

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Technology Transitions) GN Docket No. 13-5

**COMMENTS
OF GRANITE TELECOMMUNICATIONS, LLC**

I. Introduction and Summary.

Granite Telecommunications, LLC (“Granite”) provides these comments in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking (“FNPRM”) in the recent *Technology Transitions Order*.¹ In the *Technology Transitions Order*, the Commission determined that, to ensure a prompt and effective transition to IP-based networks, incumbent local exchange carriers (“ILECs”) that seek to transition to all-IP by discontinuing, reducing, or impairing a TDM-based commercial wholesale platform service must provide competitive carriers that use those services with reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions.² The Commission determined that the requirement to provide reasonably comparable wholesale access would remain in place at least for an interim period – that is, until the Commission completed its ongoing evaluation of rates, terms and conditions for special access services and an order had become effective.³ In the FNPRM, the Commission requested comment on a number of questions related to the reasonably comparable wholesale access requirement, including whether

¹ *Technology Transitions et al.*, GN Docket No. 13-5, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. August 7, 2015) (“*Technology Transitions Order*”).

² *Id.* ¶ 132.

³ *Id.*

the requirement, as applied to wholesale platform services, should be limited to an interim period at all. For all the reasons stated below, Granite urges the Commission to recognize that it is inappropriate to tie the reasonably comparable wholesale access requirement for wholesale platform services to the issuance of an order in the special access proceeding, and that it is unnecessary for the Commission to establish a specific end date for reasonably comparable access for wholesale platform services because other alternative methods for obtaining relief already exist.

II. The special access proceeding will not address the status of commercial wholesale platform services, therefore, the Commission should remove the tie to the special access proceeding created in the *Technology Transitions Order*.

In the *Technology Transitions Order*, the Commission noted that promoting a prompt and effective transition to IP requires the Commission to evaluate whether ILECs are subject to substantial competition for the packet-based services that will replace the TDM-based services being discontinued.⁴ While Granite agrees that competition for certain services (e.g., DS1, DS3 and Ethernet special access services) is the subject of the Commission’s ongoing special access proceeding, Granite emphasizes that competition for wholesale platform services will not be part of that proceeding. Also, any conclusion regarding the extent of competition (or lack thereof) for DS1, DS3 and Ethernet special access services, would have little relevance to a determination whether and where substantial competition exists for wholesale platform services.

In fact, the Commission recognized that “the special access proceeding will *not* address the status of commercial wholesale platform services . . . [emphasis added]”⁵ and appears to have selected the special access proceeding as the end point for the reasonably comparable access requirement for wholesale platform services merely on the basis that the special access

⁴ *Id.* ¶ 131.

⁵ *Technology Transitions Order* at ¶ 242.

proceeding offered a “foreseeable and definitive point in the future[.]”⁶ notwithstanding the dissimilar subject matter of that proceeding. The Commission should therefore conclude that it is inappropriate to tie the reasonably comparable wholesale access requirement for wholesale platform services to the special access proceeding and should eliminate the tie to that proceeding created by the *Technology Transitions Order*.

III. If the Commission establishes *any* specific end date for the requirement to provide reasonably comparable wholesale access for wholesale platform services, incumbent providers will be unlikely to provide reasonably comparable wholesale access beyond the end date.

If the Commission agrees (as Granite urges) to remove the link between the reasonably comparable wholesale access requirement for wholesale platform services and the special access proceeding, as part of the Commission’s determination of which, if any, end date should take its place, the Commission should first consider whether wholesale arrangements for IP platform services are likely to be offered on reasonable rates, terms and conditions following expiration of the requirement. Granite contends that such offerings would be unlikely to be offered at all, or if offered, would not provide the basis for the breadth of consumer benefits currently experienced by end users who are served by existing wholesale platform services.⁷ It is reasonable to conclude that if given the opportunity to discontinue providing services they were formerly obligated to provide, ILECs would be likely to take advantage of the opportunity to so do, or take advantage of the opportunity to increase rates, limit availability of the services, or introduce other unilateral modifications allowed by the resulting shift in leverage.⁸ The Commission should not rely on Verizon’s assertions that because wholesale platform services are pervasive

⁶ *Id.* ¶ 152.

⁷ See Letter from Michael B. Galvin, General Counsel, Granite, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al., Attach. Letter from Charles River Associates (filed June 12, 2015).

