

Michael Galvin

From: Michael Galvin
Sent: Friday, January 29, 2016 4:23 PM
To: dwight.bailey@att.com
Cc: 'MS6611@att.com'; Sam Kline; Paula Foley
Subject: FW: AT&T LWC Tech Trans Amendment
Attachments: Draft Granite ATT LWC Tech Trans Amend (1.29.16) (00015521-2xD85FF).docx

Dwight:

We attach an amendment to Granite's LWC Agreement. We'd be happy to discuss this amendment with you and/or others at AT&T. Could you advise us whom that will be by 5 pm EDT on Friday, Feb. 5, 2016?

Thank you.

Michael B. Galvin, Esq.
General Counsel
617-745-5168 (office) | 617-833-3913 (cell)



From: Paula Foley
Sent: Friday, January 29, 2016 3:33 PM
To: Michael Galvin
Subject: AT&T LWC Tech Trans Amendment

Mike – attached is the draft amendment for the AT&T 9 state LWC in compliance with the FCC's Tech Trans proceeding. We will need a similar amendment for the AT&T 13 state LWC.

Paula Foley
Legal & Regulatory Counsel
Granite Telecommunications, LLC
617.837.4604
Paula.Foley@granitenet.com



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**AMENDMENT NO. 2
TO LOCAL WHOLESALE COMPLETE AGREEMENT**

This Amendment No. 2 ("Amendment No. 2") amends the Local Wholesale Complete Commercial Agreement executed as of December 28, 2011, as amended ("LWC Agreement") by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee ("AT&T") and Granite Telecommunications, LLC ("CARRIER"), hereinafter referred to collectively as the "Parties" and individually as a "Party", and shall apply in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

WHEREAS, the Parties desire to amend the LWC Agreement to make additional changes as set forth below.

NOW THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the LWC Agreement as follows:

- 1.0 This Amendment No. 2 is composed of the foregoing recitals and the terms and conditions contained herein, all of which are hereby incorporated in this Amendment No. 2 by this reference and constitute part of this Amendment No. 2.
- 2.0 Section 1.7 of Attachment 2 – Local Wholesale Complete of the LWC Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:
 - 1.7 LWC is available only where capabilities and facilities exist. The facilities used by AT&T-22STATE to provide LWC shall remain the property of AT&T-22STATE. Nothing herein shall obligate AT&T-22STATE to provide LWC or LWCALs in the following AT&T-22STATE wire centers: Richardson, TX (DLLSTXRNDS0), Olathe, Kansas (KSCYKSOLDS0) and Corporate Woods, KS (KSCYKSCBDS0).
- 3.0 Section 2.1.2 of Attachment 2 – Local Wholesale Complete of the LWC Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:
 - 2.1.2 "Basic Transmission Facility" refers to a transmission facility provided with a LWCAL that connects a distribution frame (or its equivalent) in an AT&T-22STATE central office and the facility demarcation point at an Eligible End User's premises. Basic Transmission Facility may refer, as an example, to a hybrid circuit, in which the analog transmission originating from the Eligible End User's premises is converted to a TDM digital format at an RT, FDI, hut, CEV or other AT&T-22STATE enclosure for carriage to the AT&T-22STATE central office, at which location appropriate digital signaling would be utilized. Basic Transmission Facility may also refer to any transmission facility which replaces a copper loop. Moreover, notwithstanding anything else in the LWC Agreement, LWC will be available using IP replacement technologies, and all LWC rates and regulations will apply to LWC services utilizing IP replacement technologies.
- 4.0 The references to "Basic Analog Transmission Facility" in Sections 1.2, 2.1.6, 2.1.7 and 2.1.8 of Attachment 2 – Local Wholesale Complete of the LWC Agreement are hereby deleted and replaced with "Basic Transmission Facility." The remainder of those sections remain in full force and effect.

