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April 3, 2009

VIA ELECTRONIC MAIL

Alex Starr, Chief
 Lisa Griffin, Deputy Chief
 Rosemary McEnery, Deputy Chief
 Market Disputes Resolution Division
 Federal Communication Commission
 445 12 Street, SW
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Re: Granite Telecommunications, LLC's Negotiations of a 9-State Commercial Agreement with AT&T

Dear Mr. Starr, Ms. Griffin and Ms. McEnery:

As discussed during our meeting on April 2, 2009, Granite Telecommunications, LLC ("Granite") respectfully asks the FCC's Market Dispute Resolution Division ("MDRD") to assist in and potentially mediate the negotiations between Granite and AT&T, Inc. (AT&T) in establishing a reasonable wholesale commercial agreement in AT&T's 9-state (legacy BellSouth) region that is in compliance with Section 271. As explained below, Granite seeks the FCC's assistance because:

- Pursuant to Sections 271 and 201, the FCC is responsible for regulating this agreement;
- The April 30, 2009 deadline to reach a replacement agreement or face disconnection of service is rapidly approaching;
- The confidential rates, terms, and conditions that AT&T has offered Granite are unreasonable and absent an FCC request, the NDA that AT&T required Granite to sign as a condition of

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entering into negotiations for a replacement agreement prevents Granite from demonstrating this to the FCC; and

- The parties are at an impasse on the basic rates and terms, have yet to negotiate the detailed language in the agreement, and doing so is likely to take significant time.

For these reasons, Granite asks that the FCC's MDRD do the following: (1) Issue a written request to Granite that it supply relevant information by April 20 (including information regarding the negotiation positions of the parties that may be covered by the NDA) for the replacement commercial agreement pursuant to Section 271;¹ (2) Issue a written request to AT&T that it provide similar information by April 20 or facilitate in extending the April 30 deadline by at least 90 days; and (3) Schedule a mediation meeting with AT&T and Granite by April 27 or, if the April 30 deadline has been extended, shortly thereafter.

- **About Granite**

By way of background, Granite is a non-facilities-based CLEC that offers local, long distance, broadband, and inside wire services to business customers throughout the United States. Through commercial agreements with the largest incumbent LECs, Granite offers voice and broadband² solutions to its customers and serves over 13,500 corporate clients in over 240,000 locations. Its customers include at least 66 of the nation's Fortune 100 corporations, and its customer retention rate is more than five times higher than the industry average. With scalable solutions and dedication to "live" personalized service, Granite is able to meet the ever changing needs and demands of its multi-location customers.

In AT&T's 13-state (legacy SBC) region, Granite currently has approximately 190,000 lines and in AT&T's 9-state (legacy BellSouth region), Granite has roughly 90,000 lines. Based upon public information, Granite estimates that it obtains over 12 percent of the total voice lines AT&T provisions

¹ The written request should explain how the confidential information should be provided to the FCC and how the confidential information will be maintained by the FCC.

² Broadband has been made available to Granite by all of these incumbent LECs except for AT&T.

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via these wholesale commercial agreements; thus, Granite is likely the largest or one of AT&T's largest customers under these agreements.³

- **The FCC is Responsible for Regulating the AT&T Agreement at Issue**

The FCC has exclusive jurisdiction over Granite's commercial agreement with AT&T in the 9-state (legacy BellSouth) region⁴ and any successor agreement, as they are designed to satisfy AT&T's obligation to offer switching as a network element under 47 U.S.C. § 271. Section 1.2 of the existing Agreement expressly acknowledges that it "is intended to be governed by the provisions of 47 U.S.C. §§ 201, 202 and 271" and that it "is subject to the exclusive jurisdiction of the FCC."

- **The April 30 Deadline Associated with Granite's Expiring 9-State Agreement with AT&T is Rapidly Approaching**

This 9-state agreement expired on December 31, 2008.⁵ While the parties formally extended this agreement to allow for negotiations of a successor agreement and although the parties have been negotiating, the terms of the amendment specify that the negotiations must be concluded and a new agreement must be executed by April 30, 2009 unless the parties agree otherwise. Section 1.2 of the amendment specifically states that "if the parties have not executed a new agreement within sixty (60) days prior to the Expiration Date of this agreement (i.e. June 30, 2009) **negotiations for a new agreement shall cease** unless otherwise mutually agreed to by the parties, and the parties shall develop a transition plan....In the event the parties are unable to agree upon a transition plan, AT&T-9STATE may, at its discretion, disconnect all or any of the services provided under this agreement at any time after June 30, 2009." (emphasis

³ See Selected RBOC Local Telephone Data as of 12/31/07, available at <http://www.fcc.gov/wcb/iatd/comp.html>. In this Excel Spreadsheet and at the end of 2007, AT&T had a total of 2,297,123 UNE loop arrangements where switching is also provided" where it operates as a RBOC (this includes the legacy BellSouth 9-state and SBC 13-state regions). The number of these arrangements has been declining and while the current number of these AT&T arrangements is not posted on the FCC website, it is likely lower, assuming the decline is continuing.

⁴ This commercial agreement is known as the Wholesale Local Platform ("WLP") agreement.

⁵ Granite's commercial agreement with AT&T in the 13-state (legacy SBC) region expires in December of 2011 so negotiations of a successor agreement are not necessary at this time.

