Morgan, Lewis & Bockius LLP
2020 K Street, NW
Washington, District of Columbia 20006-1806
Tel. 202.373.6000
Fax: 202.373.6001
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

Eric J. Branfman
Partner
+1.202.373.6553
eric.branfman@morganlewis.com

June 17, 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*; Granite Telecommunications Petition for Declaratory Ruling*, WC Docket No. 15-114

Dear Ms. Dortch:

This *ex parte* is submitted on behalf of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications ("MetTel"). MetTel provides voice and other services to numerous multi-location businesses, many of which have locations across the nation, but have very limited needs at each location (most frequently 1-10 lines per location). To provide this service, MetTel relies primarily on a voice-grade product purchased from ILECs pursuant to commercial agreements. MetTel does not merely resell the ILEC's service. It provides added value to the customer, including providing a single bill in a uniform format, a single point of contact (frequently referred to as "one throat to choke"), nationwide service management, and more attentive customer service than does the ILEC.

The locations of most MetTel customers are widely dispersed, and often in suburban, exurban and rural areas where no competitive carrier has facilities because it is not economical for a CLEC to construct facilities duplicating the ILEC's, given the very limited demand at each location. Often, the customers are in standalone buildings or buildings with few other businesses, and therefore it would not be feasible to construct facilities to a building in the expectation of recovering the cost by serving a large number of small customers in the same building.

Absent access to ILEC facilities, in many circumstances competitive options are not practical. As the Commission recognizes, 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.[1] For example, cable companies frequently require a special construction charge ranging from a few thousand dollars to hundreds of thousands of dollars to build out their networks to these locations. Given the relatively small revenue stream available at each location, these construction charges are usually prohibitively expensive, and MetTel is only infrequently able to make a business case for purchasing facilities from the cable company.

In the November 2014 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."[2] The Commission recognized in ¶ 110 that the technical transition should not be used to eliminate competition that currently exists. This competition includes competition provided through wholesale commercial agreements such as AT&T's Local Wholesale Complete and Verizon's Wholesale Advantage. Therefore MetTel 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, and endorses the attached conditions, filed by COMPTEL on June 8, 2015 (Attachment 1), as modified on June 11, 2015 (Attachment 2).

The lack of alternative wholesale suppliers in the vast majority of the locations where MetTel relies on ILEC wholesale inputs means that, in the absence of regulatory requirements, ILECs can simply "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."[3]

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 then 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. MetTel 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

[1] *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).

[2] *See Technology Transitions et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 14972 ¶ 6 (2014) ("*NPRM*").

[3] *NPRM*, 29 FCC Rcd at 14973 ¶ 6.

equivalent access [to IP-based services] on equivalent rates, terms, and conditions."[4] 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," because in either case, absent regulatory protections the TDM to IP transition would result in the elimination of a robust competitive alternative for consumers.[5]

MetTel also supports Granite's Petition for Declaratory Ruling.[6] MetTel agrees with Granite that RBOCs must provide a § 251 UNE loop commingled with § 271 local switching and shared transport because the Commission requires RBOCs to provide § 271 checklist items on rates, terms and conditions consistent with §§ 201(b) and 202(a).[7]

Sections 201(b) and 202(a) together obligate RBOCs to provide in combined form § 271 checklist items that are already combined. It would be discriminatory and contrary to § 202(a) for an RBOC to provide a combination of loop, switching and shared transport to its own customers while withholding such combinations from CLECs.[8] It would also be unjust and unreasonable under § 201(b) for RBOCs to separate these 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 commingled with a combination

---

[4] *NPRM*, 29 FCC Rcd at 15012 ¶ 110.

[5] 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, faxing, point of sale systems and credit card verification is crucial for the types of multi-location business customers that MetTel serves.

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

[7] *See* Granite Petition at 8.

[8] *See* Granite Petition at 9.

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 when 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 and eliminating competitive options.

Respectfully submitted,

/s/ Eric J. Branfman

Eric J. Branfman
Counsel for Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications