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June 11, 2015

**Via ECFS**

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

**Re:   *Technology Transitions, GN Docket No. 13-5; GN Docket No. 12-353; 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; Granite Telecommunications Petition for Declaratory Ruling, WC Docket No. 15-114***

Dear Ms. Dortch:

On June 9, 2015, Mordy Gross of Xchange TelecomLLC., Paula Foley of Granite Telecommunications, LLC (“Granite”) and the undersigned met in person with Carol Matthey, Daniel Kahn, Pamela Arluk, Bakari Middleton, Michele Berlove, Deena Shetler, David Zesiger John Visclosky and Virginia Metallo of the Wireline Competition Bureau. On the telephone were Nancy Lubamersky of TelePacific Communications, David Bailey of BullsEye Telecom, Inc., Bob Beaty of Impact Telecom, Glen Nelson of New Horizon Communications Corp., and Richard Brown of Access Point Inc., and the following from the Wireline Competition Bureau: Jean Ann Collin and Heather Hendrickson. The industry attendees will be referred to herein as the Wholesale Voice Line Coalition.

The Wholesale Voice Line Coalition members explained that all of their companies rely, in whole or in part, on the use of a voice-grade product purchased from ILECs to serve multi-location businesses that have relatively modest needs for voice communications at each location (most frequently 1-10 lines). The locations are widely dispersed, and often in suburban, exurban and rural areas where no competitive carrier has facilities and it is not economical for a CLEC to construct facilities duplicating the ILEC’s, given the very limited demand at each location. Moreover, the local cable company usually cannot construct facilities to reach these businesses

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on an economical basis and even in those locations where the CLEC wishes to compete via UNE-L, it frequently finds that ILEC facilities are not available.

We circulated some slides (attached as Exhibit A), that were prepared by Granite, but which are also indicative of the wide dispersion of the locations of the other members of the Wholesale Voice Line Coalition, the limited demand at each location and the inability to obtain cable facilities on an economical basis at most locations. For example, Granite has an average of 3.5 lines per location, more than 3/4 of its locations have 4 or fewer lines, and 2/3 of the locations are single-customer buildings, such as a gas station or retail location.

We pointed out that members of the Wholesale Voice Line Coalition provide added value to the customer, including providing a single bill, a single point of contact (referred to as “one throat to choke”), and more responsive customer service.

We suggested that as recognized in ¶ 110 of the November 2014 NPRM in these dockets,<sup>1</sup> the technical transition should not be used to eliminate competition that currently exists, including competition provided through wholesale commercial agreements such as AT&T’s Local Wholesale Complete and Verizon’s Wholesale Advantage. We circulated a copy of a modified version of Windstream’s 6 principles that COMPTTEL had previously filed in these dockets (attached as Exhibit B), and indicated our support for COMPTTEL’s revisions. There was discussion about the relationship of Windstream’s Principle 1 and the modified version of Windstream’s Principle 3. We suggested that they address the same issue--a requirement that after the transition, ILECs provide wholesale services comparable to those they provide currently, at comparable rates. Taken together, they support this principle for all services ranging from a voice grade line to service up through 50 Mbps. We endorsed this principle.

In response to a question from Staff, the Wholesale Voice Line Coalition stated that to the extent the Commission determines that this requirement should be “interim” in nature, it need not tie the duration of the requirement to the conclusion of a specific pending or future proceeding. For example, the Commission did not do so in 1996 with the *Local Competition Order*,<sup>2</sup> and yet it ended several of the requirements of the *Local Competition Order* when it re-examined them in the *TRO*<sup>3</sup> and the *TRRO*.<sup>4</sup> As in that case, the Commission can re-evaluate the need for a

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<sup>1</sup> See *Technology Transitions et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 15012 ¶ 110 (2014) (“NPRM”).

<sup>2</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996). (*subseq. history omitted*).

<sup>3</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*subseq. history omitted*).

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particular pro-competitive requirement on its own motion. Alternatively, if any ILEC believes that re-evaluation is needed, it can file a petition for forbearance pursuant to § 10, or a petition for rulemaking.

If, however, the Commission decides that it must identify such a proceeding, it can state that the equivalent access requirement as applied to wholesale voice services will be evaluated in the Technology Transition docket as part of a later NPRM.

The Wholesale Voice Line Coalition urges the Commission to adopt rules expeditiously that make clear that ILECs may not obtain § 214 approval to withdraw TDM based wholesale services without providing equivalent wholesale access services on equivalent rates, terms and conditions. Further, the Wholesale Voice Line Coalition urges that the Commission likewise clarify that the transition from TDM to IP does not eliminate or alter the ILEC obligations to provide network elements under § 251 or checklist items under § 271.