5.0 Section 5.5 of Attachment 2 – Local Wholesale Complete is hereby deleted in its entirety and the following is inserted in lieu thereof:

5.5 Local Wholesale Complete Transition.

5.5.1 CARRIER acknowledges and understands that AT&T has publicly announced its intention to move all customers from TDM-based services. For avoidance of doubt, AT&T and CARRIER seek to memorialize the terms and conditions to apply as part of the AT&T TDM-to-IP transition.

5.5.2 AT&T agrees to comply with the discontinuance and other processes discussed in *Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 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 (rel. Aug. 7, 2015) (“*Technology Transitions Order*”).

6.0 This Amendment No. 2 is binding upon the Parties as of the date executed by both Parties and the effective date of this Amendment No. 2 shall be February __, 2016 (“Amendment Effective Date”).

7.0 Except as amended above, all other terms and conditions of the LWC Agreement, as otherwise amended, shall remain in effect and binding on the Parties.

[Signatures on following page]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Granite Telecommunications, LLC

**BellSouth Telecommunications, LLC d/b/a
AT&T ALABAMA, AT&T FLORIDA, AT&T
GEORGIA, AT&T KENTUCKY, AT&T
LOUISIANA, AT&T MISSISSIPPI, AT&T
NORTH CAROLINA, AT&T SOUTH
CAROLINA and AT&T TENNESSEE by
AT&T Services, Inc. its authorized agent**

State	Resale OCN	ULEC OCN
ALABAMA	9927	375A
FLORIDA	9927	325A
GEORGIA	9927	8878
KENTUCKY	9927	101A
LOUISIANA	9927	787A
MISSISSIPPI	9927	404A
NORTH CAROLINA	9927	8156
SOUTH CAROLINA	9927	614A
TENNESSEE	9927	987A

Description	ACNA Code
ACNA	GIM



February 12, 2016

Michael B. Galvin, Esq.
General Counsel
Granite Telecommunications, LLC
MGalvin@granitenet.com

Dear Mr. Galvin,

Your e-mail dated January 29, 2016, contained a proposed amendment to Granite's Local Wholesale Complete ("LWC") contract with AT&T.

The changes that Granite proposes would fundamentally alter the nature of the LWC product and greatly expand AT&T's obligations established by the LWC contract, and would do so well in advance of any action by AT&T that could arguably give rise to the need for such an amendment.

The proposed amendment also asks AT&T to contractually obligate itself to the processes discussed in the *Technology Transitions Order* in advance of judicial review. AT&T views that request as premature as well. AT&T sees no reason to open negotiations on an amendment to Granite's LWC contract at this time.

If Granite believes there is a requirement in the *Technology Transitions Order* that would justify a change of law amendment at this time, please point it out for AT&T's consideration.

Sincerely,

M. Robert Sutherland
Executive Director - Senior Legal Counsel - Wholesale Regulatory
ms6611@att.com
(678) 880-1088



By Electronic Mail (r.sutherland@att.com & ms6611@att.com)

February 25, 2016

M. Robert Sutherland
Executive Director – Senior Legal Counsel – Wholesale Regulatory
AT&T Inc.
1120 20th Street, NW
Washington, DC 20036

Mr. Sutherland:

Thank you for your February 12, 2016 letter regarding the request of Granite Telecommunications, LLC (“Granite”) for an amendment to our Local Wholesale Complete (“LWC”) agreement with AT&T Inc. (“AT&T”). We do not agree that our request is, as you claim, “premature.” Rather, actions that AT&T has already taken make our amendment timely and appropriate to maintain the strong business relationship our companies have enjoyed over the years and that we are eager to continue.

