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November 6, 2014

Via ECFS **EX PARTE**

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

Re: Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch A Proceeding Concerning the TDM-IP Transition, GN Docket No. 12-353;

Dear Ms. Dortch:

Granite Telecommunications, LLC ("Granite") respectfully submits this letter to endorse the recommendations of Windstream Communications, Inc.,[1] regarding the nexus between preserving CLEC access to last-mile facilities and achieving the Commission's goals with respect to preserving competition during and after the transition to IP networks.[2] Both companies agree that the Commission must take concrete steps to promote competitive access to ILEC wholesale inputs and promote certainty in the market for business customers.

Granite has consistently supported the Commission's efforts to assist the IP transition.[3] However, the success of that endeavor requires that the Commission continue to promote competition in all markets on a technology-neutral basis.[4]

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[1] *Ex Parte Letter* of J. Nakahata on behalf of Windstream Communications, Inc. to Marlene H Dortch, FCC, GN Docket 13-5 et al. (October 28, 2014) "*Windstream Oct. 28 Ex Parte*"); *Ex Parte Letter* of J. Chandra, Windstream Communications, Inc. to Marlene H. Dortch, FCC, GN Docket No. 13-5, et al, (Sep. 26, 2014) ("*Windstream Sep.26 Ex Parte*"); *Ex Parte Letter* of J. Chandra, Windstream Communications, Inc. to Marlene H. Dortch, FCC, GN Docket No. 13-5, et al, (Aug. 7, 2014) ("*Windstream Aug. 7 Ex Parte*").

[2] *Technology Transitions, et al.*, GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-5, rel. Jan. 31, 2014 ("*Technology Transitions Order*"), Statement of Chairman Wheeler, at 2.

[3] *See* Comments of Granite Telecommunications, LLC, GN Docket No. 12-353 pp. 1-2 (filed Jan. 28, 2013) ("Granite Docket -353 Comments").

[4] *Ex Parte Letter* of Michael B. Galvin, Granite Telecommunications, LLC to Marlene H. Dortch, FCC, GN Docket Nos. 13-5 and 12-353 (May 23, 2014) ("Granite E*x Parte*.

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As Granite has explained in this proceeding, it provides voice and data communications to national companies across the entire United States that need a small number of voice lines (typically 3 to 15) at a significant number of locations. Granite provides these national companies with the ability to obtain service from a single supplier at their disparate retail locations nationwide. To meet the demand for such services, Granite obtains, through commercial agreements with ILECs, a combined package of a DS0 loop, local switching and shared transport: in short, a commercial UNE-P replacement.

Because Granite's customers only have limited demand for communications service at any given location, the locations at which Granite provides service are typically not economically suited for competitive fiber deployment. As a result, competitors such as Granite are dependent on the ILEC for reasonably-priced wholesale inputs necessary to serve their customer locations at very many of the numerous locations where Granite's customers ordinarily operate (i.e., retail shopping malls, town centers, small to mid-sized business centers). Competitors such as Windstream and other facilities-based CLECs rarely have facilities in place to serve such customers.

These customers need competition just as much as companies requiring larger amounts of bandwidth. As Chairman Wheeler acknowledged, whether the "customer is a neighborhood pizza parlor, or a national pizza chain, the ability to enjoy the fruits of competitive networks often requires access to wholesale capacity."[5] Granite could not agree more; as a provider of services to national chains such as Dominos and Pizza Hut, as well as smaller pizza retailers, Granite relies on reasonably-priced wholesale inputs, to serve those customers. If the Commission grants AT&T and other ILECs relief from their obligations to provide competitors with reasonably priced inputs – whether to serve the local pizzeria or a chain of company-owned pizza restaurants – those customers will be deprived of the benefit of competition.

A. Preserving Last-Mile CLEC Access Is Critical To Preserving The Benefits Of Competition

Granite supports the principle that the Commission must establish ground rules for the IP transition that preserve competitors' access to reasonably priced wholesale inputs before, during and after the IP transition. This means that CLECs should have access to functionally equivalent wholesale inputs to what they purchase today from the ILECs on "equivalent rates, terms and conditions through the IP transition."[6]

Windstream submitted GeoResults data showing that CLECs are currently the primary providers of competitive choice to non-residential customers.[7] Chairman Wheeler

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[5] Remarks of Chairman Tom Wheeler, COMPTEL Fall Convention & Expo- Oct. 6, 2014, at p. 2 ("*Wheeler Oct. 6 Remarks*").

