

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

In the Matter of)	
)	
Ensuring Customer Premises Equipment Backup Power for Continuity of Communications)	PS Docket No. 14-174
)	
Technology Transitions)	GN Docket No. 13-5
)	
Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers)	RM-11358
)	
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)	RM-10593
)	

COMMENTS OF GRANITE TELECOMMUNICATIONS, LLC

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I. Summary

In this Notice of Proposed Rulemaking and Declaratory Ruling, the Commission “seeks to strengthen [its] public safety, *pro-consumer and pro-competition policies* and protections in a manner appropriate for the technology transitions that are underway and for the networks and services that emerge from those transitions.”¹ Granite Telecommunications, LLC (“Granite”) supports these objectives and agrees that clarification of Commission rules is needed to: (1)

¹ *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, et al.*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, at ¶ 2 (November 25, 2014) (“NPRM” or “Declaratory Ruling” as applicable) (emphasis added).

Protect competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-sized business, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs, and (2) Protect consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities (*e.g.*, copper networks) and seek to discontinue legacy services.²

The Commission has recognized that as ILECs “move to turn off legacy services, competitive carriers face the prospect of having *no access to critical inputs*, at least not on reasonable terms and conditions—preventing them from continuing to provide competitive alternatives to small- and medium-sized businesses and other institutions like schools, libraries, and health care facilities.”³ In order to preserve existing competition through the transitions, the Commission’s section 214 rules must define an “adequate substitute” for the critical wholesale input services that Granite and others rely upon, and require ILECs seeking 214 authority to commit to providing functionally equivalent wholesale products, similar to AT&T’s Local Wholesale Complete (“LWC”) product, at equivalent rates, terms and conditions as those tariffed and non-tariffed legacy services for which they seek discontinuance. The Commission’s rules should define an “adequate substitute” for a legacy service to encompass both voice call functions (*e.g.*, the ability to use caller ID, call hunting, message waiting), and non-call functionality, including those functions derived from third party CPE or services such as credit card processing, point of sale system functionality, security and alarm system functionality and other functions.

Granite supports the rebuttable presumption proposed by the Commission that when a carrier seeks to discontinue, reduce, or impair *a wholesale service*, that the action will discont-

² NPRM, at ¶ 2.

³ NPRM, at ¶ 6 (emphasis added).

ue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to section 214(a), provided that the Commission requires the ILECs to file a *prima facie* case so that the public can scrutinize the ILEC's case. The required *prima facie* case must include substantial evidence, not mere assertions.

Granite supports use of the six principles discussed by the Commission for evaluating ILEC replacement offerings, with some modifications.⁴ For Granite, it is important that the principles make clear that on a per-line basis, wholesale rates for any IP replacement product for DS0 services (*i.e.*, services that combine a UNE loop, and Section 271 shared switching and shared transport), such as AT&T's LWC product, may not exceed the per-line rate currently offered for the same service provided using TDM including any volume or term plans.

II. Preserving Last-Mile CLEC Access Is Critical To Preserving The Benefits of Competition Through the Transitions and Beyond

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 lines) at a significant number of locations. Granite's customers often 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. Granite provides these national customers with the ability to obtain service from a single supplier at their disparate retail locations nationwide. Granite's customers find this to be a major benefit.⁵ These customers need the efficiency of a single source of supply at multiple locations. Because no single supplier has, or reasonably could have, facilities serving all of this type of customer's locations, to meet the demand for such services, Granite obtains,

⁴ NPRM, at ¶ 111.

⁵ *See, e.g., Ex Parte* Letter From Michael B. Galvin on behalf of Granite to Marlene H. Dortch, Secretary, Technology Transitions, GN Docket No. 13-5, at 2 (May 23, 2014).

through agreements with ILECs, a DS0 wholesale service, such as AT&T's LWC, that is a combined package of an unbundled DS0 loop, local switching and shared transport.

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. 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. As a result, Granite is dependent on the ILEC for reasonably-priced wholesale inputs necessary to serve their customer locations with relatively modest bandwidth requirements, typically no greater than the "main street customers" that Windstream identified and often serves.⁶ As the Commission has observed, all competitive carriers, including cable companies, "face extensive economic barriers" to the deployment of competitive facilities where they lack existing facilities needed to serve the customer.⁷ The shift in network technology from TDM to IP does not alter the economics of deploying competitive networks to serve the relatively low bandwidth locations served by Granite. The enormous barriers to competitive deployment to such locations remain.