However, AT&T is mistaken that its decision to seek “judicial review” of the FCC’s *Technology Transitions Order*, GN Docket No 13-5, *et al.* (released Aug. 7, 2015) (“*Tech Trans Order*”) somehow relieves AT&T of its obligation to comply with the *Tech Trans Order* until some unspecified future date. The *Tech Trans Order* took effect on November 18, 2015, thirty days after publication in the *Federal Register*.¹ Because AT&T opted not to seek reconsideration from the FCC or a stay from the appellate court (much less be granted one), the *Tech Trans Order* has been in effect for months already.²

We also disagree with AT&T’s suggestion that we are proposing this amendment “in advance of any action by AT&T that could arguably give rise to the need for ... an amendment.” While your letter does not explain what AT&T means by that sweeping statement, we point to the following actions of AT&T, which individually and collectively highlight why an amendment is needed.

First, AT&T’s refusal to amend Granite’s LWC to include IP-based voice services has placed Granite at a competitive disadvantage. Granite customers have switched from Granite’s TDM-based voice services to AT&T’s IP-based voice services that Granite cannot offer under its LWC agreement.

Second, current Granite TDM-voice customers are being contacted by AT&T personnel and advised that they should discuss with AT&T replacement products and services for the TDM products and

¹ See *Tech Trans Order*, ¶ 255.

² See *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 673-74 (D.C. Cir. 1985) (agency order takes effect despite appeal unless interim relief granted).

services that they are currently purchasing from Granite, in part because of the ongoing transition from TDM to IP technologies. For example, one national restaurant chain was informed by AT&T that because it has locations serviced by central offices that will be converted from its current TDM service to IP, the restaurant chain should now meet with AT&T to discuss replacement IP products and services. AT&T's attempt to squeeze Granite out of that business is precisely the anti-competitive incumbent carrier conduct that the FCC attempted to prevent in the *Tech Trans Order*.³

Third, AT&T has been offering and providing retail IP services to business end-users in the IP trial wire centers in Carbon Hill, AL and West Delray Beach / King's Point, FL since mid-2014. In doing so, AT&T assured the FCC that "AT&T's objective is to complete [wholesale product] development efforts, as well as those aimed at developing an IP-based alternative to the Local Wholesale Complete Product, *as soon as possible*," albeit after it commenced the trials.⁴ And since then, AT&T has regularly reported on its progress in converting retail customers to IP, including conversion of both simple businesses (those with fewer than 7 POTS lines / DSL services per site) and more recently more complex businesses (those with greater numbers of lines and/or DS1, DS3 or ISDN services). AT&T's Jan. 2016 report reflects that it has transitioned business accounts from TDM services to IP services / Uverse as a result of AT&T's "Direct Marketing Calls" and "General IVR" about the ongoing IP transition.⁵ As AT&T well knows from our prior communications on this topic, Granite services numerous businesses in each of the AT&T trial wire centers, and volunteered years ago to be a participant in the ongoing trials.⁶ Despite having assured the FCC that it was working on a replacement wholesale IP product since 2014, AT&T has thus far not followed through on this pledge and has not offered Granite such a replacement IP product on any terms or conditions, leaving those products and services "TBD" in its service guide.⁷ It is inconceivable that after two years of marketing and selling IP replacement services to retail customers within and without the trial wire centers that a contract amendment establishing reasonably comparable rates, terms and conditions on which AT&T offers IP replacement services to Granite could remain "premature."

³ *Id.* at ¶ 110 ("Today, we act to ensure that transitions in the technologies used to provide service do not undercut the availability of competitively-provided services that benefit communities and enterprise customers of all sizes that serve those communities.").

⁴ AT&T Proposal for Wire Center Trials, GN Docket Nos. 12-353 and 13-5, at 29 (filed February 27, 2014) (emphasis added).

⁵ See AT&T Ex Parte Letter at 2 & 3Q2015 Data Collection and Reporting for AT&T Wire Center Trials at 6-9, 15, GN Docket Nos. 12-353 and 13-5 (filed January 19, 2016).

⁶ See Comments of Granite Telecommunications, LLC, GN Docket Nos. 12-353 and 13-5, at 10 (filed March 31, 2014) ("Granite has customers with locations in both wire centers, and has already indicated its desire to participate in the trials . . ."); see also Granite Press Release: "Granite Intends to Participate in IP Transition Technical Trials" (dated March 6, 2014).

