Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations That Inhibit Deployment of Next-Generation Networks	)))))))	WC Docket No. 14-192

OPPOSITION OF GRANITE TELECOMMUNICATIONS, LLC

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TABLE OF CONTENTS

SUMMARY

The United States Telecom Association ("USTA") Petition for Forbearance is another in a string of filings by the largest dominant telecommunications providers, the Regional Bell Operating Companies, AT&T, CenturyLink and Verizon, to con the Commission into prematurely repealing the market opening provisions of the Telecommunications act of 1996. The Commission, on multiple occasion, but most recently in the *Qwest Phoenix Forbearance Order* has rejected such deregulation. But the RBOCs and their trade association will not be deterred. They continue to insist that the transition from copper based TDM networks to fiber-based networks and transition from circuit switched voice communications to IP-based voice means that the market opening measures embodied in §§ 251 and 271 of the Act are obsolete.

The Commission should once again reject the RBOCs' pleas. In particular, Granite urges the Commission to reject USTA's petition with regard to the RBOCs' Section 271 obligations (category 1 as set forth in the Petition, and the Commission's rule requiring ILECs to provide CLECs with a 64 Kbps voice channel where the ILEC has overbuilt its copper network with fiber and retired the copper (category 3 as set forth in the Petition).

The Petition should be denied because the obligations under Section 271 remain vital to preserving and advancing competition. Granite and other CLECs rely on access to switching under Section 271 in order to obtain a combination of DS-0 loop, switching and transport, that it uses to provide voice service to business customers, including business customers in remote and rural locations. These customers are typically national or regional in scope with hundreds or thousands of locations spread across the United States, but only needing a handful of voice lines and sometimes a modest data connection at each location. These locations, with the small amount of demand, are not candidates for deployment of fiber facilities, including the ILEC. Absent competitive entry these customers have no opportunity to obtain the benefits of

competition except from CLECs that obtain wholesale inputs from the ILEC. Without the requirements under Section 271, the RBOCs will be unlikely to continue providing DS-0 arrangements on which Granite and other CLECs rely or at least will seek to raise the rates they charge for such arrangements once freed from the requirement that their rates be just and reasonable.

Despite the national statistics included in USTA's petition, neither cable nor wireless is viable substitute for the vast majority of Granite's customers. Wireless services are not a viable substitute because they do not provide the features and reliability that Granite's customers desire. Cable companies rarely have facilities at the locations where Granite's customers - convenience stores, gas stations, supermarkets, wholesale clubs and pizzerias need service. And even where the cable company has a presence, the Commission has established that forbearance from the wholesale obligations of the Act's market opening measures is inappropriate if such forbearance leaves a duopoly in its place, recognizing that the dangers of duopoly are similar to the dangers of monopoly.

Nor is there any merit to USTA's suggestion that eliminating unbundling of legacy facilities will foster further deployment of fiber. The fact remains that even where the ILECs have been freed from some legacy unbundling requirements they have failed to deliver the promised deployment of fiber everywhere. Further, the Commission has already rejected the claim that reduced legacy unbundling obligations will spur deployment of new fiber facilities in the *Qwest Phoenix Forbearance Order*. The Commission should reaffirm this policy.

Lastly, the Commission should reject USTA's petition because it fails to address the fact that at the vast majority of business locations the ILEC has the only facilities. Absent the unbundling obligations required under Section 271 and the Commission's 64 Kbps channel UNE rule, Granite's customers will face higher prices and reduced service as a result of losing the ability to benefit from competition. For these reasons, USTA's petition must be denied.

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OPPOSITION OF GRANITE TELECOMMUNICATIONS, LLC

Granite Telecommunications, LLC respectfully submits this Opposition to the Petition for Forbearance ("Petition")[1] filed by the United States Telecom Association ("USTA") consistent with the Commission's 2014 Public Notice inviting oppositions and comments.[2] Granite opposes USTA's petition with respect to Category 1, concerning RBOCs' obligations under §§ 271-272 of the Communications Act , as amended, and Category 3, the obligation of all ILECs to provide a 64kbps voice circuit where the ILEC has overbuilt its copper network with fiber loops and retired the copper. Both of these legal obligations remain necessary to protect consumers and afford customers a choice of supplier, particularly in markets that do not otherwise support competitive deployment.

[1] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192 (filed Oct. 6, 2014).