[6] *Windstream Aug. 7 Ex Parte* at p.1.

[7] *Windstream Aug 7 Ex Parte* p. 6.

recently acknowledged this fact, stating that "CLECs "account for the bulk of the competition to incumbent providers."[8]

Windstream's GeoResults data encompasses competition from CLECs using a range of competitive entry strategies for serving end users. It includes CLECs that serve end users a) entirely through their own facilities, b) through a combination of their own facilities and ILEC last-mile facilities, and c) CLECs such as Granite that serve customers entirely through ILEC facilities purchased through LWC and similar agreements. Granite and other CLECs employing a similar business model are inevitably responsible for a significant portion of the CLEC share of competition for non-residential customers in both the 5-19 and 20-49 employees per location customer segments reflected in the data provided in Windstream's August 7 *ex parte*.

In addition, these small customer locations are frequently located in thinly populated rural and suburban areas. For example, nearly every community has a post office, convenience store, gas station and/or fast food restaurants. Deploying competitive facilities to these locations is likely not economic. Further, it is also unlikely there is competitive entry in the middle mile transport market.

As a result of the limited demand and high barriers to competitive entry, the ILEC's network typically remains the only available source of wholesale inputs for serving such locations. As Granite has explained, the transition from copper, circuit-switched based networks to packet-switched fiber-based networks does not alter the core economics of competitive facilities deployment and entry. Thus the ILEC remains the only viable source of supply to these locations.

Granite agrees with Windstream's statement in the *Windstream Oct. 28 Ex Parte* that "if the large ILECs are able to discontinue UNEs through the IP transition, the transition would effect a significant price increase to purchase last-mile connectivity from the ILEC for a significant number of smaller and multilocation customers—even if that connectivity is being offered at rates comparable to the former DS1 and DS3 TDM services." UNEs are a substitute for the wholesale services (such as AT&T's Local Wholesale Complete ("LWC")) that Granite and others CLECs use to serve multilocation businesses. The availability of UNEs at TELRIC pricing acts to keep the pricing for wholesale services at reasonable levels. In addition to DS1 and DS3 UNES (as advocated by Windstream), DS0 UNEs should be required to be offered at TELRIC pricing so as to keep pricing of wholesale service at reasonable levels throughout and after the IP transition.

Moreover, if ILECs are allowed to eliminate the TDM wholesale services (such as LWC) without providing comparably priced IP replacements, non-residential customers will be forced to pay higher prices for the services they currently use to serve their customers. If CLECs are forced to raise prices, ILECs can either raise prices themselves, or use the

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[8] Wheeler Oct. 6 Remarks, at p. 2.

price differential to lure customers away from CLECs. Once CLECs have left this segment of the market because of their inability to offer competitively priced products, ILECs will have free rein to raise prices above competitive levels.

Therefore it is critical that the Commission enact policies that allow CLECs to maintain access to their critical wholesale inputs, including UNEs, access to the 64 kps voice channel on fiber, special access, and wholesale agreements such as LWC on equivalent terms during and after the IP transition.

Windstream has proposed six guiding principles that the Commission can incorporate into a standard for preserving competition where competitors rely on ILEC wholesale inputs.[9] Granite likewise recommends the Commission adopt these principles, several of which are particularly relevant for preserving competitors' access to IP-based UNE-P replacement services.

For Granite, it is important that on a per-line basis, wholesale rates for any IP replacement UNE-P product not exceed the TDM per-line rate. It is also important that wholesale rates for any IP replacement product be offered below the retail rate, as otherwise it would effectively preclude competition. In addition, Granite agrees that the ILEC should be required to offer the same range of bandwidth options available prior to the transition. This would enable Granite's customers to obtain the modest high speed Internet access they need for point of sale terminals while avoiding forced upgrades to higher capacities that they do not need and cannot afford. Likewise, the ILEC should be required to offer on a wholesale basis the same bandwidth options it makes available on a retail basis. Granite supports the principles that ILECs be precluded from imposing backdoor price increases or service impairments such as lock-up provisions or early termination penalties and be required to maintain service quality and installation intervals at parity with the ILECs' own operations.

