

**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
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ hereby submits these comments in response to the Public Notice issued by the Federal Communications Commission (Commission or FCC) seeking comment on a petition for declaratory ruling filed by Granite Telecommunications, LLC (Granite) asking for clarification on the manner in which sections 201(b) and 202(a) of the Act apply to the separation, combination, and commingling of unbundled network elements (UNEs) by Bell Operating Companies (BOCs). The petition specifically cites to statements made by USTelecom regarding BOC obligations to combine “section 271 UNEs” that purportedly “have created uncertainty.”² But we see no uncertainty that requires clarification by the Commission. Rather, Granite appears to be asking the Commission to create leverage for competitors to use in negotiations with BOCs that would effectively require BOCs to recreate the UNE Platform (UNE-P) or provide similar regulated

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See *Petition of Granite Telecommunications, LLC for Declaratory Ruling Regarding the Separation, Combination, and Commingling of Section 271 Unbundled Network Elements*, WC Docket 14-192, at 6 (filed May 4, 2015) (*Granite Petition*) (citing *Reply Comments of the United States Telecom Association*, WC Docket No. 14-192, at 11 (filed Dec. 22, 2014) (*USTelecom Modernization Reply Comments*)).

offerings upon request although they have no regulatory obligation to do so. That would be a step in the wrong direction.

The Commission should not be looking backward; today's regulatory landscape must be about eliminating barriers to infrastructure investment and competition. We therefore ask the Commission to deny Granite's request for declaratory ruling to the extent it seeks to revive legacy BOC obligations to provide UNE-P or similar offerings upon request (or to require BOCs to justify reasonable business decisions not to provide such offerings) under the guise of prohibiting unjust and unreasonable practices and unreasonable discrimination under sections 201(b) and 202(a).³

I. MODERNIZATION IS NECESSARY TO FACILITATE THE TRANSITION TO NEXT-GENERATION SERVICES AND NETWORKS

As we stressed in the *Modernization Petition*, it is critical that the Commission "promote the deployment of next-generation high-speed networks and fulfill [its] core goals of expanding infrastructure investment and increasing competition for services that have become central to Americans' daily lives."⁴ Thus, the Commission must ensure that going forward "it imposes only those regulations necessary to create the right incentives, in a minimally regulatory environment," to allow providers to protect consumers, promote public safety, and help achieve the nation's reasonable broadband deployment goals.⁵

Many of the regulations that continue to govern telecommunications services and providers pre-date major technological and competitive transitions that have taken place, and

³ 47 U.S.C. §§201(b), 202(a).

⁴ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) from Obsolete Incumbent LEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks*, WC 14-192, at 2 (filed Oct. 6, 2014) (*Modernization Petition*).

⁵ *Comments of the United States Telecom Association*, WC Docket No. 15-1, GN Docket No. 13-5, at 2 (filed Feb. 5, 2015) (*USTelecom Comments*).

they are not being updated in real time to adjust to today's changing competitive marketplace. USTelecom has explained why the Commission should forbear from dozens of regulatory obligations that no longer serve a useful purpose, evidenced by, among other things, irreversible competition in local and long distance markets - the primary goal of sections 271 and 272 and legacy equal access requirements.⁶

In the *Modernization Petition*, we demonstrated how maintaining legacy obligations has a real cost to BOCs operating as incumbent local exchange carriers (LECs) that other providers do not have to bear. For example, they must maintain certain network configurations and access offerings to facilitate stand-alone long distance offerings by other providers, which often means maintaining legacy facilities in addition to building new IP- and fiber-based facilities that will better serve the needs and wants of consumers. These compliance obligations divert investment dollars away from building new infrastructure necessary for the transition to modern IP networks and expansion of broadband access. The Commission should therefore resist Granite's urging to impose more requirements that are unnecessary, outdated, and backward-looking, and that will elevate costs for incumbent LECs, especially BOCs, but not their competition (other LECs, cable, and wireless providers).

