Before the
Federal Communications Commission
Washington, D.C. 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 COMPTEL

COMPTEL urges the Commission to expeditiously grant the petition for declaratory ruling ("Petition") filed by Granite,[1] so as to preserve and promote the competition that has been made possible using Section 271 network elements. Pursuant to the Commission's May 15, 2015 Public Notice,[2] COMPTEL hereby submits these comments in support of the Petition regarding the separation, combination, and commingling of Section 271 network elements in the above-referenced docket. As discussed herein, the requested declaratory ruling is entirely consistent with the Act, Commission precedent, and Commission policy.

I. To Preserve and Promote Competition in the Multi-Location Business Market, the Commission Should Clarify That Sections 201(b) and 202(a) of the Act Apply to the Separation and Combination of Section 271 Network Elements.

As COMPTEL has previously explained, competitive carriers such as Access Point, Birch, Granite, and MetTel have relied on combined packages of unbundled DS0 loops, switching, and shared transport to bring competitive choice to hundreds of thousands of business customer

[1] Petition of Granite Telecommunications, LLC for Declaratory Ruling Regarding the Separation, Combination and Commingling of Section 271 Unbundled Network Elements, WC Dkt. No. 15-114 (filed May 4, 2015) ("Petition").

[2] *Petition Filed by Granite Telecommunications, LLC for Declaratory Ruling*, Public Notice, DA 15-590 (rel. May 15, 2015) ("Public Notice").

locations across America.[3] In particular, these carriers provide voice and data services to multi-location business customers (*e.g.*, retail chains, fast food restaurants, convenience stores, and gas stations) that (1) have relatively modest voice and data needs at each of their locations;[4] (2) are located in suburban and rural areas where it is often uneconomic for competitive carriers to deploy their own facilities, particularly to meet the relatively modest voice and data needs of these customers;[5] and (3) have business needs that are not met by incumbent LECs or cable companies (*e.g.*, a single point of contact and a single bill for all of their locations nationwide).[6]

The independent unbundling obligations of Section 271 of the Act[7] provide a critical regulatory backstop for competitive carriers' commercial negotiations with the BOCs for the combinations of wholesale inputs needed to serve these business customers. Indeed, Section 271(c)(2)(B)(v) and (vi) is the only legal requirement that BOCs provide unbundled local switching and shared transport to competitive carriers.[8] However, the competition and consumer welfare benefits made possible using these wholesale inputs[9] are being jeopardized by USTelecom's

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[3] *See* COMPTEL's Opposition to USTelecom's Petition for Forbearance, WC Dkt. No. 14-192, at 9-11 (filed Dec. 5, 2014) ("COMPTEL Dec. 5, 2014 Opposition").

[4] *See id.* at 9.

[5] *See id.* at 10; *see also* Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 14-192 *et al.*, at 1 and Attachment, at 4 (filed June 3, 2015) (explaining that wholesale agreements with incumbent LECs are the only viable means by which competitive carriers such as Granite can meet multi-location businesses' demand that their service provider serve all of their business locations).

[6] *See* COMPTEL Dec. 5, 2014 Opposition at 10-11.

[7] 47 U.S.C. § 271(c)(2)(B)(iv)-(vi) (requiring BOCs to provide unbundled local loops, local transport, and local switching to requesting telecommunications carriers).

[8] *See* Petition at 5-6.

[9] *See* Letter from Steven C. Salop and Jeffrey E. Prisbrey, Charles River Associates, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 14-192 *et al.* (dated June 12, 2015), *attached to* Letter from Michael B. Galvin, General Counsel, Granite Telecommunications, LLC, to Marlene H. Dortch,

argument that BOCs have no legal obligation to provide Section 271 network elements in combination with each other.[10]

