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Ex Parte

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

Re: Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks, WC Docket No. 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:

We are writing to respond to Granite's recent ex parte¹ opposing USTelecom's petition for forbearance from the outdated requirement that ILECs unbundle standalone voice-grade channels on fiber loops.² Granite also opposes USTelecom's petition for forbearance from Section 271, and it incorrectly claims the 64 kbps unbundling rule and Section 271 together provide a regulatory backstop for commercial UNE-P replacement products.³ USTelecom's forbearance petition has

¹ Letter from Michael B. Galvin, Granite, to Marlene H. Dortch, FCC, WC Docket 14-192, *et al.* (Oct. 23, 2015) ("*Granite Ex Parte*").

² See 47 C.F.R. § 51.391(a)(3)(B)(iii)(c).

³ The UNE-Platform, or UNE-P, was the regulated combination of unbundled switching, unbundled shared transport, and unbundled loops. After the DC Circuit in *United States Telecom Ass'n v. FCC* (359 F.3d 554, D.C. Cir., 2004) vacated the FCC's earlier findings requiring UNE-P, the FCC in 2004 eliminated the regulatory requirement to provide it. *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*").

nothing to with UNE-P replacement products because neither Section 251 nor Section 271 requires ILECs to offer them.⁴ And forbearance from the 64 kbps unbundling rule and Section 271 will not affect the continued availability of these products. Granite's latest filing only confuses the record, and the Commission should ignore it.

Despite Granite's claims, the Commission has held there is no regulatory requirement to provide commercial "UNE-Platform" replacement services. To be sure, after the Commission decided more than 10 years ago to eliminate regulated access to UNE-P, a subset of ILECs – the former Bell Operating Companies – still had to provide standalone switching and standalone shared transport under Section 271. They also had to provide unbundled loops under Section 251. But those companies are not required to bundle those facilities to "recreate" UNE-P, because the Commission "decline[d] to require BOCs, pursuant to Section 271, to combine network elements that no longer are required to be unbundled under Section 251."⁵ The Commission later acknowledged Qwest had introduced a commercial replacement for UNE-P "even in the absence of a legal mandate to do so."⁶ And the Commission told the Sixth Circuit "no BOC is obligated under the FCC's rules ... to combine the unbundled local circuit switching and shared transport piece of what used to comprise the now-defunct UNE-Platform to satisfy its commingling duties."⁷

Instead of a regulatory backstop for UNE-P, there is a commercial backstop. UNE-P replacement products are commercial offerings designed to "keep customers on [the carrier's] network" and "to minimize revenue losses resulting from customer defections" to other providers' services, including the now ubiquitous cable providers.⁸ And as ILEC retail switched access lines in service continue to decline, commercial incentives to provide UNE-P replacements grow only stronger

⁴ Notably, Verizon does not include Wholesale Advantage (Verizon's UNE-P replacement product) in the Performance Assurance Plans it files with state public service commissions, which spawned from Section 271. Verizon does post on its web site customer-specific Wholesale Advantage service-quality reports, which its wholesale customers can access.

⁵ See *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 16,978, n.1989 (2003).

⁶ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd. 19,415, ¶ 82 (2005) ("Omaha Order"), *pets. for rev. dismissed and denied on the merits*, *Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

⁷ Brief for Amicus Curiae Federal Communications Commission in Support of Defendants-Appellants, Cross –Appellees and Partial Reversal of the District Court, *BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky v. Kentucky Public Service Commission*, Case Nos. 10-5310/10-5311, at 17 (CA6 filed Dec. 6, 2011).

⁸ *Omaha Order*, ¶¶ 81-82.

to keep as many access lines as possible – retail or wholesale – using the ILECs’ networks.

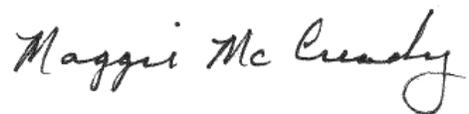
Unlike the hypothetical costs Granite suggests it might face if the Commission does away with the 64 kbps requirement, the costs of unbundling a 64 kbps voice-grade channel over fiber are real and significant. And these costs threaten to impede ILECs from retiring copper and fully embracing superior fiber facilities. Granite, meanwhile, acknowledges it does not even buy standalone voice-grade unbundled loops from Verizon or any other ILEC.⁹

Customers that do still purchase voice-grade only service will continue to have options if the Commission forbears from the 64 kbps unbundling rule. In fact CLECs that today purchase unbundled voice-grade loops could continue to serve end-user customers by switching to UNE-P replacement services, the same services Granite incorrectly claims forbearance would jeopardize. And in areas where we already have retired copper, Verizon continues to make Wholesale Advantage available.

Granite serves customers through a business model that relies on legacy services and technologies. When the FCC eliminated UNE-P, it found in practice it was not a transitional tool leading to facilities-based competition but instead had become many CLECs’ long-term business plan.¹⁰ Granite now chooses to rest its business plan on commercial UNE-P replacement products. Granite can make that choice. But the Commission should not let Granite’s baseless claims that its legacy business model is at risk impede its competitors’ efforts to modernize their networks free from outdated requirement like the 64 kbps unbundling rule.

The Commission should reject Granite’s arguments and forbear from the 64 kbps unbundling rule as well as Section 271.

Sincerely,



⁹ *Granite Ex Parte*, at 2.

¹⁰ See *Triennial Review Remand Order*, ¶ 220.