[2] Public Notice, *Pleading Cycle Established For Comments On United States Telecom Association Petition For Forbearance From Certain Incumbent LEC Regulatory Obligations,* WC Docket No. 14-192, DA 14-1585 (Nov. 5, 2014).

I. Introduction

A. Granite and the National Market For Low Volume Service to National and Regional Retail Establishments

Granite 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 geographically dispersed locations. Granite provides these national companies with the ability to obtain service from a single supplier at these scattered retail locations nationwide. Because no single supplier has, or reasonably could, have facilities serving all of its customer's locations, in order to meet the demand for such services, Granite obtains, through agreements with ILECs, a DS-0 wholesale service that is a combined package of a DS0 loop, local switching and shared transport: in short, a 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 ill-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 and competitors such as Windstream and other facilities-based CLECs rarely have facilities in place to serve such customers. In addition, the transition to IP networks is unlikely to lead to increased deployment of competitive facilities to such locations as the significant barriers to competitive deployment to such locations remain.

These customers have a need for competition that is just as great as companies requiring massive amounts of bandwidth, and for the same reason. 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."[3] In

[3] Remarks of Chairman Tom Wheeler, COMPTEL Fall Convention & Expo- Oct. 6,

Granite's experience, the communications needs of the local outlet of a national chain are similar to those of the purely local small business.

Because the customer has a modest telecommunications spend at each location, the competitive choices are typically very limited for both Granite in terms of wholesale supplier and for its retail customer as limited demand for voice lines and bandwidth is typically not worth the investment for competitive carriers to extend their own facilities. In addition, Granite's customers have multiple locations in thinly populated rural and suburban areas. For instance, the United States Postal Service is a Granite customer and nearly every town has a post office. Granite provides service to post offices in towns as small as approximately 200 people.

The ongoing transition from copper, circuit-switched based networks to packet-switched fiber-based networks does not provide new competitive choices for Granite or for its retail customers. Nor does the transition to IP-based networks alter the core economics of competitive facilities deployment and entry. Thus, before, during and after the IP transition the ILEC will remain the only viable source of supply to the majority of locations where Granite's customers seek service.

B. Statutory Background

In the Telecommunications Act of 1996 ("1996 Act") Congress adopted measures to foster competition without requiring competitors to duplicate the ILEC network.[4] In particular, Congress amended the Communications Act of 1934 (the "Act") to add two separate but related obligations designed to compel ILECs to share their monopoly networks that were funded by captive ratepayers and protected from competition by the legal and regulatory framework. In

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2014, at p. 2 ("*Wheeler Oct. 6 Remarks*").

[4] *BellSouth Telecomms., Inc. v. Se. Tel., Inc.*, 462 F.3d 650, 652 (6th Cir. 2006) *quoting AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999).

Section 251(c)(3), Congress requires ILECs to lease certain “network elements” to competitive local exchange carriers (“CLECs”) “on an unbundled basis.”[5] And rates for UNEs are set by state commissions pursuant to the Commission’s TELRIC methodology.[6] In Section 271, Congress replaced the consent decree (the modified final judgment (“MFJ”) that governed the breakup of AT&T’s monopoly that prohibited AT&T’s local telephone company offspring, the Regional Bell Operating Companies (“RBOCs”) from entering the competitive long distance market while they retained a stranglehold on local markets. Congress, however, gave the RBOCs a path forward, allowing them to apply for permission to enter long distance markets as long as they demonstrated that their local markets were open to competition. In order to show that the RBOC's market is open, the RBOC was obligated to prove compliance with a ‘competitive checklist’ of unbundling and interconnection requirements that the RBOC must meet as condition of being allowed to provide in-region long-distance services.[7]

The RBOC’s obligation to provide these checklist items, which include unbundled access to loops, transport, switching, and operations support systems is “independent” from their § 251(c)(3) unbundling obligations.[8] Further, the RBOC’s obligation to comply with the competitive checklist endures after the RBOC has obtained its long distance authority, [9] and

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[5] 47 U.S.C. § 251(c)(3).

[6] 47 C.F.R. §§ 51.503-511.

[7] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 17382 ¶ 650 (2003) (“*TRO”*), *corrected by Errata*, 18 FCC Rcd. 19020 (2003), *vacated* and *remanded in part*, *aff’d in part*, *United States Telecom Ass’n v. FCC*, 359 F3d 554 (D.C. Cir 2004) (*USTA II*), *cert. denied*, 543 U.S. 925 (2004) *vacated in part and remanded, U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 589-90 (D.C. Cir. 2004) (“*USTA II*”).