The Commission notes it is "guided by the mantra that technology transitions should not be used as an excuse to limit competition that exists."⁸ Preserving competition through the IP

⁶ *Ex Parte* Letter of E. Einhorn, Windstream Communications, Inc., to Jonathan Sallet, FCC, GN Docket No. 13-5, *et al.*, at 4 (April 28, 2014) ("Windstream April 28 Ex Parte") (Windstream serves "main street" businesses, such as medical practices, pharmacies, and insurance brokers, that are the backbone of their local economies.").

⁷ *See, e.g.,* *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, 8670 ¶ 90 (2010) *aff'd* *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

⁸ NPRM, at ¶ 6.

transition and beyond will preserve choices and competitive pressures for all providers to improve services and prices. Windstream submitted GeoResults data showing that CLECs are currently the primary providers of competitive choice to non-residential customers.⁹ Chairman Wheeler recently acknowledged this fact, stating that CLECs account for the bulk of the competition to incumbent providers.”¹⁰ To preserve CLEC competition through the transitions, the Commission’s section 214 rules must define an “adequate substitute” for the critical wholesale input services that Granite and others rely upon, and require ILECs to commit to providing functionally equivalent wholesale products, similar to AT&T’s LWC product, at equivalent rates, terms and conditions as those tariffed and non-tariffed legacy services for which they seek discontinuance.

III. Section 214 Rules Must Define an “Adequate Substitute” to Encompass Both Voice and Non-Call Functionality Including Functions Derived From Third Party CPE or Services Such as Credit Card Processing and Point of Sale Functionality

As the Commission noted, it is critical for it to “define carriers’ responsibilities when discontinuing legacy services to ensure that we carry our values forward” including protection of consumers, public safety, and protection of competition where it exists today, without regard to the particular technology used.¹¹ To these ends, the Commission seeks comment on “what constitutes *an adequate substitute* for a retail service being discontinued, reduced, or impaired.”¹² The Commission also “tentatively conclude[d] that [it] should require incumbent LECs that seek section 214 authority to discontinue, reduce, or impair a legacy service used as a

⁹ *Ex Parte Letter* of J. Chandra, Windstream Communications, Inc. to Marlene H. Dortch, FCC, GN Docket No. 13-5, et al, (Aug. 7, 2014).

¹⁰ Remarks of Chairman Wheeler, COMPTTEL Fall Convention, Oct. 6, 2014, at 2 (“*Wheeler Oct. 6 Remarks*”).

¹¹ NPRM, at ¶ 92.

¹² *Id.* (emphasis added).

wholesale input by competitive providers to *commit to providing equivalent wholesale access on equivalent rates, terms, and conditions.*”¹³

In the Declaratory Ruling, the Commission clarified that the “service” that the Commission addresses in its discontinuance process “is defined in a *functional manner*, and not exclusively by reference to how the service is described in [the carrier’s] tariff.”¹⁴ This clarification means that the Commission’s Section 214 discontinuance process applies even “where access to third-party services and devices are not defined by the tariff as a part of the service offering[,]”¹⁵ which clarifies that LWC and other non-tariffed services within the scope of the section 214 evaluation. Further, the clarification also means that in considering what constitutes an “adequate substitute” for a service the Commission’s analysis encompasses what a community or part of a community would “reasonably view as the service provided by the carrier” in functional terms.¹⁶

The Commission now seeks comment on what factors it should consider in evaluating section 214 filings and in determining what constitutes an “adequate substitute” for a service being discontinued, reduced, or impaired.¹⁷ The most important factor that the Commission should consider in assessing a section 214 filing is the functionality of the discontinued retail or wholesale service for both residential and business customers. Consistent with the functional analysis adopted in the Declaratory Ruling, this assessment should include not only functions relating to voice calls (*e.g.*, the ability to use caller ID, call hunting, message waiting), but also the ILEC replacement service’s compatibility with non-call functionality of third-party CPE and

¹³ *Id.* (emphasis added).

¹⁴ NPRM, at ¶ 5 (emphasis added).

¹⁵ *Id.*

¹⁶ Declaratory Ruling, at ¶ 114.