II. THE COMMISSION SHOULD ELIMINATE OR FORBEAR FROM APPLYING LEGACY REQUIREMENTS THAT ARE MOOT OR IRRELEVANT

In a marketplace now characterized by robust, intermodal competitive alternatives in which traditional BOC services are among many communications offerings from multiple industry players, and in which BOCs continue to lose market share to competitors, stringent rules designed to open up competitive markets no longer serve a necessary regulatory purpose.

⁶ See, e.g., *USTelecom Modernization Reply Comments* at 9.

USTelecom has demonstrated that these markets are indeed open, and that voice, broadband, and data competition are irreversibly established across the country.⁷

Today, one can walk down the street with a device that enables voice conversations and communication by texting, plays music, and provides access to the Internet. These devices are enabled by service from a variety of providers, many of whom compete in the same markets and operate using their own networks and facilities. For residential customers, the wired, in-home service that was an essential lifeline two decades ago no longer serves that purpose in many cases, as customers have “cut the cord” and instead rely heavily – or exclusively – on their wireless phones and broadband-enabled devices to communicate. Additionally, business competition is robust, as cable providers now offer business-class services over their own network facilities throughout the country.

Any meaningful distinction between local and long distance markets has been virtually obliterated, replaced by a competitive, all-distance marketplace. In fact, this regulatory scheme has worked so well that in many cases BOCs are no longer dominant providers in the market;⁸ thus, competitors arguably no longer need the particular help that the Commission’s market-opening requirements were designed to provide.⁹ We therefore have urged the Commission to forbear from applying those regulations that have served their purpose, including any section 271

⁷ *See id.* at 2-8.

⁸ The Commission determined several years ago that RBOCs lack classic market power in the mass-market, enterprise, and wholesale long distance markets. *See Modernization Petition* at 29 (citing *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007)).

⁹ *See USTelecom Modernization Reply Comments* at 9 (explaining that cable companies provide national, facilities-based competition for business and residential customers, and competitive LECs’ share of business customers is on the rise).

requirements that remain,¹⁰ consistent with “its obligation to remove costly, overly broad, and outmoded requirements and burdens in response to changes in markets and regulatory needs.”¹¹

III. THE COMMISSION SHOULD DENY GRANITE’S REQUEST

Granite claims that a recent filing by USTelecom has contributed to “uncertainty as to the BOCs’ obligations regarding the separation, combination, and commingling of Section 271 UNEs.”¹² A careful examination of the statement cited by Granite makes it clear that USTelecom was merely repeating what the Commission itself has held: “We decline to require BOCs, pursuant to section 271, to combine network elements that no longer are required to be unbundled under section 251. ... We also decline to apply our commingling rule [] to services that must be offered pursuant to [the section 271] checklist items.”¹³ In fact, USTelecom cites to multiple sources in support of its statement, and further explains that “even with no regulatory obligation to provide UNE-P replacement services, companies continue to offer them” on a voluntary basis.¹⁴ Tellingly, Granite does not challenge the accuracy of USTelecom’s assertion. Rather, Granite claims that USTelecom has created uncertainty because there are no “explicit agency rules” that otherwise require separation, combining, and commingling of UNEs that must be offered pursuant to section 271.¹⁵

¹⁰ *Modernization Petition* at 24-28.

¹¹ *Petition of USTelecom for Forbearance Under 47 U.S.C. §160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7656 ¶ 55 (2013).

¹² *Granite Petition* at 2; *see also id.* at 6.

¹³ *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, 17386 n.1990 (2003).

¹⁴ *USTelecom Modernization Reply Comments* at 14.

¹⁵ *Granite Petition* at 6.