⁸ *Id.*

and offered “voluntarily,” that is evidence that competitive providers will continue to have options.⁹

First, Granite does not agree that wholesale platform services are wholly “voluntary” ILEC offerings. Instead, wholesale platform services are offered to fulfill ILECs’ obligations arising under §§ 201, 202, 251 and 271 and therefore modifications of those offerings raise issues under those statutes (as discussed further below). Second, even if wholesale platform services are offered “voluntarily” by ILECs, continued availability of the services at reasonably comparable rates, terms and conditions (or at all) following expiration of the wholesale access requirement cannot be presumed. The Commission has acknowledged that without substantial competition, ILECs may not have “incentive to price competitively to retain the wholesale business.”¹⁰ An incorrect assumption would have the deleterious effects described in the *Technology Transitions Order* at ¶ 136:

To the extent the wholesale prices of replacement packet-based services are unreasonably high, competitive LECs may be unable to modify the terms of their long-term retail contracts to recover the increased cost of the wholesale inputs without losing customers or losing revenue and potentially exiting the market, to the detriment of its customers and the public they serve. Moreover, in offering new contracts to customers, competitive LECs could in these circumstances be forced to raise their prices, so a switch to packet-based services could weaken the constraint competitive LECs place on incumbent LEC market power. These results would delay the positive effects of the technology transitions on competition and the economy.

Thus, to preserve and promote competition, the Commission should maintain the status quo with respect to wholesale access requirements.

IV. The Commission does not need to establish an end date for reasonably comparable wholesale access for wholesale platform services.

⁹ Verizon Reply Comments, GN Docket No. 13-5, at 9 (March 9, 2015).

¹⁰ *Technology Transitions Order* at ¶ 131.

As noted above, the special access proceeding will not address wholesale platform services and therefore the conclusion of that proceeding does not serve as a logical end date for the reasonably comparable wholesale access requirement for wholesale platform services. Also as noted above, ILECs are unlikely to continue to provide reasonably comparable wholesale platform services in the absence of the requirement to do so. For these reasons and the reasons discussed further below, the Commission should conclude that it is neither necessary nor in the public interest to establish an end date for the requirement to provide reasonably comparable wholesale access for wholesale platform services.

Notwithstanding that ILECs describe wholesale platform services as “voluntary” arrangements; these services are not wholly voluntary. While UNE-P services at TELRIC pricing are no longer required (and Granite is not attempting to re-instate UNE-P at TELRIC), the wholesale platform services offered by ILECs at commercial rates, terms and conditions fulfill obligations that arise under §§ 201, 202, 251 and 271, and therefore, their discontinuance or modification poses a serious threat to competition and consumer welfare. Specifically, wholesale platform services consist of combinations of switching and shared transport elements (required to be provided to competitors by BOCs under § 271) and loops (required to be provided under § 251 and/or § 271). As Granite argued in its recent *Petition for Declaratory Ruling*, the application of §§ 201(a) and 201(b) dictate that a BOC may not separate or refuse to combine or commingle § 271 UNEs unless it has a reasonable basis for doing so.¹¹ Because these combinations constitute wholesale platform services, unless a BOC has a reasonable basis for denying the combination, it must provide it to a requesting competitor. As explained, allowing the reasonably comparable wholesale obligation to sunset without replacing that

¹¹ *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, at 6 (filed May 4, 2015) (“*Granite Petition for Declaratory Ruling*”).

obligation with wholesale regulation that is based on an assessment of incumbent LEC market power in the provision of wholesale services would result in less voice competition for American businesses. Therefore, the Commission should not establish an end date for providing reasonably comparable wholesale access for wholesale platform services unless and until it determines, based on a market power analysis, that the incumbent LECs' obligations to provide wholesale voice under §§ 201, 202, 251 and 271 are no longer necessary.

In addition, the Commission need not establish an end date for the reasonably comparable wholesale access requirement for wholesale platform services because there are already avenues available to ILECs to obtain relief based on a showing that incumbent LECs are subject to substantial competition in the provision of wholesale voice services. According to the *Technology Transitions Order*, if competitive alternatives (for example, just and reasonable rates, terms and conditions for special access services) exist for the wholesale service being discontinued, then the reasonably comparable wholesale access requirement becomes unnecessary.¹² If an ILEC makes a showing of substantial competition for wholesale platform services in a specific market or markets through a request for rule change, petition for forbearance or other appropriate procedural vehicle, then the Commission has the opportunity to grant the request following review. In all events, if the Commission decides that it must retain a trigger for eliminating the reasonably comparable wholesale access requirement for wholesale platform services, that trigger should be the completion of the pending review of economic regulations applicable to IP voice services in the *IP-Enabled Services* proceeding.¹³

¹² *Id.* ¶ 132.

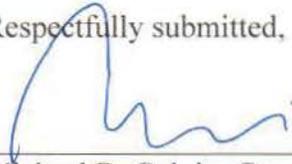
¹³ See *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 73 (2004) (seeking comment on whether and how economic regulations set forth in Title II should be applied to any class of IP-enabled service provider, including providers of IP voice services).

However, it is not appropriate for the Commission's order in this proceeding to retain an end date for the reasonably comparable wholesale access requirement for all wholesale platform services nationwide in the absence of a showing of substantial competition for the services.

V. Conclusion

For the foregoing reasons, the Commission should conclude that is inappropriate to tie the reasonably comparable wholesale access requirement for wholesale platform services to the special access proceeding, and that there is no need for the Commission to establish a specific end date for reasonably comparable access for wholesale platform services.

Respectfully submitted,



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