility Regulatory Commission