#### **1. The Commission Should Adopt Its Proposed Equivalent Wholesale Access Requirement**

In the NPRM, the Commission explained that it is “guided by the mantra that technology transitions should not be used as an excuse to limit competition that exists.”<sup>5</sup> Nonetheless, the ILECs continue to assert that they should “be able to invest their way out of unbundling obligations ... particularly for ‘next-generation network facilities and equipment,’ described as ‘fiber optic cables and equipment used to provide packet-based services.’”<sup>6</sup> The ILECs further claim that continuing wholesale obligations during and after the ongoing technology transitions “would continue to place ILECs at a competitive disadvantage in comparison to their cable and wireless competitors.”<sup>7</sup>

The transition from TDM to IP does not, however, alter the economics of deploying competitive networks to serve the relatively low bandwidth locations such as those that the members of the Wholesale Voice Line Coalition serve. The Commission recognizes that all competitive carriers, including cable companies, “face extensive economic barriers” to the deployment of competitive

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<sup>4</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) (*subseq. history omitted*).

<sup>5</sup> *NPRM*, 29 FCC Rcd at 14973 ¶ 6.

<sup>6</sup> Comments of The United States Telecom Association, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket N. 05-25, RM-10593 at 12, (filed Feb. 5, 2015)

<sup>7</sup> Letter from M. Caldwell, ITTA, to M. Dortch, FCC, at 1 (April 20, 2015).

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facilities where they lack existing facilities needed to serve the customer.<sup>8</sup> The significant barriers to competitive deployment to such locations do not disappear simply because the network protocol changes from TDM to IP.

The lack of alternative wholesale suppliers in most of the areas where the members of the Wholesale Voice Line Coalition rely on ILEC wholesale inputs means that the absence of regulatory requirements would allow ILECs “to turn off legacy services, [leaving] competitive carriers [to] 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.”<sup>9</sup>

It is thus critical that the Commission establish rules to ensure that as the transition progresses, consumers will not be left worse off — with fewer choices for service than they had before the transition. To guard against such an outcome, the Commission must compel ILECs to provide functionally equivalent wholesale facilities and services at rates equivalent to those they now offer during and after the technology transition. The Wholesale Voice Line Coalition thus urges the Commission to adopt the proposal in the NPRM to require incumbent LECs that seek to discontinue “a legacy service that is used as a wholesale input by competitive carriers to commit to providing competitive carriers equivalent access [to IP-based services] on equivalent rates, terms, and conditions.”<sup>10</sup> In so doing, the Commission should clarify that a “legacy service that is used as a wholesale input” means any ILEC service or facility purchased by a competitor at wholesale and used by the competitor to serve its own customers, including but not limited to, commercial wholesale voice line replacement arrangements, UNEs and special access services. It should not matter whether the service is offered pursuant to tariff or contract; nor should it matter whether the service is offered under regulatory compulsion or “commercially.”<sup>11</sup>

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<sup>8</sup> 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).

<sup>9</sup> *NPRM*, 29 FCC Rcd at 14973 ¶ 6.

<sup>10</sup> *NPRM*, 29 FCC Rcd at 15012 ¶ 110.

<sup>11</sup> The Commission should define an “adequate substitute” for a legacy service to include device interoperability as well as non-call functionality, such as those derived from third party CPE or services such as credit card processing and point of sale system functionality. Continued support for multi-line call hunting, point of sale systems and credit card verification is crucial for the types of multi-location business customers that members of the Wholesale Voice Line Coalition serve.

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## **2. The Commission Should Confirm that the Technology Transition Does Not Eliminate Existing Wholesale Obligations**

Consistent with its understanding that “technology transitions should not be used as an excuse to limit competition that exists,”<sup>12</sup> the Commission should clarify that an ILEC’s withdrawal of TDM-based services under a Section 214 discontinuance application does not eliminate the obligation to provide UNEs under § 251 and, for an RBOC, to provide items on the competitive checklist under § 271 on terms consistent with §§ 201(b) and 202(a). This includes the requirement under § 251 that ILECs provide requesting carriers a 64 Kbps voice channel where they no longer provide home run copper loops in a fiber overbuild situation and that RBOCs commingle unbundled loops with § 271 checklist items such as unbundled switching and unbundled shared transport.