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added). Thus, unless the parties either execute a new agreement by April 30 (which is unlikely for the reasons discussed herein) or formally agree to extend the April 30th deadline (which Granite has been unable to accomplish), Granite will need to transition its roughly 90,000 impacted lines in AT&T's 9-state region to another provider or AT&T offering; otherwise, Granite's customers face immediate disconnection after June 30, 2009.

- **Confidential Rates, Terms, and Conditions that AT&T Has Offered to Granite are Unreasonable and Absent an FCC Request, the NDA that AT&T Required Granite to Sign as a Condition of Entering into Negotiations for a Replacement Agreement Prevents Granite from Demonstrating This to the FCC**

Before AT&T would enter into negotiations of a successor 9-state commercial agreement with Granite, AT&T required that Granite execute a Non-Disclosure Agreement ("NDA") to cover each party's confidential information that is exchanged during the course of these negotiations. Consequently, Granite cannot disclose AT&T's confidential information to the FCC nor can Granite explain the unreasonable nature of it unless AT&T does not object to such disclosure.⁶

While AT&T's information cannot be disclosed, Granite did propose to spend at least \$400 million with AT&T over the next six years so long as the current average prices are not increased, and the commercial agreement is expanded to include a voice over fiber and DSL offerings. In response, AT&T re-proposed unjust and unreasonable rates, terms and conditions that are covered by the NDA.

The NDA does not, however, prevent Granite from generally noting that a benchmarking comparison of AT&T's commercial offering with that of other major ILECs demonstrates that AT&T's offering is incredibly unreasonable. Indeed, in Florida, North Carolina, and South Carolina, three major ILECs provide similar wholesale services and in all cases, AT&T is already the most

⁶ To avoid this problem, in negotiations with AT&T on behalf of other CLECs, the undersigned counsel have requested that AT&T agree to language that makes it clear that the parties are free to provide information about the negotiations to the FCC, but AT&T has refused to agree to such language. We raised this point with Ms. Terri Hoskins of AT&T's Government Affairs Office on April 3, 2009, and are hopeful that AT&T will agree to allow Granite to disclose the substance of the parties' positions to the FCC Staff.

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expensive. In fact, unlike the other major ILECs, all of which have offered growth incentives or decreased wholesale prices, AT&T has proposed to increase its already highest wholesale prices.⁷

- **The Parties Are at an Impasse on the Basic Rates and Terms, Have Yet to Negotiate the Detailed Language in the Agreement, and Doing So May Take Some Time**

To date, the negotiations between the parties has been focused on key rates, terms and conditions that the commercial agreement will eventually contain. At this time, the parties are at an impasse at this conceptual level. Until the parties come to some high level understanding about what the contract should contain, negotiations of the significant detailed contract language that accomplishes the intent of the parties in a just and reasonable fashion cannot be commenced.

Granite notes, however, that as reflected in the voluminous AT&T 22-state LWC commercial agreements that have been recently filed with the FCC under Section 211, the considerable terms and conditions in them are much less CLEC-friendly than in Section 252 interconnection agreements and contain many unreasonable rates, terms and conditions.⁸ One example from the publicly filed agreements is that these agreements are limited to serving residential and small business customers;⁹ however, this is unacceptable to Granite as it serves many of the largest businesses in the United States. In addition to resolving disagreements between AT&T and Granite over the major rates and terms, Granite intends to address these unreasonable provisions with AT&T and negotiate commercially reasonable language, which may be a prolonged endeavor.

For the forgoing reasons, Granite seeks the assistance of the MDRD. Because significant issues associated with the rates, terms and conditions of AT&T's 9-state commercial offering need to be resolved, Granite does not believe the parties will execute an agreement by April 30. Granite therefore requested an amendment to extend the agreement but has been unsuccessful in its

⁷ Pricing aside, AT&T also fails the benchmarking test as to a wholesale DSL offering — the other major ILECs offer DSL under wholesale commercial agreements whereas AT&T does not.

⁸ See, e.g., Letter from Terri L. Hoskins, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC (Feb. 27, 2009) (attaching and filing pursuant to 47 U.S.C. § 211 and 47 C.F.R. § 43.51, a LWC commercial agreement between AT&T-22State and Millennium 2000 Inc.).

⁹ See *id.* Attachment 02 (Local Wholesale Complete) at § 4.1.1.

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efforts to obtain such an extension.¹⁰ Because the April 30 deadline is rapidly approaching and because the parties have significant unresolved issues, Granite respectfully requests that the MDRD issue the requests to Granite and AT&T as noted at the beginning of this letter, mediate any open issues, and assist in the establishment of a formal extension amendment to the agreement so that the parties may continue negotiating after April 30.

Should you have any questions concerning the above, please let us know.

Sincerely,

/s/ Eric J. Branfman

Eric J. Branfman
Philip J. Macres

Counsel for Granite
Telecommunications, LLC

cc: Gary Phillips, AT&T (all via e-mail)
Terri Hoskins, AT&T
Sam Kline, Granite
Neil Brodsky, Granite
Geoff Cookman, Granite

¹⁰ We have re-raised the issue of the extension with Ms. Hoskins on April 3, 2009, but as of this writing, have not obtained an extension of the April 30, 2009 deadline.