

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of Granite Telecommunications, LLC)	WC Docket No. 15-114
For Declaratory Ruling Regarding the)	
Separation, Combination, and Commingling of)	
Section 271 Unbundled Network Elements)	

COMMENTS OF VERIZON¹

The Commission should deny Granite’s Petition to resurrect UNE-P—the regulated combination of unbundled switching, unbundled shared transport, and unbundled loops. The Commission long ago eliminated UNE-P because it discouraged investment in facilities-based competition and because CLECs can deploy their own switching.² Companies have since offered commercial UNE-P replacement products as market-based responses to the *Triennial Review Remand Order*³ with no legal mandate to do so. Despite the protections of a highly competitive marketplace, Granite now wants the Commission to declare that some competitors—only the former Bell Operating Companies (“BOCs”)—must provide those UNE-P replacements not as commercial offerings but as regulatory obligations under a creative new interpretation of Sections 201 and 202 of the Communications Act. The Petition does not present a real-world problem for the Commission to solve, and there is no legal justification for the declaratory ruling Granite seeks. The Commission should dismiss the Petition.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *Granite Petition of Granite Telecommunications, for Declaratory Ruling Regarding the Separation, Combination, and Commingling of Section 271 Unbundled Network Elements*, WC Docket No. 15-114 (May 4, 2015) (“Petition”).

³ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) (“*Triennial Review Remand Order*”).

DISCUSSION

More than 10 years ago the Commission eliminated regulated access to UNE-P and found it created disincentives to infrastructure investment.⁴ From 1997 until 2004, the Commission’s rules implementing Section 251 allowed CLECs to lease UNE-P and thus to serve their end-user customers using none of their own facilities. UNE-P—which the D.C. Circuit called a “completely synthetic” form of competition⁵—was supposed to be a transitional tool that led to facilities-based competition. In practice, it became many CLECs’ long-term business plan.⁶ After the appellate courts repeatedly rejected these unbundling rules,⁷ the Commission in the *Triennial Review Remand Order* reversed course, concluding ILECs no longer were required by Section 251 to unbundle switching because providers could deploy their own switches and UNE-P was “a disincentive to competitive LECs’ infrastructure investment.”⁸ The D.C. Circuit affirmed the Commission’s holding and found CLECs had in fact deployed their own switches, including new advanced switches with greater capacity and broader geographic reach.⁹

Despite the revised Section-251-switching holding, the former BOCs still had to provide standalone switching and standalone shared transport under section 271(c)(2)(b), but Section 271 never required the former BOCs to bundle switching with transport to effectively recreate UNE-P after the Commission eliminated it. That is the law, and in its *Petition Granite* reluctantly

⁴ See *Triennial Review Remand Order*, ¶ 218.

⁵ *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 424 (D.C. Cir. 2002) (“USTA I”).

⁶ See *Triennial Review Remand Order* ¶ 220.

⁷ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); USTA I; *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“USTA II”) *cert. denied*, 125 S. Ct. 313 (2004).

⁸ *Triennial Review Remand Order* ¶ 204.

⁹ *Covad Communs. Co. v FCC*, 450 F.3d 528, 546-548 (D.C. Cir. 2006).

acknowledges a footnote in the *Triennial Review Order* says just that.¹⁰ The footnote Granite glosses over leaves no doubt that the Commission “decline[d] to require BOCs, pursuant to Section 271, to combine network elements that no longer are required to be unbundled under Section 251.”¹¹ And Granite’s suggestion that this holding is confined to a single footnote is wrong. In the *Omaha Order*, the Commission said Qwest had introduced a commercial replacement for UNE-P “even in the absence of a legal mandate to do so”—meaning there was no mandate.¹² And in a 2006 amicus brief the Commission also told the Sixth Circuit that “no BOC is obligated under the FCC’s rules ... to combine the unbundled local circuit switching and shared transport piece of what used to be comprise the now-defunct UNE-Platform to satisfy its commingling duties.”¹³

Against this backdrop, the Commission cannot grant Granite’s request and find that former BOCs have to provide a new regulated UNE-P under Sections 201(a) and 201(b). Those sections say nothing about the particular services carriers have to provide. These sections are about just and reasonable rates and practices and nondiscrimination, not about services that carriers have to provide to other carriers. Sections 251 and 271 speak to those wholesale obligations, and the Commission already has said Sections 251 and 271 do not require UNE-P or a UNE-P

¹⁰ See *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 16,978, n.1989 (2003) (“*Triennial Review Order*”).

¹¹ *Id.* at ¶ 655 n. 1989.

¹² *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd. 19,415, ¶ 82 (2005) (“*Omaha Order*”), *pets. for rev. dismissed and denied on the merits, Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

¹³ See Brief for Amicus Curiae Federal Communications Commission in Support of Defendants-Appellants, Cross –Appellees and Partial Reversal of the District Court, *BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky v. Kentucky Public Service Commission*, Case Nos. 10-5310/10-5311, at 17 (filed Dec. 6, 2011).

replacement. And the Seventh Circuit and the Eleventh Circuit have relied on the Commission's holding that former BOCs "are permitted to charge market rates for Section-271 elements,"¹⁴ not the regulated rates that would result if the Commission granted Granite's petition.

The same marketplace makes it unnecessary to create a new regulatory backstop. The former BOCs for a decade have provided commercial UNE-P replacement products to companies like Granite at market-based rates, terms, and conditions. These commercial products are not responses to legal mandates. They are commercial offerings in response to competitive pressures designed to "keep customers on [the carrier's] network" and "to minimize revenue losses resulting from customer defections" to other providers' services, including the thriving intermodal options like cable, wireless, and IP-based services.¹⁵ Granite claims that Section 271 gives it a regulatory backstop that helps facilitate its negotiations for those arrangements, but the competitive marketplace provides the backstop, not any legal requirement.

If anything, marketplace dynamics make a regulatory mandate for UNE-P even more unnecessary today. The Commission said in 2004 that regulated UNE-P "hindered the ability of competitors to use intermodal facilities to compete,"¹⁶ and intermodal competition has grown exponentially since the Commission eliminated regulated UNE-P. At the end of 2013, more than 40 percent of American households relied exclusively on wireless services.¹⁷ More than one-third of wireline retail local telephone service connections were interconnected VoIP, often

¹⁴ *Nuvox Communications, Inc. v. BellSouth Communications, Inc.*, 530 F.3d 1330, 1335 (11th Cir. 2008) accord *Illinois Bell Tel. Co. v. Box*, 548 F.3d 607, 612 (7th Cir. 2008).

¹⁵ *Omaha Order*, ¶¶ 81-82.

¹⁶ *Triennial Review Remand Order* ¶ 220.

¹⁷ *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, et al*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14,968, ¶ 8 (2014), citing Drew Desilver, CDC: *Two of Every Five U.S. Households Have Only Wireless Phones* (July 8, 2014), <http://www.pewresearch.org/fact-tank/2014/07/08/two-of-every-five-u-s-households-have-only-wireless-phones/>.

provided by cable companies, and more than half of the residential retail voice connections were interconnected VoIP as of the end of 2013.¹⁸ And ILEC switched and VoIP access lines had fallen to 75.1 million, just 43 percent of the lines they served at the end of 2000.¹⁹ In light of this competition there is no lawful rationale for the Commission to ignore its precedent and use Sections 201 and 202 to bring regulated UNE-P back from the dead.

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For these reasons the Commission should deny the Petition.

Respectfully submitted,

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¹⁸ See *FCC Local Competition Report Year-End 2013*, at Figure 4, https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf.

¹⁹ See *id.* at Table 1; *Petition* at 9.