

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Business Data Services in an Internet Protocol Environment)	WC Docket No. 16-143
)	
Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans)	WC Docket 15-247
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	
Technology Transitions)	GN Docket No. 13-5
)	
Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers)	RM-11358
)	

COMMENTS OF GRANITE TELECOMMUNICATIONS, LLC

I. Introduction and Summary.

Granite Telecommunications, LLC (“Granite”) provides these comments in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking (“FNPRM”) in the recent *Business Data Services Order*.¹

Granite urges the Commission to extend the sunset of the wholesale voice platform

¹ *Business Data Services, et al.*, WC Docket No. 16-143 *et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54 (rel. May 2, 2016) (“*Business Data Services Order*”).

regulatory backstop established in the *Technology Transitions Order*² until such time as the Commission analyzes the relevant market for multi-location business voice services and determines the appropriate treatment of incumbent market power in that market.

II. Background.

Granite provides an enhanced voice offering to national and regional multi-location business customers, such as Starbucks, Simon Properties, Sears Holding Company, Bed Bath & Beyond, Brookdale Senior Living, Pier 1 Imports, the Washington Metropolitan Area Transit Authority, and many others,³ by purchasing wholesale voice platform services from incumbent local exchange carriers (“ILECs”). In the *Technology Transitions Order*, the Commission adopted a requirement that ILECs seeking to discontinue wholesale voice platform services must offer a reasonably comparable IP wholesale replacement service on reasonably comparable rates, terms, and conditions.⁴ The Commission further stated that this regulatory backstop would sunset upon the adoption of an order concluding the Business Data Services proceeding.⁵ The Commission then sought comment on a number of questions related to the reasonably comparable wholesale access requirement, including whether the regulatory backstop as applied to wholesale voice platform services should extend beyond the interim period

² *Technology Transitions et al.*, GN Docket No. 13-5 *et al.*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (2015) (“*Technology Transitions Order*”).

³ See Ex Parte Letter from Michael B. Galvin, General Counsel, Granite Telecommunications, to Marlene H. Dortch, Secretary, FCC, GN Docket 13-5 *et al.* (filed June 23, 2015) (enclosing 183 letters from Granite customers supporting the Commission’s efforts to preserve and promote competitive choices in telecommunications).

⁴ *Technology Transitions Order* ¶ 132.

⁵ *Id.*

established in the *Technology Transitions Order*.⁶

III. Allowing the Regulatory Backstop for Wholesale Voice to Sunset Would Not Be In the Public Interest.

The Commission noted in the *Technology Transitions Order* that “the special access proceeding will not address the status of commercial wholesale platform services. . . .”⁷ However, the information that has been assembled in the Business Data Services proceeding clearly demonstrates a lack of competitive options for higher capacity products / circuits in all but a small minority of markets.⁸ From this information, the Commission can and should recognize that businesses on the opposite end of the spectrum in terms of voice and data usage, such as business customers served by wholesale voice platform services, have even fewer competitive options. For example, Granite provided studies showing the relatively small number of lines / bandwidth per location of Granite customers.⁹ Specifically, 76% of Granite’s customer locations have 4 or fewer voice lines and are spread broadly across many wire centers (6,938 wire centers serve 20 Granite lines or fewer).¹⁰ In addition, at 85% of Granite’s customer locations,

⁶ *Id.* In response to the request for comments, Granite filed initial and reply comments on October 26, 2015, and November 24, 2015, respectively.

⁷ *Technology Transitions Order* ¶ 242.

⁸ See *Business Data Services Order* ¶ 237 (“Our own analysis, the Rysman White Paper, and the Baker Declaration, provide direct evidence of market power in the supply of various services” (footnote omitted)); *id.* at Appx. B, Rysman White Paper at I (“The paper studies what are arguably three different data sets covering revenue, locations and prices, yet evidence of ILEC market power is found in each.”). See also Letter from Kathleen Grillo, Senior Vice President, Public Policy and Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and RM-10593 (filed June 27, 2016) (Verizon and INCOMPAS agree that the FCC should deem TDM and packet-based business data services below 50 Mbps non-competitive and subject to *ex ante* price regulation).

