

April 8, 2019

**VIA ECFS**

***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**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 No. 18-141***

Dear Ms. Dortch:

On April 4, 2019, Michael Galvin, General Counsel, and Sana Sheikh, Senior Corporate Counsel, of Granite Telecommunications, LLC (“Granite”), Joseph Farano, General Counsel of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”), John Hoehne, Chief Operating Officer of Access One, Inc., and Susan Butler of Capitol Resources LLC, consultant to Granite, as well as Mia Guizzetti Hayes and the undersigned of Willkie Farr & Gallagher LLP, met with Nirali Patel, Wireline Advisor to Chairman Pai, and Will Holloway, intern in the Chairman’s office. Sean Sullivan, MetTel’s Vice President, Product Management and Regulatory Affairs, participated in the meeting by phone.

The attached outline formed the basis for the presentation at the meeting. During the presentation, the undersigned reiterated points made in the three companies’ prior filings in the above-referenced docket,<sup>1</sup> which explain why the Commission should deny the USTelecom petition for forbearance, at least to the extent that it applies to avoided-cost resale of traditional TDM service under Section 251(c)(4).

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<sup>1</sup> See Opposition of Granite to USTelecom’s Forbearance Petition, WC Docket No. 18-141 (Aug. 6, 2018); Opposition of MetTel, WC Docket No. 18-141 (Aug. 6, 2018); Declaration of John Hoehne (Aug. 3, 2018), attached as Attachment 3 to Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141 (Aug. 6, 2018); Reply Comments of Granite, WC Docket No. 18-141 (Sept. 5, 2018); see also Letter from Thomas Jones, Willkie Farr & Gallagher LLP, Counsel to Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (Nov. 8, 2018); Letter from Thomas Jones, Willkie Farr & Gallagher LLP, Counsel to Granite Telecommunications, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (Mar. 14, 2019).

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Please contact the undersigned with questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones  
Thomas Jones

*Counsel for Granite Telecommunications, LLC,  
Manhattan Telecommunications Corporation d/b/a  
Metropolitan Telecommunications, and Access One, Inc.*

Attachment

cc: Nirali Patel  
Will Holloway

JOINT PRESENTATION OF GRANITE, METTEL, AND ACCESS ONE  
REGARDING USTELECOM PETITION TO FORBEAR FROM  
ENFORCEMENT OF AVOIDED-COST RESALE UNDER SECTION 251(c)(4)  
WC DKT NO. 18-141  
(Apr 4, 2019)

I. The Commission Should Utilize Appropriate Product and Geographic Markets

A. The relevant product market for purposes of Section 251(c)(4) is traditional TDM service.

1. Self-powered copper voice lines provide business and government customers the reliability that they need for a range of critical applications. This reliability is not available from other voice services, including VoIP or wireless services. As a result, the demand for traditional TDM service remains strong among the business and government customers served by resale competitors.

a) Federal agencies (including DoD and FAA) have stated that they remain critically reliant on traditional TDM service, and multiple federal agency regulations (including DEA, FAA, and FBI) continue to rely on the presence of traditional TDM service;

b) Multiple state public utility commissions and public safety advocates have emphasized that public safety services frequently depend on the ubiquity and unmatched reliability of traditional TDM service.

2. ILECs themselves market the unique reliability of line-powered telephone service delivered via copper loops.

B. The relevant geographic market is the customer location, although a larger geographic area should be used where customers facing similar market conditions can be aggregated.

II. The ILECs Have Market Power in the Provision of Traditional TDM Service

A. Only the ILECs own the copper loops needed to provide traditional TDM service.

B. It is highly unlikely that another firm will deploy these facilities in the future.

- III. Resale Competitors Rely on the Availability of Avoided-Cost Resale as a Protection Against ILEC Abuse of Market Power
  - A. It is used as a crucially-important means of balancing bargaining power between ILECs and competitors in commercial wholesale agreement negotiations.
  - B. It is used as a means of purchasing wholesale services under interconnection agreements governed by Sections 251 and 252.
- IV. Absent the Availability of Avoided-Cost Resale, the ILECs Would Have the Incentive and Ability to Reduce Competition by Increasing Wholesale Prices for Traditional TDM Service -- This Result is Explained at Length in an Economist Report Prepared by William Zarakas and Filed in this Proceeding
- V. USTelecom and Its ILEC Members Have Failed to Support USTelecom's Request for Forbearance from Enforcement of Section 251(c)(4)
  - A. The ILECs refuse to analyze relevant product or geographic markets for traditional TDM voice service. This error causes the ILECs to rely on data regarding (1) consumer demand for telephone service which is distinct from and irrelevant to business customer demand and (2) aggregate nationwide competition which masks actual competitive conditions in relevant geographic areas.
  - B. The ILECs' economic analyses do not address resale; ILECs do not even try to demonstrate that forbearance from avoided-cost resale would promote competition.
  - C. The ILECs incorrectly assert that avoided-cost resale should not be maintained because traditional TDM service will eventually be eliminated and because the volume of services purchased as resale is smaller than other wholesale products.
  - D. There is no basis for the ILEC assertion that Section 251(b)(1) and Sections 201/202 would adequately protect competition if Section 251(c)(4) were no longer enforced.
  - E. AT&T's claim that avoided-cost resale somehow imposes costs on ILECs is unsupported in the record and has no basis in fact.
  - F. ILEC claims that retaining avoided-cost resale would undermine broadband deployment also have no basis in fact.
  - G. ILEC reliance on the Commission's non-dominance classification for switched access service in the 2016 *Technology Transitions Order* is misplaced since that classification relied on the presence of rate regulation (i.e., the bill and keep mandate), not competition.

H. The Commission's *BDS Order* is irrelevant to traditional TDM service. Unlike BDS, no firm other than the ILEC owns copper loops and, in all events, competitors are much less likely to deploy loops of any kind to new customer locations for the purpose of providing voice service as opposed to more lucrative BDS.

I. ILEC claims that the "alternative options test" for assessing TDM discontinuance requests supports their view that VoIP is a substitute for traditional TDM service for businesses have no merit.

J. ILEC claims that CLECs want to preserve Section 251(c) provisions indefinitely do not apply to resale of traditional TDM service because copper will be gradually retired and TDM service will be discontinued.