

November 19, 2018

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 November 15, 2018, Michael Galvin, General Counsel, and Sana Sheikh, Senior Corporate Counsel, of Granite Telecommunications, LLC, Sean Sullivan, Vice President, Product Management and Regulatory Affairs, and Joseph Farano, General Counsel, of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and John Hoehne, Chief Operating Officer of Access One, Inc. as well as the undersigned met with Terri Natoli, Eric Ralph, Michele Berlove, Claudia Pabo, Pam Megna, Megan Capasso, and Benjamin Plante of the Wireline Competition Bureau. Joel Miller, General Counsel of Access One, Inc., participated in the meeting by phone.

The attached outline formed the basis for the presentation during the meeting. During the presentation, the undersigned and the company representatives reiterated points made in prior filings in the above-referenced docket by the three companies.¹ Messrs. Galvin, Sullivan, and Hoehne emphasized in particular that their companies' business customers frequently view TDM-based telephone service provided via incumbent LEC copper loops ("traditional TDM service") as having distinct service characteristics that other telephone services, including voice over IP ("VoIP") provided by cable companies and wireless voice services, do not provide. Mr. Sullivan explained that more than 50 percent of MetTel's VoIP customers purchase traditional TDM service from MetTel at the same

¹ 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); 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).

location at which they purchase VoIP service from MetTel. This is so even though the prices that MetTel must charge for traditional TDM service are on average more than double the prices that it charges for VoIP service. Similarly, Mr. Hoehne explained that a large number of Access One customers prefer traditional TDM service over VoIP service even though Access One must charge prices for traditional TDM service that are more than two and a half times the prices that Access One charges for VoIP service. Messrs. Galvin, Sullivan, and Hoehne also emphasized that the availability of avoided-cost resale is essential to ensuring that the companies are able to purchase traditional TDM service from incumbent LECs on commercially-viable rates, terms, and conditions and that, in the absence of avoided-cost resale, competition and business customers that rely on traditional TDM service (including government customers, pharmacies, banks, hospitals, and many others) would be harmed. Accordingly, the company representatives argued that 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).

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: Terri Natoli
Eric Ralph
Michele Berlove
Claudia Pabo
Pam Megna
Megan Capasso
Benjamin Plante

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
(Nov. 15, 2018)

I. Legal Framework

A. USTelecom must meet all four prongs of the Section 10 forbearance test by showing that Section 251(c)(4) is not necessary to ensure that charges, practices, classifications, or regulations for relevant telecommunications services are just, reasonable and not unjustly or unreasonably discriminatory; that Section 251(c)(4) is not necessary to protect consumers; and that forbearance is consistent with the public interest.

B. Forbearance from enforcement of Section 251(c)(4) should only be granted in rare circumstances given the significant benefits of resale competition and the *de minimis* costs of enforcement and compliance. The terms of Section 251(c)(4), in particular the absence of an impairment provision, indicate Congress' expectation that resale would be available even in relevant markets in which unbundling has been eliminated.

C. The traditional market power standard is the most appropriate analytical framework for assessing the USTelecom Petition. By defining and analyzing appropriate relevant markets, the FCC can assess the effect of forbearance in a reasonable manner and will not fail to account for the effects of forbearance on significant customer categories.

II. 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. 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.

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.

III. 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.

- IV. 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.
- V. 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
- VI. 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.
 - 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 resale competitors focus on harm to competitors, not competition.
 - D. 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.
 - E. 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.
 - F. ILECs incorrectly assert that the Commission should ignore competitors' use of avoided-cost resale as a means of obtaining reasonable commercial wholesale agreements.
 - G. AT&T's claim that avoided-cost resale somehow imposes costs on ILECs is unsupported in the record and has no basis in fact.
 - H. ILEC reliance on the Commission's non-dominance classification for switched access service in the 2016 *Technology Transitions Order* is misplaced.

- VII. The Experiences of Individual Resale Competitors Illustrate the Manner in Which Avoided-Cost Resale Remains Necessary to Protect Competition and Consumer Welfare
 - A. Access One.
 - B. MetTel.
 - C. Granite.
- VIII. The Commission Should Consider at Least Four Factors in Assessing the Consequences of Forbearance from Enforcement of Section 251(c)(4)
 - A. The extent to which different categories of products are provided by resale-based competitors.
 - B. Differences among geographic areas.
 - C. Categories of customers for which traditional TDM service remains essential.
 - D. Transition period.