B. The FCC Should Establish Policies and Rules Applicable to Section 214 Proceedings Rather than Allowing an Ad Hoc Approach with individual Section 214 Proceedings

In its letters, Windstream urges the Commission to articulate a clear standard that will be used to evaluate Section 214 discontinuance petitions that ILECs may file in the future, when they are ready to cease providing circuit-switched TDM-based services. Granite agrees that the Section 214 discontinuance does not relieve an ILEC of its obligations under Section 251 of the Act, including its obligations to provide access to UNEs, interconnection and collocation. Granite also agrees that the current section 214 discontinuance process is inadequate to deal with the competitive and public interest concerns that are likely to arise from such discontinuance applications. Instead, Granite agrees with Windstream that the Commission should, as soon as possible, begin a process

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[9] *Windstream Sep. 26 Ex Parte* at p. 5.

that will elaborate on the criteria necessary for approval of ILEC Section 214 petitions to complete their transitions away from legacy circuit switched networks and services.

The Commission should clarify that Section 214 discontinuance does not eliminate the ILEC's obligation to comply with Sections 251 and, for RBOCs, 271. The Act is technology neutral and the obligations under Sections 251 and 271 are likewise technology neutral.[10] Converting a loop from copper to fiber or converting service from TDM to IP should not relieve an RBOC of its 271 obligations, and the section 214 process should not be permitted to supersede 271 obligations. As a prerequisite to any Section 214 discontinuance, ILECs should be required to commit to providing functionally equivalent wholesale products at equivalent rates, terms and conditions as those for which they seek discontinuance, and this requirement should apply to discontinuance of services such as LWC that are not tariffed.

Further, the current Section 214 process is not suited to making good public policy. Leaving important policy decisions to the process of evaluating individual ILEC's Section 214 discontinuance applications will result in piecemeal decision-making instead of providing for a comprehensive resolution on an industrywide basis. Neither the 30 nor 60 day period provided for under the Commission's Section 214 discontinuance rules[11] is sufficient for dealing with the host of competitive and consumer protection issues likely to arise from the transition to IP networks. Neither the 30 nor 60 day timeline provides sufficient time for reasoned decision-making. Leaving important policy issues for the Section 214 discontinuance process creates significant uncertainty in the market, as competitors and their customers are deprived of the ability to engage in medium and long range planning regarding their businesses.

Business customers need more long-term planning certainty than the brief section 214 process can provide. In many cases Granite's customers insist on multi-year contracts, and the uncertainty of having to wait for an ILEC to file a section 214 application and then waiting the for the Commission's ruling on the particular relief requested deprives Granite and other CLECs, as well as customers, of the information they need to plan for the future.

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[10] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, 24017 ¶ 11 (1998) ("the pro-competitive provisions of the 1996 Act apply equally to advanced services and to circuit-switched voice services. Congress made clear that that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets.") *See also In The Matter Of Biennial Regulatory Review -- Amendment Of Parts 1, 22, 24, 27 and 90 To Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, 23 FCC Rcd 5319, 5325 ¶ 13 (2008).

[11] 47 C.F.R. § 63.71

C. The Transition to IP Networks Does Not Eliminate the Advantages of Incumbency

AT&T has argued that the transition from circuit switched networks to IP-based networks means that CLECs and ILECs compete on an equal footing. This is simply not accurate. As Granite has explained, the ILECs IP networks are built on the same infrastructure that supported their monopoly-based networks. An ILEC gets to start with a customer base acquired when it was a monopoly with mandated pricing. The fact that it has replaced copper with fiber and circuit-switched equipment with packet-based equipment does not eliminate the advantages of incumbency such as the ILEC's ubiquitous network and enormous customer bases that finance the transition by paying for legacy services. AT&T and other ILECs have perpetuated the myth that CLECs and ILECs face similar barriers to deploying fiber and networks and getting customers to subscribe to new fiber based services. The FCC should reject AT&T's arguments that ILECs have no advantages in the new IP/fiber world, and therefore should not be subject to any regulatory requirements to share their networks.

Respectfully submitted,

Eric J. Branfman
Counsel for Granite Telecommunications, LLC