[8] *TRO*, 18 FCC Rcd. at 17384 ¶ 653.

[9] *See* 47 U.S.C. § 271(d).

endures in markets where RBOCs have obtained forbearance from UNE obligations.[10] Section 271, does not, however, require RBOCs to provide checklist items at TELRIC rates.[11] Instead, the Commission construed § 271 to require BOCs to offer unbundled access to checklist items at just, reasonable, and nondiscriminatory rates.[12]

C. The Commission's 64 Kbp Voice Channel Requirement

Section 51.319(a)(3)(iii)(C) of the FCC's rules provide that

> An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iv) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop or fiber-to-the-curb loop on an unbundled basis.

The Commission adopted this requirement because it determined that the ILEC has "an entry barrier within its sole control" that could be used to deny CLECs access to customers for the provision of voice service.[13] Requiring the ILEC to provide the 64Kbps channel allows CLECs providing voice services in an ILEC overbuild situation to continue providing such service where the ILEC has elected to retire the copper loop.[14]

D. Forbearance Standard

The 1996 Act gives the Commission the power to forbear from regulation that was no longer necessary to protect consumers. The Commission had long exercised forbearance by tailoring its Title II regulation to accommodate changes in the competitive marketplace, for example, imposing less onerous requirements on non-dominant carriers, with respect to the

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[10] *Petition of Qwest Corporation for Forbearance Pursuant to 47 USC §160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd. 19415 (2005) ("*Omaha Forbearance Order*")*, aff'd, Qwest Corp. v. FCC,* 482 F3d 471 (DC Cir 2007).

[11] *TRO*, 18 FCC Rcd. at 17386-89 ¶¶ 656-64.

[12] *Id.*, 18 FCC Rcd. at 17386, 17389 ¶¶ 656, 662-64.

[13] 18 FCC Rcd. at 17144 ¶ 277.

[14] *Id*.

market entry and exit requirements under Section 214. Because the Commission could not, however, waive application of statutory requirements, such as tariffing,[15] Congress added section 10 providing the Commission authority to exempt individual carriers or broad classes of carriers from statutory or regulatory requirements that were no longer needed to fulfill the Commission's mandate. Section 10 thus provides that the Commission shall grant forbearance when (1) enforcement of the regulation s not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.[16]

The Commission has adopted a specific framework for analyzing petitions for forbearance of the 1996 Act's market opening wholesale obligations.[17] The Commission should employ that same framework in evaluating the Petition. Under this framework, the forbearance "analysis begins by defining the relevant product and geographic markets and by identifying the market participants." The Commission's analysis then considers evidence regarding market shares and gauges whether potential entry could occur in a timely, likely, and sufficient manner to counteract the exercise of market power by the RBOC either alone or in concert with a few competitors.[18] The Commission also considers "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[19] Under this framework,

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[15] *See MCI Telecom Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985).

[16] 47 U.S.C. 160(a).

[17] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd. 8622, 8634 (2010) ("*Qwest Phoenix Forbearance Order*") *aff'd Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

[18] *Id.* at 8646-47 ¶ 42.

[19] 47 U.S.C. 160(b).

the existence of a duopoly is insufficient to warrant forbearance.[20] Under this framework, the Commission aims to "ensure that competition in downstream markets is not negatively affected by premature forbearance from regulatory obligations in upstream markets."[21] Under the Commission's rules, "the petitioner bears the burden of proof—that is, of providing convincing analysis and evidence to support its petition for forbearance."[22]

II. USTA Cannot Meet the Forbearance Standard with Respect the RBOCs' Section 271 Obligations

USTA has not met its burden to support its request for forbearance with convincing evidence and analysis. Indeed, USTA's petition is facially defective because it fails to provide any market analysis consistent with the applicable analytical framework.[23] Consistent with this lack of analysis of discrete product and geographic markets, USTA's petition fails to identify geographic areas where RBOCs face extensive facilities-based competition from more than two competitors. In particular, USTA's petition is deficient because it conducts no separate analysis of the business market, including the small business market in which competitors such as Granite rely on Section 271 in order to obtain the wholesale inputs necessary to serve customers.