As Granite requests, the Commission should eliminate this uncertainty by issuing a declaratory ruling that the prohibition on unjust and unreasonable practices in Section 201(b) of the Act[11] and the prohibition on unreasonable discrimination in Section 202(a)[12] apply to the separation and combination of Section 271 network elements. Specifically, the Commission should clarify that (1) where the requested Section 271 network elements are already combined in a BOC's network for the provision of a telecommunications service, the BOC may not separate those network elements except upon request from the competitive carrier or unless the BOC has a reasonable basis for doing so; and (2) where the requested Section 271 network elements are not already combined in a BOC's network, the BOC must combine those network elements upon request from the competitive carrier unless the BOC has a reasonable basis for refusing to do so.[13]

COMPTEL agrees with Granite that the Commission has ample legal authority and policy basis to issue this declaratory ruling. *First*, the Commission has already expressly held that Sections 201(b) and 202(a) apply to the terms and conditions on which Section 271 network elements are provisioned.[14] *Second*, as Granite explains, the requested clarifications are fully

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Secretary, FCC, WC Dkt. No. 14-192 *et al.* (filed June 12, 2015) (discussing the consumer welfare benefits generated by Granite and other non-facilities-based competitive carriers in the multi-location business market).

[10] *See* Petition at 6 (citing Reply Comments of the United States Telecom Association, WC Dkt. No. 14-192, at 11 (filed Dec. 22, 2014) ("USTelecom Dec. 22, 2014 Reply Comments")).

[11] 47 U.S.C. § 201(b).

[12] *Id.* § 202(a).

[13] Petition at 2.

[14] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd. 3696, ¶

consistent with the terms of Sections 201(b) and 202(a).[15] *Third*, the requested clarifications are entirely consistent with the *Triennial Review Order*. There, the Commission merely held that *Section 271* does not require BOCs to combine Section 271 network elements.[16] Contrary to USTelecom's assertions,[17] the Commission never held that BOCs have no statutory duty to combine Section 271 network elements with each other or to not separate Section 271 network elements that are already combined. *Fourth*, the same policy basis for adopting rules governing the separation and combination of unbundled network elements provided pursuant to Section 251 of the Act[18] applies to the separation and combination of Section 271 network elements.[19] For example, the Commission should clarify that allowing BOCs to separate Section 271 network elements that are already combined is unreasonably discriminatory and anticompetitive, just as it has previously found that allowing BOCs to separate Section 251 unbundled network elements is discriminatory and unnecessarily raises competitors' input costs.[20]

II. The Commission Should Also Clarify That Sections 201(b) and 202(a) of the Act Apply to the Commingling of Section 271 Network Elements With Wholesale Services.

The Commission should also make the requested clarification that Sections 201(b) and 202(a) apply to the commingling of Section 271 network elements with wholesale services. As

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470 (1999), *vacated and remanded in part on other grounds, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

[15] *See* Petition at 9-10.

[16] *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, n.1990 (2003) ("*Triennial Review Order*").

[17] *See* USTelecom Dec. 22, 2014 Reply Comments at 11.

[18] 47 U.S.C. § 251(c)(3).

[19] *See* Petition at 12-14.

[20] *See id.* at 12-13.

Granite explains, although courts have held that BOCs are required to commingle Section 251 UNEs with Section 271 network elements, the Commission has not adopted rules requiring that BOCs commingle Section 271 network elements with other wholesale services.[21] The Commission should eliminate this uncertainty by clarifying that BOCs are required to commingle, or permit competitive carriers to commingle, a Section 271 network element or combination of Section 271 network elements with wholesale services obtained from an incumbent LEC absent a reasonable basis for refusing to do so.[22] As discussed in the Petition, this clarification is (1) consistent with the Commission's holding that Sections 201(b) and 202(a) apply to the terms and conditions on which Section 271 network elements are provided; (2) consistent with the terms of Sections 201(b) and 202(a); and (3) consistent with the policy reasons underlying the Commission's prohibition on restrictions on the commingling of Section 251 unbundled network elements with wholesale services.[23]

III. Conclusion

For the foregoing reasons, the Commission should expeditiously grant the Petition.

Respectfully submitted,

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[21] *See id.* at 14.

[22] *Id.* at 2.

[23] *See id.* at 15-16.