¹⁷ NPRM, at ¶¶ 94, 97.

services that communities expect and rely upon to support home or business security and fire alarm systems, elevator alarm systems, fax machines, medical alert monitors, broadband (*e.g.*, DSL, Ethernet over Copper), credit card processing, point of sale systems, and other functions currently supported by the PSTN. The lessons of Verizon’s Fire Island deployment of Voice Link underscore the importance of both call and non-call functionality, including functions derived in part from third party equipment and services. Verizon’s deployment of its Voice Link service on Fire Island disrupted credit card processing and ATM services, and raised public safety concerns.¹⁸ As Public Knowledge points out, “A customer that uses the copper network for heart monitoring, for example, could justifiably refuse to switch over to a network that does not support her medical equipment or does not have the same reliability as the existing PSTN network.”¹⁹ An ILEC proposing to offer an “adequate substitute” for the PSTN services that businesses, residential users, and government agencies rely on for their day-to-day functioning must address and resolve such functional and reliability issues.²⁰

Thus, the Commission’s rules should define an “adequate substitute” for a legacy service to encompass device interoperability²¹ and both call functions and non-call functionality, including functions derived from third party CPE or services such as credit card processing and point of sale system functionality. In addition, these functions, including functions derived from third

¹⁸ See, *e.g.*, Letter from Harold Feld et al., Public Knowledge, to Tom Wheeler, Chairman FCC, GN Docket Nos. 12-353 and 13-5, at 2-3 (Jan. 13, 2014) (“Public Knowledge Letter”); Candice Ruud, Verizon offers alternative to Voice Link on Fire Island, Long Island Newsday (Sept. 10, 2013).

¹⁹ Public Knowledge Letter, at 5.

²⁰ Public Knowledge Letter, at 5 (“many small and midsize businesses (such as pharmacies, real estate agents, and banks) as well as government agencies rely on fax machines and other legacy technologies that do not work with IP-based or wireless equipment.”).

²¹ Public Knowledge Letter, Attachment, at 12 (For the “device interoperability” factor, “[t]esting should verify that voice and non-voice equipment that works on the current PSTN will work consistently on an IP-transitioned phone line[.]”).

party equipment and services, must continue to be provided at a high level of quality and reliability such that factors such as call persistence,²² and call quality, also identified by the Commission in the NPRM, are also protected.²³ The ILEC should be required to address and satisfactorily resolve each of these factors and attributes of a replacement service as a condition to proceeding with a section 214 discontinuance, reduction or impairment of a legacy service. For example, where consumers who are losing copper-based TDM services are to be transitioned to a wireless service, Section 214 requires the Commission to consider the impact of the proposed discontinuance on consumers' loss of access to call hunting, faxing, credit card verification services, point of sale system functionality, medial alert services, alarm monitoring and other functions that the TDM copper-based network supports.²⁴ Supporting call hunting, point of sale systems and credit card verification is crucial for the types of multi-location business customers served by Granite. In addition, a recent survey determined that some 26% of consumers keep their landline for a medical alert device, 17% for use with a home security system, and 26% for use with a fax machine.²⁵ These functions remain important to business and residential consumers and must be preserved through the transitions and beyond, consistent with the Commission's stated goals.

Thus, as the Commission tentatively concluded, 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 legacy services for which they seek discontinuance, and this requirement should extend to discontinuance of non-tariffed services

²² Public Knowledge Letter, Attachment, at 24 (For the "call persistence" factor, "[t]ests should be conducted in both the lab and the field to verify that a call placed on the IP-migrated phone system stays connected indefinitely.").

²³ NPRM, at ¶ 94.

²⁴ Declaratory Ruling, at ¶ 116.

²⁵ Letter from Jodie Griffin, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, Attachment at 3, 7 (Nov. 2014); NPRM, at n.235.

such as LWC.²⁶ The identification of an adequate substitute wholesale service, including disclosure of the rates, terms and conditions, should be required well in advance of the ILEC's section 214 filing so that providers and business customers may engage in the long term planning needed for the transitions and to enter into multi-year contracts. Neither the 30 nor 60 day period provided for under the Commission's Section 214 discontinuance rules²⁷ is sufficient for dealing with the host of competitive and consumer protection issues likely to arise from the transition to IP networks. Business customers need more long-term planning certainty than the brief existing 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 for the Commission's ruling on the particular relief requested deprives Granite and other CLECs, as well as customers, of information they need to plan for the future.