As the Commission established in the *Qwest Phoenix Forbearance Order*, the market for serving business customers must be analyzed separately from the market for serving residential customers[24] In the business market, where Granite provides service, the RBOCs retain their

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[20] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8637-41 ¶¶ 32-34.

[21] *Id.* at 8645 ¶ 40.

[22] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act, as Amended*, Report and Order, 24 FCC Rcd. 9543, ¶ 20 (2009) ("*Forbearance Procedures Order*").

[23] *See Qwest Phoenix Forbearance Order,* 25 FCC Rcd. at 8645-47 ¶¶ 41-45.

[24] *See Id.* at 8635 ¶ 28 (explaining that an analysis that fails to separately evaluate market power in business markets separate from the mass market "is not supported by current economic theory.").

market power advantages as the result of lack of alternative customer access facilities for these types of users in most cases.

Separate analysis of the business market is also required because business customers obtain services that are markedly different from residential services and have different features. For example, business customers rely on sophisticated features that are not typically part of residential offerings, such as message waiting, hunting, hold, and Centrex features. Business customers also rely on more dedicated customer support functions.

Instead of marshaling supporting evidence and analysis regarding competition in discrete markets, USTA argues that the marketplace where ILECs control bottleneck facilities no longer exists because of the evolution of telecom networks from copper based TDM network to IP-based fiber networks.[25] That is incorrect. The transition to fiber based broadband networks has not eliminated the need to "curb ILEC power."[26] USTA claims that in an era of broadband, voice is just "one application among many"[27] but then urges the Commission to base its forbearance analysis on voice centric statistics that obfuscate a central fact —the vast majority of connections needed to serve most business customers in the U.S. remain under the control of the ILEC. And where there is the presence of a facilities-based competitors, it is likely the incumbent cable company, resulting in a duopoly market at best.

For instance, USTA emphasizes statistics regarding the growth of VoIP services.[28] But these statistics do not identify whether there is facilities-based competition in a particular market since VoIP requires a broadband connection in the first place. USTA's statistics fail to identify

[25] Petition at 8.

[26] *Id*.

[27] *Id*.

[28] Petition at 9-10.

which VoIP services are provided over broadband connections that the RBOCs themselves supply. USTA's statistics regarding mobile services are likewise of limited utility since business users do not view wireless services as a substitute for the robust fixed connections and the business centric features available through fixed line services. USTA also mistakenly argues that the obligations of Section 271 only had relevance when local and long distance were separate retail markets. USTA plainly misses the point of Section 271's checklist. Section 271 mandates that RBOCs, even after they have received long distance approval from the Commission, must continue to provide competitors with reasonably priced access to the wholesale inputs necessary to sustain competition in the local market, even where unbundling under section 251(c)(3) has been eliminated.

A. Enforcement Of Section 271 And Related Obligations Are Necessary To Ensure That Charges, Practices, Classifications, Or Regulations Are Just And Reasonable, And Are Not Unjustly Or Unreasonably Discriminatory

USTA claims that Section 271's checklist requirements are redundant. But Section 271 is not redundant to Granite's customers who rely on DS-0 arrangements to serve customers who otherwise lack any competitive choice for business telecommunications and broadband services. In the *Qwest Phoenix Forbearance Order,* the Commission explicitly identified a separate wholesale product market,[29] and as separate retail enterprise market,[30] that includes distinct product markets for local voice and data services.[31]

In the wholesale market, USTA offers no evidence whatsoever that facilities based competitors offer at wholesale access to the combination of loops, switching and transport that

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[29] *Id*. at 8648 ¶ 48.

[30] *Id*. at 8656 ¶ 62.

[31] *Id*.

competitors like Granite obtain through DS-0 arrangements from RBOCs under section 271. And even if there are some geographic locations where some competitors offers a competing product, there is no such wholesale service available from anyone other than the ILEC at most small business locations across the country.

This is because at most business locations in the country the RBOC's last mile facilities remain the only source of wireline communications service.[32] Nor is there the potential that new entrants will offer competition, either on a retail or wholesale basis at these locations. This is because there remain significant barriers to deployment of the competitive facilities needed to provide competing service.[33] And those barriers can only be overcome at significant expense.

