



August 13, 2020

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Notice of *Ex Parte* Submission of the Fiber Broadband Association,
*Modernizing Unbundling and Resale Requirements in an Era of Next-
Generation Networks and Services, WC Docket No. 19-308***

Dear Ms. Dortch:

The Fiber Broadband Association's ("FBA's") engagement with the issue of whether incumbent local exchange carriers ("ILECs") should be required to provide unbundled network elements ("UNEs") goes back over 15 years, when FBA advocated that the Federal Communications Commission ("Commission") not require unbundling of fiber loop facilities to drive investment in fiber infrastructure and increase facilities-based competition.¹ The Commission adopted FBA's proposal,² ending ILEC obligations to unbundle fiber loops and,

¹ See Letter from Timothy J. Regan, Senior Vice President, Corning (on behalf of the Fiber to the Home Council), to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-336 (Oct. 14, 2002).

² See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, *et al.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, para. 273 (2003) ("We conclude that requesting carriers are not impaired without access to FTTH loops, although we find that the level of impairment varies to some degree depending on whether such loop is a new loop or a replacement of a pre-existing copper loop. With a limited exception for narrowband services, our conclusion applies to FTTH loops deployed by incumbent LECs in both new construction and overbuild situations.").

since then, the deployment of all-fiber networks has burgeoned, passing some 50 million households today.³

In the above-referenced proceeding, the Commission is again considering whether to find that competitive providers are not impaired without access to a variety of ILEC facilities, including dark fiber transport facilities that are within one-half mile of competitive facilities, and thereby ending ILEC unbundling obligations. Just as the Commission decided to not require unbundling of fiber loops because it would drive investment and competition, so should the Commission find that ILECs should no longer have to unbundle dark fiber facilities. As USTelecom explained in its comments in this proceeding:

“ILECs have first-hand knowledge as to the availability of dark fiber from competitors as purchasers of dark fiber transport from competitive LECs and cable companies on a commercial basis. The opposition in the record is simply an attempt by competitive LECs to continue to lease unbundled dark fiber at below-market TELRIC rates and undermine additional investment in fiber upgrades.”⁴

Moreover, while the Commission should provide for an appropriate transition for competitive providers that currently access dark fiber UNEs, it would undermine incentives to invest in fiber facilities for that transition to have no end. FBA members are finding the economics of deploying fiber have become even more favorable as they race to build facilities to residential, business, and anchor institution locations, as well as to small cell and other wireless sites and for smart city and smart grid applications. The Commission has an opportunity in this proceeding to propel those deployments even further by ending UNE dark fiber obligations as soon as reasonably possible.

³ See Letter from Lisa R. Youngers, President & CEO, Fiber Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 17-84, 19-126, 2 (Dec. 11, 2019).

⁴ Reply Comments of USTelecom—The Broadband Association, WC Docket No. 19-308, 35 (Mar. 20, 2020).

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁵



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⁵ 47 C.F.R. § 1.1206.