IV. The Commission Should Require ILECs to File a *Prima Facie* Case Including Substantive Details on Any Replacement Wholesale Services

The Commission seeks comment on “adopting a rebuttable presumption that where a carrier seeks to discontinue, reduce, or impair *a wholesale service*, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to section 214(a).”²⁸ The Commission noted the “presumption would be rebutted where it could be shown that either: (i) discontinuance, reduction, or impairment of the wholesale service would not discontinue, reduce, or impair service to a community or part of a community; or (ii) discontinuance, reduction, or impairment of the wholesale service would not impair the

²⁶ NPRM, at ¶ 6.

²⁷ 47 C.F.R. § 63.71.

²⁸ NPRM, at ¶ 103 (emphasis added).

adequacy or quality of service provided to end users by either the incumbent LEC *or competitive LECs in the market.*”²⁹

Granite supports this rebuttable presumption, provided the presumption is deemed conclusive, unless and until the ILEC files a *prima facie* case demonstrating and providing the basis for the ILEC’s assertion that it has rebutted the presumption, that includes details regarding the wholesale replacement product including price, terms and conditions, and the Commission conducts a comprehensive analysis of the ILEC’s case and the market for the relevant wholesale service, including DS0 services such as AT&T’s LWC. In addition, the Commission should require the ILEC to send a copy of the certification and supporting case to its CLEC wholesale customers that are affected by the discontinuance and make the certification and supporting case public. In the absence of any requirement to file a *prima facie* case, neither the Commission or affected consumers and wholesale customers will have any means or basis to analyze the ILEC’s likely self-serving assertions that it has satisfied the rebuttal requirement, nor to determine whether a community or parts of a community of end users are adversely affected by the discontinuance, reduction or impairment of legacy services. Only considered public scrutiny by end users, consumer groups, wholesale customers, and others, as well as the Commission, will ensure that there are no significant adverse effects arising from discontinuance, reduction or impairment of legacy services. End users and wholesale customers are often in the best position to determine whether the two prongs of the test for the rebuttable presumption are met and, for example, whether “discontinuance, reduction, or impairment of the wholesale service *would not impair the adequacy or quality of service* provided to end users by either the incumbent LEC or competitive LECs in the market,” because they actually utilize the services that the ILECs seek to discontinue,

²⁹ *Id.* (emphasis added).

reduce or impair and associated third-party services and will foresee issues that may otherwise escape the Commission's or Staff's notice.

The required *prima facie* case must include substantial evidence, not mere assertions, that rebuts the presumption; and include substantive detail regarding any wholesale or retail replacement services, including service descriptions, rates, terms and conditions, timing of availability, and the relevant geographic areas. The timing of the filing of the *prima facie* case should be far enough in advance of the section 214 filing to allow reasonable time for analysis and comment by affected end users, wholesale customers, consumer groups and the general public.

V. The Commission Should Require ILECs to Commit to Providing Equivalent Wholesale Access for DS0 and Other Services On Equivalent Rates and Terms

In the NPRM, the Commission “tentatively conclude[d] that [it] should require incumbent LECs that seek section 214 authority to discontinue, reduce, or impair a legacy service that is used as a *wholesale input* by competitive carriers to commit to providing competitive carriers equivalent wholesale access on equivalent rates, terms, and conditions.”³⁰ Granite supports this conclusion and urges the Commission to include this requirement in its section 214 rules. ILECs should be required to confirm this commitment as part of the *prima facie* case associated with their section 214 filings and provide detailed information on their equivalent wholesale service, including rates, terms and conditions, with their section 214 filing. The Commission's rules must make clear that these requirements apply to all “wholesale input” services, including DS0 services such as AT&T's LWC product or Verizon's Wholesale Advantage product.

The Commission should clarify that Section 214 discontinuance does not eliminate the ILEC's obligation to comply with their obligation to provide UNEs under Section 251 and, for RBOCs, Section 271 obligations. As discussed more fully in Granite's comments on the Wind-

³⁰ NPRM, at ¶ 110 (emphasis added).

stream Petition,³¹ the Act is technology neutral and the obligations under Sections 251 and 271 are likewise technology neutral. Converting a loop from copper to fiber or converting service from TDM to IP does 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 non-tariffed services such as AT&T's LWC.