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[32] *See e.g. Special Access for Price Cap Local Exchange Carriers*, WC Docket 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, 27 FCC Rcd. 10557, 10582, ¶ 49 (2012) ("*Special Access Order*") (finding that in Atlanta approximately 60 percent of the zip codes lacked any competitive fiber deployment and it did not expect other markets would show broader competitive deployment); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, 22 FCC Rcd. 21293, 21317 ¶ 41 (2007) (finding that competitors have their own facilities at only 0.25% of the commercial buildings in the six covered MSAs combined); *Petitions of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis, St. Paul, Phoenix and Seattle Metropolitan Statistical Areas*, 23 FCC Rcd. 11729, 11758 ¶ 40 (2008) (finding that competitors served approximately 0.17 to 0.26 percent of all business locations in the four MSAs combined); Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, GAO-07-08, at 20 (Nov. 2006) (finding competitive fiber deployment across 16 markets limited to 6% of buildings with demand for DS1s; 15% with DS3 demand, and 25% with demand for 2 or more DS-3s); *United States v. SBC Communications, Inc.*, Complaint, No. 1:05-cv-02102, ¶ 15 (D.D.C. Oct. 27, 2005); *United States v. Verizon Communications Inc. and MCI, Inc.*, Complaint, No. 1:05-cv-02103, ¶ 15 (D.D.C. Oct. 27, 2005) (finding that for "the vast majority of commercial buildings in their territories, the ILEC is likely the only carrier that owns a last-mile connection to the building.")

[33] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board*, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. at 17663,

The limited business opportunity at the locations Granite serves is typically insufficient to justify competitive investment, even from cable companies. This problem is even more acute in the many locations in rural areas or business sectors where cable lacks deployed facilities. RBOCs continue to serve a very high percentage of business customers nationwide.[34]

Even the RBOCs are unable to justify the massive investment necessary to extend fiber facilities to the bulk of the small business locations in their respective ILEC markets. AT&T, for example, in its most recent business market infrastructure initiative, committed merely to extend fiber to 50% of the multi-tenant locations in its territory where there are six or more tenants at the location. Verizon has similarly indicated it has no further plans to extend FiOS beyond its initial footprint.[35]

There is a corresponding lack of competition in the retail market, where the bulk of the competition comes from companies like Granite that are dependent on the RBOC for last mile and other critical inputs.

If the RBOCs receive forbearance from section 271, thereby allowing them to cease offering the DS-0 service (271 switching combined with UNE loops and transport) that they current offer to Granite and others with similar business plans, business customers will be forced to pay higher prices for the services they currently use. If CLECs are forced to raise prices, ILECs can either raise prices themselves, or use the 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.

17668,17669 ¶¶ 4-5, 7 (2011); *TRO*, 18 FCC Rcd. at 16985¶ 7.

[34] *See Special Access* Order, 27 FCC Rcd. at 10582, ¶ 49.

[35] *See* Laying a Foundation for Future Growth, AT&T Analyst Conference, Nov. 7, 2012 at p. 11. Available at http://www.att.com/gen/general?pid=23393. *See* Verizon 2011 Annual Report at p. 3 (claiming that FiOS has passed homes in 60% of its wireline territory).

B. Continued Enforcement Of Section 271 Is Necessary To Protect Consumers

The Commission has consistently sought to advance and protect competition provided by multiple firms because such competition maximizes innovation. It would be contrary to the public interest to use the innovative developments regarding the evolution of IP networks, typically led by rivals to the incumbent carriers, as the genesis for *decreasing* competition through premature deregulation.

In the telecommunications industry, history suggests that, contrary to USTA's suggestion that eliminating requirements that support competition will induce more investment and innovation, "innovations have been more rapidly deployed in telecommunications networks" where there are more competitors, not fewer.[36] Innovation thrives and advances more rapidly in less concentrated markets.[37] Facing less competition through innovation, a company with market power "might be able to slow its own innovative efforts … thereby entrenching its monopoly power in the future."[38]

Because the Commission has recognized that innovation — the "provision of new technologies and services to the public" — best serves the public interest, a reduction in the level of innovation in a market is contrary to the public interest.[39] The Commission has acknowledged that innovation can come in many forms. Innovation has certainly come in the delivery to the

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[36] Howard Shelanksi, *Competition and Deployment of New Technology in U.S. Telecommunications*, 2000 U. Chi. Legal F. 85 (2000).

[37] Brett M. Frischmann and Mark A. Lemley, Spillovers, 107 Colum L Rev 257, 281 (2007) ("[i]nnovation … is generally spurred by decentralized competition.").