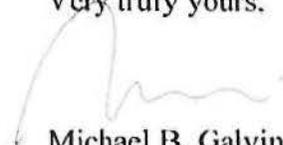
⁷ See AT&T Wire Center Trial Operating Plan, Exhibit D.

M. Robert Sutherland
February 25, 2016
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Thus, to preserve our strong overall relationship, Granite requests that AT&T reconsider its flat refusal to enter into negotiations to amend our LWC agreements to include IP-based services to replace TDM-based and copper-based services that AT&T intends to discontinue, and to memorialize AT&T's compliance with the *Tech Trans Order* and other FCC rulings.

It would be great to hear from you on this by Friday, March 4, 2016. Thanks again.

Very truly yours,



Michael B. Galvin
General Counsel
Granite Telecommunications

cc: Sam Kline
Paula Foley
Tom Caldwell



March 8, 2016

Michael B. Galvin, Esq.
General Counsel
Granite Telecommunications, LLC
MGalvin@granitenet.com

Dear Mr. Galvin,

On January 29, 2016, Granite asked AT&T to enter into negotiations to amend its Local Wholesale Complete ("LWC") contract. AT&T responded on February 12, 2016, and made three points: the changes that Granite proposes would fundamentally alter the nature of AT&T's LWC product; the amendment would contractually obligate AT&T to processes discussed in the *Technology Transitions Order* whether or not those processes are modified on judicial review; and, if Granite believes that there is a requirement in the *Technology Transitions Order* that would justify a change of law amendment at this time to please point it out for AT&T's consideration. In its February 25, 2016 response, Granite does not directly address these points.

LWC was intended as a commercial alternative to the unbundled network element platform ("UNE-P") that the AT&T incumbent local exchange carriers ("ILECs") were formerly required to provide to competitive local exchange carriers ("CLECs") such as Granite. It is a TDM-based service that includes a loop, local switching and shared transport. It was intended as a cost-effective alternative to resale. It was never intended as a pathway to a future Internet protocol network. AT&T is under no obligation to modify LWC in the manner proposed by Granite, and AT&T declines to do so. Granite was fully aware of the nature of LWC when it negotiated its present contract, and, in AT&T's view, nothing has changed that would warrant redefining LWC in the manner proposed by Granite.

Granite's proposed amendment also asks AT&T to obligate itself contractually "to comply with the discontinuance and other processes discussed" in the *Technology Transitions Order*. In its response, AT&T declined to obligate itself contractually to "processes discussed" in an order that is under judicial review. Granite interpreted this statement to be a claim that the *Technology Transition Order* is not currently in effect and binding on AT&T. AT&T made no such claim. AT&T's point is that it has taken no action to date with regard to the withdrawal of LWC that would trigger the requirements of the *Technology Transition Order*. Thus, it is premature for AT&T to commit contractually to any specific "processes" that may be required at that future time. In the existing contract, the parties already agree that the retirement of LWC will be "subject to any regulatory requirements" and AT&T sees no reason to commit contractually beyond that existing provision.

AT&T's third point was to ask Granite to identify any requirement in the *Technology Transition Order* that would warrant a change of law amendment at this time. Granite's response does not identify any such requirements.

AT&T understands Granite's desire to have a wholesale IP replacement product available from AT&T well in advance of AT&T's retirement of LWC. To this end, the parties negotiated a requirement in the existing contract that AT&T provide a Discontinuance Notice one-year in advance of withdrawal of LWC. The existing contract also requires that AT&T fulfill any regulatory requirements prior to discontinuance. However, AT&T cannot agree to negotiate contract language that would require it to offer wholesale IP replacement products that have not yet been developed and deployed.

Sincerely,

M. Robert Sutherland
Executive Director – Senior Legal Counsel – Wholesale Regulatory
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(678) 880-1088