



November 17, 2015

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 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 No. 14-192); Petition of Granite Telecommunications 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:

USTelecom's forbearance petition seeks relief from certain section 271 obligations and the requirement to provide a 64 kilobits per second (kbps) voice channel over fiber where copper loops are retired.¹ Granite claims that these requirements create an essential "regulatory backstop" that compels ILECs to offer commercial UNE-P replacement products,² which in turn produces billions of dollars a year in savings.³ But Granite's imagined "regulatory backstop" is not real and has been expressly disavowed by the FCC. UNE-P replacement products are the result of marketplace conditions that have enabled negotiated commercial agreements that serve the best interests of Granite and incumbent providers. Regulatory obligations did not cause these agreements, and they do not "backstop" them. Any savings claimed by Granite resulted from market conditions, not regulatory "backstops."

¹ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) from Obsolete Incumbent LEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192 (filed Oct. 6, 2014).

² Letter from Michael B. Galvin, Granite, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-192, 15-114, GN Docket Nos. 13-5, 12-353 (filed Oct. 23, 2015) (*Granite Ex Parte*).

³ See Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-192, 15-114 (filed Nov. 11, 2015) (estimating competitive LECs would lose between \$4.4 billion and \$10.2 billion without access to ILEC wholesale lines).

Granite provides voice service to scattered locations of large business customers, currently serving about 1.4 million business lines,⁴ and Granite and other non-ILEC providers collectively serve about half of business voice lines in the marketplace, according to FCC reports.⁵ Granite claims to provide value to these customers (and to its wholesalers) by, among other things, centralizing billing and customer service. According to Granite, its business depends on negotiating viable wholesale agreements with incumbent LECs that provide Granite a finished, ready to sell business voice service platform. To date, Granite and incumbent LECs have negotiated these arrangements, resulting in Granite's growth to become a substantial provider of voice service to business customers.⁶

Granite contends that the reason it has been able to negotiate "viable" wholesale arrangements is because of the "regulatory backstop" provided by the section 271 and the 64 kbps voice channel requirements from which USTelecom seeks relief. Granite claims these requirements are "essential to maintain the consumer benefits provided by competition through the use of wholesale voice platform services."⁷ That assertion is false, however, no matter how many times Granite repeats it.

To serve as a regulatory backstop against the loss of access to the business voice platform lines that Granite now purchases from ILECs, the section 271 and the 64 kbps voice channel requirements would have to provide a platform alternative to such agreements. Although the sections and rules Granite cites do require the offering of certain separate network elements, they do not require that those elements be assembled into the wholesale voice platform that Granite depends on. By implying that they do, Granite resurrects and tries to re-litigate issues that were settled years ago in the Commission's UNE proceedings.⁸ There is no requirement that companies assemble the various elements available under the sections and rules Granite cites into a finished wholesale business voice service. The Commission's rules "only require ILECs to 'combine' section 251(c)(3) UNEs with other section 251(c)(3)

⁴ Letter from Steven C. Salop, Charles River Associates, to Marlene G. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, WC Docket Nos. 14-192, 15-114, at 2 (filed Jun. 12, 2015) (filed with Letter from Michael B. Galvin, Granite, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, WC Docket Nos. 14-192, 15-114 (filed Jun. 12, 2015) (*CRA Letter*)).

⁵ See Federal Communications Commission, Local Telephone Competition: Status as of December 31, 2013 and Excel Tables (lcom1213_tables.xls), at Table 11 (Oct. 2014), available at <http://transition.fcc.gov/wcb/iatd/comp.html>.

⁶ See *CRA Letter* at 2-3.

⁷ *Granite Ex Parte* at 1.

⁸ See generally *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). See also Reply Comments of the United States Telecom Association, WC Docket No. 14-192, at 10-12 (filed Dec. 22, 2014) (*USTelecom Reply Comments*); Comments of the United States Telecom Association, WC Docket No. 15-114, at 6 (filed Jun. 15, 2015).

UNEs,” so ILECs are not required to combine UNEs with section 271 elements.⁹ As explained succinctly in an amicus brief filed by the Commission, no ILEC is obligated to recreate the UNE-Platform:

[T]he FCC has determined that BOCs are not required to combine section 271 checklist items with one another. ... Thus, no BOC is obligated under the FCC’s rules [] to combine the unbundled local circuit switching and shared transport pieces of what used to comprise the now-defunct UNE-Platform to satisfy its commingling duties.¹⁰

Incumbent carriers do not negotiate these commercial agreements because of Granite’s claimed regulatory backstop; they negotiate and sign agreements because the agreements make sense as commercial deals.¹¹ As a practical matter concerning leverage, note that Granite has never ordered a 64 kbps channel, and nothing in the record suggests that it has invested in network facilities to be able to add the switching and transport necessary to provide voice service.¹² And, same as here, wholesale arrangements supporting service resale exist in the wireless and in the cable industry without any “regulatory backstop.”

In claiming that it would be harmed by the relief USTelecom seeks, Granite ignores other existing safeguards.¹³ So, even if the section 271 and the 64 kbps voice channel

⁹ 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 Kentucky v. Kentucky Public Service Commission*, Case No. 10-5311, at 16 (6th Cir, filed Dec. 6, 2011) (*FCC Amicus Brief*).

¹⁰ *FCC Amicus Brief* at 17. See also *USTelecom Reply Comments* at 11-12; Letter from Maggie McCready, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-192, 15-114, GN Docket Nos. 13-5, 12-353, at 2 (filed Nov. 9, 2015) (*Verizon Ex Parte*).

¹¹ See, e.g., *USTelecom Reply Comments* at 12; *Verizon Ex Parte* at 2.

¹² *Granite Ex Parte* at 2.

¹³ Granite fails to mention, for example, the Commission’s recent decision to require providers seeking to discontinue old fashioned TDM-based incumbent LEC services, including the platform services Granite relies on, to offer reasonably comparable replacement services until the Commission adopts permanent rules governing the special access services market. See *Technology Transitions, et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, FCC 15-97, ¶ 132 (rel. Aug. 7, 2015). To be clear, we believe that using the discontinuance process to address commercial wholesale platform services was a dramatic (and unlawful) enlargement of the scope of section 214, and a reversal of policies that had been in place and were working for some time, and that it was inappropriate to include UNE-P replacement services in the interim condition adopted in that order. See Comments of the United States Telecom Association, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at

requirements somehow created a regulatory backstop (which they do not), the Commission need not retain them because there are already sufficient safeguards in place.¹⁴

Granting USTelecom's petition for relief will remove outmoded legacy rules that fundamentally hamper investment and competition in modern broadband services. It will not change the relationship between parties negotiating voice platform service arrangements.

Please contact the undersigned should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Banks". The signature is fluid and cursive, with the first name "Jonathan" and last name "Banks" clearly legible.

Jonathan Banks
Senior Vice President, Law & Policy

17-18 (filed Oct. 26, 2015). USTelecom has sought review of this decision in the D.C. Circuit court of appeals. Petition for Review, *United States Telecom Association v. Federal Communications Commission*, Case No. 15-1414 (filed Nov. 12, 2015).

¹⁴ For example, the section 214 application process requires ILECs to seek approval from the Commission before discontinuing a service. 47 U.S.C. § 214(a). Moreover, competition in the business voice and special access segments, as well as statutory restrictions against providers acting in an unjust, unreasonable, or discriminatory manner (under the threat of enforcement action) provide additional assurances. See 47 U.S.C. §§ 201, 202, 208.