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September 22, 2015

**Via ECFS**

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

**Re: *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 14-192; 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; Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353***

Dear Ms. Dortch:

On September 18, 2015, Michael Galvin and Paula Foley of Granite Telecommunications, LLC (“Granite”), Thomas Jones of Willkie Farr & Gallagher LLP, and the undersigned met in person with Matthew DelNero, Daniel Kahn, Randy Clarke, Jodie May, Clark Hedrick, Shanna Holako, Megan Capasso, Alexis Johns, and Brian Hurley of the Wireline Competition Bureau. The Granite representatives expressed their opposition to the aspects of the USTelecom Petition for Forbearance relating to Section 271 and the 64 Kbps requirement set forth in 47 C.F.R. § 51.319(a)(3)(iii)(C) and their support for Granite’s Petition in WC Docket No. 15-114.

Granite explained that it enters into commercial agreements with RBOCs to obtain the voice grade service it provides to retail business customers.<sup>1</sup> The § 271 and 64 Kbps requirements have been and will be essential for Granite to obtain reasonable commercial agreements for voice grade service. The service that Granite (and many other CLECs) use to provide voice grade lines

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<sup>1</sup> Granite’s customers’ characteristics and demographics were the subject of an ex parte previously filed in this Docket, and re-distributed at the meeting, a copy of which is attached as Exhibit A.

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to business customers is comprised of the loop, required under § 251, combined with switching and shared transport, required under § 271. Absent the § 271 and the 64 Kbps requirements, the RBOCs would have the incentives and ability to re-monopolize the portion of the business market served by Granite and other competitive carriers. The RBOCs could accomplish this by imposing substantial wholesale price increase or by simply refusing to renew current wholesale agreements.

As reflected in Exhibit A, Granite's customers' communications requirements and demographics mean that the only significant competitive options they have are provided by competitive carriers like Granite using the RBOC networks. For example, 85% of Granite's customer locations cannot have cable without construction to extend the cable network. See Exhibit A at 9. Fiber construction is not a realistic alternative because 77% of the Granite's customer locations require 4 or fewer voice lines (*id.* at 4), the customer is the sole occupant at 66% of their locations (*id.* at 6, 10) and there is only one other occupant at another 21% of the locations. *Id.* at 10.

Without the competition provided by Granite and other similar CLECs, consumer welfare would be significantly reduced (i.e. higher end user rates, less customer choice and lower service quality). Granite referenced a letter from Charles River Associates, which Granite submitted in these Dockets on June 12, 2015 and is attached hereto as Exhibit B, estimating the loss of consumer welfare from not requiring ILECs to provide any form of wholesale access to CLECs ranging from \$4 billion to in excess of \$10 billion per year. See CRA Letter, Exhibit B at page 6. More than 60% of that loss would result if CLECs were no longer able to reach commercially negotiated agreements that provide the combination of the 251 loop and 271 switching and shared transport because of the elimination of the regulatory backstop.

### **1. Section 271 Issues**

Because Granite's negotiations with RBOCs for commercial voice line agreements have been subject to confidentiality agreements, Granite could not disclose the substantive positions of the parties or provide the details as to how those substantive positions changed over time. However, several illustrations can be provided. For example, Granite representatives recounted events that occurred in 2009, when Granite was seeking a new commercial voice line agreement in AT&T's 9-state former BellSouth territory. Granite and BellSouth had first entered into a commercial voice line agreement for these nine states in 2004, before AT&T acquired BellSouth. That agreement was up for renegotiation in 2009, after AT&T had acquired BellSouth. The then-effective agreement contained the following language: "the Parties acknowledge that *this Agreement is intended to be governed by the provisions of 47 U.S.C. §§ 201, 202 and 271*. The Parties acknowledge that this Agreement is subject to the exclusive jurisdiction of the FCC."

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In early 2009, Granite and AT&T discussed a new agreement to cover the 9-state region. AT&T's position on contract rates, terms and conditions was, in Granite's view, unreasonable. Moreover, AT&T threatened to stop negotiations and terminate service to Granite customers on April 30, 2009 if a new agreement had not been reached by that time.

On April 2, 2009, Granite and the undersigned met with Alex Starr, then the Chief of the Market Disputes Resolution Division of the Enforcement Bureau ("MDRD"), and two of his deputies, Rosemary McEnery and Lisa Griffin. Granite advised the MDRD of its position that the rates and terms proposed by AT&T were unreasonable and sought the MDRD's help in mediating and in achieving an extension of the status quo beyond April 30, so that Granite could negotiate without the pressure of having service terminated if an agreement were not reached by then.