[38] Steven C. Salop, R. Craig Romaine, *Preserving Monopoly: Economic Analysis, Legal Standards, And Microsoft*, 7 Geo. Mason L. Rev. 617, 623 (1999).

[39] *Time Warner Entertainment Co and US West Communications, Inc.*, 8 FCC Rcd. 7106, 7107-8 (1993).

market of technology that was not previously available commercially. But this innovation rarely comes from the RBOCs. For instance, it is well documented that although the RBOCs had xDSL technology available, they chose not to bring xDSL to market until it was offered by competitive providers, for fear of cannibalizing their existing products.[40] Indeed, it was competition from providers using unbundled copper loops, not from the cable companies, that spurred the ILEC investment in DSL and broadband.[41] As the President's Council of Economic Advisers explained,

> Although DSL technology has been available since the 1980s, only recently did [the ILECs] begin to offer DSL service to businesses and consumers seeking low-cost options for high-speed telecommunications. The incumbents' decision finally to offer DSL service followed closely the emergence of competitive pressure from … the entry of new direct competitors attempting to use the local-competition provisions of the Telecommunications Act of 1996 to provide DSL over the incumbents' facilities.[42]

Similarly, the Commission recently found that the availability of UNEs, particularly UNE loops, has "led some competitive carriers to invest in facilities and operational support services to bring innovative new services to customers."[43] In particular, the Commission observed that competitive carriers continue to innovate by extracting more bandwidth from the copper loop to provide services such as Ethernet over Copper.[44] Innovation can also come from "the ability to

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[40] *See* "How Phone Firms Lost to Cable in Consumer Broadband Battle," Wall Street Journal, p. 1, Mar. 13, 2003.

[41] In 2003, the Commission's Chief Economist concluded that broadband provided through unbundled access to copper loops was one of the few unambiguous successes of the 1996 Act because it brought "dramatic price reductions and dramatic jumps in DSL deployment" and "for every DSL line shared, the ILECs deployed four DSL lines of their own." Communications Daily, Oct. 20, 2003, at 10 (quoting FCC Chief Economist Simon Wilkie).

[42] Council of Economic Advisers, Economic Report of the President, February 1999, at pp. 187-188, www.gpo.gov/fdsys/pkg/ERP-1999/pdf/ERP-1999.pdf.

[43] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8677 ¶ 108.

[44] *Id*. at 8674-75 ¶¶ 102-03.

package and market services in ways that differ from the incumbent's existing service offerings [which] increases the [competing] carrier's ability to compete against the incumbent and is likely to benefit consumers."[45]

Granite innovates in service provision, among other ways, by providing its national customers with a single source to satisfy their voice and DSL telecommunications needs throughout the U.S. For nationwide merchants such as a national drugstore chain, a national auto-parts retailer, and a national gas station chain, Granite is the interface for billing, service provisioning and troubleshooting most or all of their telecommunications service, throughout the country. This is important as these and many other businesses have locations widely dispersed across the country, requiring the integration of service among multiple providers of basic telephone service. Granite provides its customers with a single uniform national interface for its service, which Granite's business customers find to be a very desirable feature of Granite's service offering. [46] This is something the ILECs do not offer, for they generally refuse to compete for these DS0 services outside of their legacy ILEC territories. Similarly, the cable companies do not provide these services, as they typically are not built out to where Granite's business customers are located and also do not typically offer voice services outside of their franchised cable territories.

Granite obtains its underlying services through DS0 agreements with ILECs— in other words, agreements for UNE-P replacement services that include an unbundled loop. In some locations where the ILEC refuses to provide Granite with DS0 UNE-P replacement services,

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[45] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, 15668 ¶ 333 (1996) (*Subseq. History Omitted*).

[46] Granite Comments, GN Docket 12-353 (filed Jan. 28, 2013), Declaration of Kevin Nichols, ¶ 8. *See id.* at ¶¶ 7, 9, 11 (Granite also offers customers other benefits, such as higher level of support than RBOCs, 24/7 live help desk support, and prompt trouble resolution) (attached as Exhibit A to this Opposition).

Granite may obtain resold ILEC services pursuant to section 251(c)(4). Absent the regulatory requirements that USTA proposes be eliminated, Granite fears it would lose the alternative of Section 251 and Section 271 services, would have dramatically less negotiating ability with the ILECs and therefore would be unable to provide the integrated services its customers demand.