⁹ Ex Parte Letter from Granite Telecommunications to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 *et al.* (filed June 3, 2015).

¹⁰ *Id.* at 5-6.

cable is not available without construction and at over 78% of Granite customer locations, the customer is either the only building tenant or shares space with just one other tenant, and at most locations the customer simply does not employ enough people to justify the spend that would be required to build a viable alternative the incumbent carrier's facilities.¹¹

The Commission should not complete the Business Data Services proceeding without adopting a more relevant sunset for the Technology Transitions requirement that ILECs offer an IP wholesale voice platform. Such an outcome would severely harm competition in the provision of voice services to multi-location business customers. It would leave customers of companies like Granite at the mercy of ILEC rate increases in the large number of customer locations where the ILEC has the only physical connection to the customer. For example, Granite submitted a study conducted by Steven C. Salop, Professor of Economics and Law at Georgetown University Law Center, and Jeffrey E. Prisbrey, Vice President, Charles River Associates, in which they explained what is at stake economically for customers of Granite and other competitive service providers.¹² Based on the substantial value created by competitive carriers like Granite and the risk that incumbent carriers will increase their prices if competitors cannot provide an alternative, Professor Salop believes the harm would be \$4.4 billion to \$10.1 billion each year.¹³

In an effort to reach a business solution, Granite attempted to engage AT&T in

¹¹ *Id.* at 10-11.

¹² Ex Parte Letter from Granite Telecommunications to Marlene H. Dortch, Secretary, FCC GN Docket 13-5 *et al.* (June 12, 2015).

¹³ *Id.* at 7-8.

good faith negotiations regarding access to IP replacement products following issuance of the *Technology Transitions Order*.¹⁴ AT&T refused to negotiate and asserted it has no wholesale IP platform product, notwithstanding that AT&T is currently offering IP products to its own retail business customers and has been offering those products for years.¹⁵ Given AT&T's demonstrated unwillingness to negotiate, it is evident that without an extension of the regulatory backstop, customers served by wholesale voice platform services will lose the benefit of competition at the large numbers of locations where other carriers cannot economically build facilities.

Even if the Commission has doubts that the IP transition will occur on the timetable that AT&T has predicted, the Commission should still clarify the durational limit anyway. AT&T's public proclamations about rapid changes from TDM to IP,¹⁶ coupled with its staunch refusals to engage with wholesale marketplace participants on non-TDM replacement products,¹⁷ has created significant uncertainty over how long crucial voice infrastructure products and services will be available. That ambiguity is problematic not just for competitive carriers, but also to the national and regional

¹⁴ See Ex Parte Letter from Granite Telecommunications to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 *et al.* (filed April 5, 2016) (describing Granite's unsuccessful attempt to amend its Local Wholesale Complete agreement with AT&T to include IP voice services and attaching written correspondence between the parties).

¹⁵ *Id.* at Attach. 7, 10.

¹⁶ See Comments of Granite Telecommunications, LLC, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, et al.*, GN Docket No. 12-353, *et al.*, Exhibit C (AT&T Nov. 7, 2012 Analyst Call Transcript, p.4 ("we plan to extend fiber to reach over 1 million businesses, 50% of multi-tenant buildings in our wireline region [by year-end 2015].") (filed Jan. 28, 2013); see also *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353 (filed Nov. 7, 2012) (AT&T proposes transition to all IP network by 2020).

¹⁷ See *supra* n.14.

businesses and governmental agencies that competitive carriers serve.¹⁸ It should not be that AT&T or other incumbent LECs are the only ones who can accurately tell business customers for how long their critical infrastructure will last, and what replacement products will be available to them. Rather, to preserve and promote competition in the multi-site business marketplace, the Commission should address the durational issue at this juncture.

IV. Conclusion

For the foregoing reasons, the Commission should extend the sunset of the wholesale voice platform regulatory backstop until such time that the Commission analyzes the relevant market for multi-location business voice services and determines the appropriate regulatory treatment of ILEC market power in that market.

Respectfully submitted,

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¹⁸ *Id.* at Attach. 6-7 (discussing AT&T's use of the transition to IP as a basis to convince customers to switch services to AT&T).