Granite also discussed with the MDRD the possibility of filing a Complaint under § 271(d)(6), which provides a highly expedited 90-day time frame for resolution, one that is much faster than the process under § 208. The difference in timing between the two processes is another important reason for preserving § 271. Given business realities, the additional time required for a § 208 complaint makes it a significantly less useful device for resolving disputes over commercial agreements than a § 271(d)(6) complaint. The undersigned sent a letter to the FCC on April 3, 2009 recapping these points, and copying AT&T's Washington DC government relations team. That letter is attached hereto as Exhibit C.

During the next few weeks, the undersigned had numerous telephone calls with Ms. McEnery and Ms. Griffin, as well as Ms. Terri Hoskins of AT&T's Washington DC government relations office. Thereafter, AT&T agreed to extend the April 30, 2009 deadline and began, in Granite's view, to negotiate in good faith the terms of a new commercial voice line agreement. On August 14, 2009, Mr. Kline of Granite sent a letter to the MDRD reporting that Granite and AT&T had reached a mutually satisfactory agreement and thanking the MDRD for its assistance. Mr. Kline stated that "We feel that the FCC's willingness to hear our concerns, as well [as] its offer to mediate in the event we were not able to negotiate a reasonable agreement, was instrumental in getting the parties past the initial roadblocks in our negotiations" and noted that the "ongoing monitoring of the process by Ms. Griffin and Ms. McEnery [was] extremely helpful." That letter is attached as Exhibit D. Obviously, this type of FCC assistance in the commercial negotiation process would not be available were the FCC to grant USTelecom's Petition for Forbearance regarding § 271.

Since that episode in 2009, Granite has had several more renegotiations of its commercial voice line agreements with AT&T. During these renegotiations, Granite has, on several occasions, raised the possibility of involving FCC personnel again under § 271 unless the parties could come to agreement and has reminded AT&T of Granite's resort to the MDRD in 2009. The availability of the § 271 remedy has been helpful to Granite in achieving a viable LWC

agreement with AT&T on these occasions, and has also been helpful to Granite in negotiating commercial voice line agreements with other RBOCs.<sup>2</sup>

## **2. 64 kbps Requirement**

Granite argued that the FCC's 64 kbps requirement is not a barrier to fiber deployment and should be preserved. Granite pointed out that USTelecom has provided no factual support for its claim that the requirement acts as a barrier to fiber deployment. The 64Kbps has been in place for more than ten years and there is no evidence that it has delayed fiber deployment.

As more and more copper loops are replaced by fiber loops, it is important to maintain this § 251 loop requirement so the § 251 loop can be combined with § 271 switching and shared transport as an alternative to commercial agreements.

Without revealing details protected by a confidentiality agreement, Granite described how this 64 kbps requirement enabled an amendment to a commercial voice line agreement. The commercial agreement amendment provides that voice lines will be provided over fiber loops. In this commercial negotiation, Granite used the FCC 64 kbps requirement as a "regulatory backstop" and obtained a pro-competitive term that benefited customers.

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<sup>2</sup> The undersigned discussed other instances in which CLECs have used the leverage provided by § 271 in negotiating commercial agreements with RBOCs. For example, in late 2005, Momentum Telecom filed a Complaint under § 271(d)(6) against BellSouth. File No. EB-05-MD-029. On March 2, 2006, one day before the Commission decision was required by statute, Momentum filed a motion to dismiss, stating that: "Momentum has addressed its business concerns through an agreement with BellSouth," and the Chief of the Market Disputes Resolution Division dismissed the complaint the next day. DA-06-520. The undersigned pointed out that in the same time frame, he was negotiating with BellSouth on behalf of another CLEC, and raised the possibility of a § 271(d)(6) complaint to obtain a more favorable commercial voice line agreement from BellSouth. The undersigned also referenced an instance on February 18, 2009, when he had a meeting with Ms. McEnery, Ms. Griffin, and Gene Fullano, who was then Deputy Director of the Enforcement Bureau, on behalf of another client. AT&T had told that client that AT&T simply refused to enter into a new commercial voice line agreement. Shortly after the undersigned spoke with Ms. McEnery, Ms. Griffin, and Mr. Fullano, AT&T changed its position and agreed to enter into a new commercial voice line agreement with that CLEC.

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Please do not hesitate to contact me if you have any questions or concerns regarding this submission.

Respectfully submitted,

*/s/ Eric J. Branfman*

Eric J. Branfman  
Counsel for Granite Telecommunications, LLC

cc: (by email)

Matthew DelNero  
Daniel Kahn  
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