As Windstream noted in its comments, “wholesale customers need significant lead time so that they can both plan for the necessary changes to their products as well as prepare their customers for changes to offerings dependent upon ILEC last-mile facilities.”³² Thus, the *prima facie* case, including information on wholesale replacement services, must be provided far enough in advance of any discontinuance, reduction or impairment of legacy services to facilitate the public comment process discussed above and to enable customers and competitors to conduct adequate transition planning.

VI. Granite Supports Adoption of the Six Guiding Principles in the NPRM

The NPRM discusses six guiding principles, proposed by Windstream, that the Commission can incorporate into a standard for preserving competition where competitors rely on ILEC wholesale inputs.³³ Granite recommends the Commission adopt these principles with some

³¹ Petition For Declaratory Ruling to Clarify That Technology Transitions Do Not Alter The Obligation of Incumbent Local Exchange Carriers to Provide DS1 and DS3 Unbundled Loops Pursuant to 47 U.S.C. § 251(c)(3), WC Docket No. 15-1, GN Docket No. 13-5 (filed Dec. 29, 2014) (“Windstream Petition”).

³² Windstream April 28, 2014 *Ex Parte*, at 11.

³³ NPRM, at ¶ 111; *Ex Parte Letter* of J. Chandra, Windstream Communications, Inc. to Marlene H. Dortch, FCC, GN Docket No. 13-5, *et al.*, at 5 (Sep. 26, 2014) (“Chandra Letter”).

refinements. Several of these principles are particularly relevant for preserving competitors' access to IP-based DS0 replacement services such as AT&T's LWC product.

For Granite, it is important that on a per-line basis, wholesale rates for any IP replacement for DS0 products, such as AT&T's LWC product, not exceed the TDM per-line rate. Thus, Granite supports the first principle ("Price per Mbps Shall Not Increase")³⁴ with the modification that it should be clear that the principle applies not only to special access services in the Mbps range but also to wholesale DS0 services such as those procured under AT&T's LWC or Verizon's Wholesale Advantage product. Specifically, the Commission should require that the price per Mbps or Kbps of the IP replacement product shall not exceed the price per Mbps or Kbps of the legacy TDM product that otherwise would have been used to provide comparable network functionality.

It is also important that wholesale rates for any IP replacement product be offered at competitive rates, as doing otherwise would effectively preclude competition for the types of customers served by Granite. Accordingly, the first and third principles should be interpreted to ensure that ILECs are obligated to provide an IP replacement service at the *same rates including volume discounts* as the legacy TDM product being replaced. Competition for the low-bandwidth small and medium-sized businesses served by Granite and others is dependent upon access to LWC and Wholesale Advantage and similar services whose rates should not increase. Likewise, the third principle should be extended so that the price of wholesale DS0 level services should not increase, not just the wholesale price for "special access service at or above the DS1 level[.]"³⁵

³⁴ NPRM, at ¶ 111.

³⁵ NPRM, at ¶ 111.

In addition, Granite agrees with the fourth principle (“Bandwidth Options Shall Not Be Reduced”) that the ILEC should be required to offer the same range of bandwidth options available prior to the transitions.³⁶ This would enable Granite’s customers to obtain the modest high-speed Internet access they need for point of sale terminals and other functions 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.

Finally, Granite supports the principles five and six that price increases shall not be permitted to be effectuated by ILECs via significant changes to charges for network-to-network interfaces or any other rate elements, lock-up provisions, early termination fees, special construction charges, or any other measure to circumvent the requirement of equivalent prices and that service functionality, delivery and quality, OSS efficiency, and other elements affecting service quality shall be equivalent to, if not better than, what is provided for TDM inputs today.³⁷ Granite also concurs with Windstream that these principles should not be a starting point for negotiations with the ILECs but should be enforceable minimum end points for Section 214 ground rules.³⁸

VII. Conclusion

Granite appreciates the Commission’s focus on these issues, and supports the Commission’s goal of protecting competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-sized businesses, multi-location businesses, schools, libraries, and other enterprises of the ability to choose

³⁶ *Id.*

³⁷ *Id.*; Chandra Letter, at 5, 10 (filed Sept. 26, 2014).

³⁸ Chandra Letter, at 5.

the kinds of innovative services that best suit their needs. Granite urges the Commission to adopt the clarifications it has suggested above to preserve competition and innovative and cost-effective choices for these customers.

Respectfully submitted,

/signed electronically/

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