USTA has sought forbearance from these obligations, arguing that such regulatory requirements are no longer needed in the post-IP transition world. But the availability of voice grade loops under § 251 (including the 64 Kbps voice channel) and checklist items under § 271 — including a commingled combination of a § 251 loop with § 271 shared transport and local switching — remain important for competitors such as members of the Wholesale Voice Line Coalition that serve business customers with limited telecommunications service demand at numerous locations widely dispersed across the country. At a minimum, the availability of UNEs and § 271 checklist items establishes an important regulatory backstop for negotiations between competitive carriers and ILECs. Such negotiations have resulted in agreements that enable members of the Wholesale Voice Line Coalition to compete, but such agreements would be unlikely in the absence of the regulatory requirements because ILECs lack any incentive to voluntarily offer competitive access to unbundled network elements, including local switching, on reasonable rates, terms, and conditions.<sup>13</sup>

The Commission has sufficient grounds to conclude that the RBOCs’ § 251 and § 271 obligations include a requirement to provide a § 251 UNE loop commingled with § 271 local switching and shared transport. The RBOCs contend that because the *TRO* contains a footnote suggesting that § 271 does not require ILECs to combine checklist items, the RBOCs are not

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<sup>12</sup> *NPRM*, 29 FCC Rcd at 14973 ¶ 6.

<sup>13</sup> See e.g., *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, COMPTTEL’s Opposition to USTelecom’s Petition for Forbearance, WC Docket No. 14-192 at 12, (filed Dec. 5, 2014) (“COMPTTEL Opposition”).

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required to provide voice line arrangements containing UNE loops, local switching and shared transport to CLECs under § 271.<sup>14</sup>

This is incorrect. First, USTA's argument that the Commission's comingling rule does not require the RBOCs to provide a UNE loop comingling with switching and shared transport under § 271 misreads the Commission's comingling rule and applicable appellate decisions.<sup>15</sup> Further, if there is any ambiguity regarding the RBOCs' obligation to provide access to a DSO arrangement consisting of a § 251 UNE loop comingling with switching and shared transport under § 271, the Commission should clarify, as Granite has requested in its Petition for Declaratory Ruling,<sup>16</sup> that RBOCs must provide such an arrangement because the Commission requires RBOCs to provide § 271 checklist items on rates, terms and conditions consistent with §§ 201(b) and 202(a).<sup>17</sup>

Sections 201(b) and 202(a) together obligate RBOCs to provide in combined form checklist items that are already combined. It would plainly be discriminatory and contrary to § 202(a) for the RBOCs to provide a combination of loop, switching and shared transport while withholding such combinations from CLECs.<sup>18</sup> Nor would it be just and reasonable under § 201(b) for RBOCs to separate elements that are already combined.

Similarly, §§ 201(b) and 202(a) require RBOCs to combine checklist items upon a CLEC's request unless the RBOC has a reasonable basis for refusing such request. Refusal to combine § 271 checklist items for CLECs that the RBOC ordinarily combines for itself is unreasonably discriminatory in violation of § 202(a) and an unjust and unreasonable practice under § 201(b). Further under §§ 201(b) and 202(a), CLECs may obtain a UNE comingling with a combination

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<sup>14</sup> See Reply Comments of the United States Telecom Association, WC Docket No. 14-192 at 11 (filed Dec. 22, 2014).

<sup>15</sup> See 47 C.F.R. § 51.5 (defining "comingling" as "the connecting, attaching, or otherwise linking of an [UNE], or a combination of [UNEs], to one *or more* facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC;" *BellSouth Telecommunications, Inc. v. Ky. PSC*, 669 F.3d 704 (6th Cir. 2012); *Nuvox Communications, Inc. v. BellSouth Communications, Inc.*, 530 F.3d 1330, 1335 (11th Cir. 2008).

<sup>16</sup> See *Petition of Granite Telecommunications, LLC for Declaratory Ruling Regarding the Separation, Combination, and Comingling of Section 271 Unbundled Network Elements*, WC Docket No. 15-114, filed May 4, 2015 ("Granite Petition").

<sup>17</sup> See Granite Petition at 8.

<sup>18</sup> See Granite Petition at 9.

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of checklist items consistent with the Commission's definition of "commingling" in 47 C.F.R. § 51.5.

The Commission should clarify these obligations pursuant to Granite's Petition for Declaratory Ruling and in any subsequent section 214 order where an RBOC seeks to discontinue CLECs' wholesale voice line arrangements. Such clarification is necessary in order to ensure that ILECs do not use the technology transition as a pretext for evading their wholesale obligations.

Respectfully submitted,

*/s/ Eric J. Branfman*

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