The failure to identify any rules requiring BOCs to combine, commingle, or separate section 271 UNEs¹⁶ is both key and fatal to Granite's request, which amounts to asking the Commission to recreate UNE-P or equivalent obligations where none currently exist.¹⁷ Parties should not be able to invoke sections 201(b) and 202(a) to compel BOCs to offer non-mandated, commercial UNE-P replacement products with specific rates, terms, and conditions that they choose. Granite offers no compelling reason for the Commission to now effectively roll back the clock on the repeal of UNE-P by requiring BOCs to justify their reasonable business decisions to offer (or not offer) commercial UNE-P replacement products that they have no legal mandate to offer at all.

If the Commission grants USTelecom's request to forbear from all remaining section 271 obligations,¹⁸ the issues raised in Granite's petition will largely be moot.¹⁹ However, even if forbearance is not granted, there are ample reasons to deny Granite's request. Additional regulation is not necessary to achieve the nationwide broadband goals, nor to preserve competition and consumer choice. The Commission's goals of more investment in fiber and IP technology, and more competition are being realized without it. For example, CLEC and cable

¹⁶ See *id.* at 10 (admitting that “[t]he Commission said nothing about whether BOCs are permitted to separate Section 271 checklist elements that are already combined”); *id.* at 11 (acknowledging that the Commission held that section 271 “does not require BOCs to combine Section 271 UNEs”); *id.* at 14 (“the Commission has not established rules requiring BOCs to commingle Section 271 UNEs with other wholesale services”).

¹⁷ The Commission has confirmed that BOCs are not obligated to recreate the UNE-Platform. See *USTelecom Modernization Reply Comments* at 11-12 and n.46 (citations omitted).

¹⁸ See *Modernization Petition* at 24-25 (explaining that section 271's remaining requirements “are redundant, moot, or unnecessary,” and that the section 271 checklist “imposes burdensome interconnection and access requirements that ... have been superseded by competitive developments in the marketplace”).

¹⁹ Granite specifically asks for relief with regard to UNEs “provisioned pursuant to Section 271(c)(2)(B)(iv)-(vi) of the Act.” *Granite Petition* at 1.

business lines have increased such that the non-ILEC share of business lines reached 45 percent at the end of 2013.²⁰

Granite further asserts that its ability to serve certain business customer locations is at risk because it purchases combinations of unbundled DS0 loops, shared transport, and local switching from the BOCs, and candidly admits that it seeks this declaratory ruling to preserve the section 271 checklist as a “regulatory backstop” for its commercial negotiations with BOCs.²¹ This is an extraordinary request; it boils down to asking the FCC to put its thumb on the scale by empowering Granite to invoke sections 201 and 202 whenever it is unhappy in negotiations with the BOCs regarding rates, terms, and conditions of commercial offerings.

The “uncertainty” Granite identifies and seeks to eliminate is the same uncertainty all parties face in negotiating commercial agreements – no more, no less. There simply is no regulatory need to grant the “clarification” Granite requests.

IV. CONCLUSION

With technology transitions to fiber and IP well underway and already bringing innovative and improved communications services to the marketplace, the Commission should be looking to tailor its regulatory protections rather than impose unnecessary obligations. The policies and regulations governing unbundling requirements established long ago have served their purposes, as competition is robust in all telecommunications markets. The Commission therefore should resist Granite’s call to encumber BOCs with revived legacy obligations and fewer incentives to continue investment in next-generation networks.

²⁰ See Federal Communications Commission (FCC), Local Telephone Competition: Status as of December 31, 2013 and Excel Tables (lcom1213_tables.xls) (Oct. 2014) (collectively, “*FCC Local Competition Data Year-End 2013*”) at Table 11, available at <http://transition.fcc.gov/wcb/iatd/comp.html> (visited Mar. 1, 2015).

²¹ *Granite Petition* at 7.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

A handwritten signature in blue ink that reads "Jonathan Banks". The signature is fluid and cursive, with the first name and last name clearly legible.

Jonathan Banks
Diane Griffin Holland

607 14th Street, NW, Suite 400
Washington, DC 20005
202.326.7300

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