Granite's customers will, of course, continue to desire and benefit from integrated nationwide service during and after the transition to IP networks. But under USTA's vision of the IP transition, Granite's customers should be denied the benefit of competition until a single company invests hundreds of billions of dollars to deploy competitive transmission facilities to every corner of the nation despite the overwhelming evidence that such deployment of duplicative networks is not economically efficient and will obviously never occur. This outcome would plainly be inconsistent with the pro-competitive charter of the 1996 Act.

C. Forbearance from Section 271 is Inconsistent with the Public Interest

Under the public interest prong of the Act's forbearance standard, the Commission considers whether forbearance form unbundling "will promote competitive market conditions, including the extent to which such forbearance will promote competition among providers of telecommunications services."[47] As in the *Qwest Phoenix Forbearance Order*, the fact that USTA's petition fails the first two prongs of the statutory forbearance standard "contribute to [the] conclusion that forbearance is not in the public interest."[48]

The Commission similarly rejected the arguments that USTA makes here, that forbearance from obligations to provide unbundled access to legacy facilities will somehow

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[47] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8675 ¶ 104 quoting 47 U.S.C. § 160(b).

[48] *Id*. at 8676 ¶ 105.

"enhance investment incentives."[49] The Commission rejected that argument observing that its existing unbundling rules have already been modified to address ILEC and RBOC investment incentives.[50] In addition, the Commission found that the availability of access to unbundling "provided an incentive for competitive carriers to invest in facilities and operational support services to bring innovative new services to customers."[51] Because the public interest benefits associated with the Act's 271 unbundling obligations outweigh may possible benefits arising from forbearance, the petition should be denied.

III. USTA Cannot Meet the Forbearance Standard For the TRO's Requirement that ILECs offer a 64Kbps Voice channel when overbuilding existing loops with fiber loops

Enforcement of the 64 Kbps rule remains necessary to ensure that charges, practices, classifications, or regulations are just and reasonable, and are not unjustly or unreasonably discriminatory. USTA argues that the Commission should eliminate the ILEC obligation to provide unbundled access to a 64 kbps transmission path over the FTTH loop when the ILEC has overbuilt its copper loop with a fiber loop as required under rules adopted in the Triennial Review Order.[52] USTA makes the astonishing claim that this modest requirement impedes the transition to fiber networks.[53] USTA contends that an ILEC would refrain from retiring its copper because doing so would obligate it to provide the 64Kbps voice channel. That is ludicrous. If the ILEC needs to retire the loop, its cost savings will far outstrip the minimal costs to provision 64Kbps of bandwidth for a requesting carrier. USTA has offered no quantitative

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[49] *Id*. at 8677 ¶ 108.

[50] *Id*.

[51] *Id*.

[52] *See* 47 C.F.R. § 51.319(a)(3)(iii)(C).

[53] Petition at 51.

evidence to the contrary.

To the extent the Commission allows ILECs to retire copper loops that CLECs need to provide service to residential customers and business customers whose needs can be served by a 64-kbps channel, the 64 kbps rule remains necessary under the statutory forbearance standard. In the *TRO*, the Commission adopted the 64Kbps requirement because it determined that the ILEC has “an entry barrier within its sole control” that could be used to deny CLECs access to customers for the provision of voice service.[54]

While there is competition from interconnected VoIP services, the public interest requires continued access to the 64Kbps voice channel. A requesting carrier may prefer to serve its customer using the dedicated voice channel rather than trusting the ILEC to not use its control of the customer’s broadband pipe to interfere with the customer’s VoIP service. Customers using third party VoIP services could be subject to bandwidth caps and other restrictions broadband ISPs impose on use of their broadband Internet services. The 64Kbps channel, as a UNE is not subject to the ILEC’s control and is operated by the CLEC as it if were part of its network.

While USTA claims that “ILECs offer wholesale voice alternatives, such as Verizon's Wholesale Advantage product, for competitive providers,”[55] if the Petition is granted with respect to RBOC Section 271 obligations is granted, those “voice alternatives” will likely disappear.

CONCLUSION

For the foregoing reasons the petition should be denied.

[54] 18 FCC Rcd. at 17144 ¶ 277.

[55] Petition at 59.

Respectfully submitted,

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