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April 6, 2016

## EX PARTE

### VIA ECFS

The Honorable Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington DC 20554

Re: **Technology Transitions, GN Docket Nos. 13-5, 12-353; WC Docket No. 05-25; RM-11358, RM-10593**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b)(1), the undersigned submits this written ex parte presentation on behalf of Access Point Inc., Birch Communications Inc., BullsEye Telecom, Inc., Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, Matrix Telecom, Inc., New Horizon Communications Corp. and Xchange Telecom LLC (collectively "Wholesale Voice Line Coalition") to urge the Commission to modify the sunset of the regulatory backstop adopted in the *Technology Transitions Order* applicable to wholesale platform services. The Wholesale Voice Line Coalition strongly supports the recommendation filed yesterday by Granite Telecommunications, LLC, urging the Commission to tie the expiration of the regulatory backstop for wholesale platform services to the conclusion of an examination of the relevant market for wholesale platform services, rather than the special access market.<sup>1</sup>

The members of the Wholesale Voice Line Coalition serve business customers across the United States, primarily focusing on providing voice lines to national companies and other entities that need a small number of voice lines at a large number of disparate, often suburban, rural and remote locations where facilities-based competition with the ILEC is uneconomical. Some providers use these lines to supply an emergency voice line to building elevators. In order to provide these services, coalition members typically lease from the ILEC a combined package of a DS0 loop, local

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<sup>1</sup> See Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC to Marlene H. Dortch, Secretary, FCC at 2 (filed April 5, 2016) ("Granite April 5, 2016 Ex Parte").

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switching and shared transport, referred to as Commercial Wholesale Platform service.<sup>2</sup> The Coalition previously submitted Comments and Reply Comments in these proceedings urging the Commission to modify the end date of the regulatory backstop adopted in the *Technology Transitions Order*.<sup>3</sup>

The vast majority of locations that the members of the Wholesale Voice Coalition serve through use of Commercial Wholesale Platform service have four or fewer lines, and are typically single-customer buildings, such as a gas station or retail location.<sup>4</sup> The limited demand at these locations renders these locations economically ill-suited for competitive deployment of facilities, including cable facilities. Without Commercial Wholesale Platform service, customers at these locations would have no choice of supplier other than the ILEC.

And the ongoing transition from TDM to IP networks does not eliminate the economic barriers impeding competition to serve these locations. The ILEC contracts on which providers of Commercial Wholesale Platform service rely, however, typically do not include terms for access to Commercial Wholesale Platform service over fiber-based or IP-based networks.<sup>5</sup>

In the *Technology Transitions Order*, the Commission recognized that absent a regulatory backstop CLECs providing Commercial Wholesale Platform “may be unable to obtain wholesale replacement services” in the marketplace and that such a lack of alternatives “will adversely affect its retail customers.”<sup>6</sup> The Commission thus adopted a regulatory backstop providing that ILECs requesting authority under Section 214 to discontinue, reduce or impair a “TDM-based ... wholesale platform service” must “provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms and conditions.”<sup>7</sup>

At that time, the Commission determined that the issuance of an effective order in the current special access proceeding would be an appropriate time to revisit whether to extend the completion date of the reasonably comparable wholesale requirement applicable to commercial platform service and sought comment in the FNPRM regarding the appropriate extension of such

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<sup>2</sup> *Technology Transitions et al.*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9443-44 ¶ 132 (2015) (“*Technology Transitions Order and Further Notice*”).

<sup>3</sup> Reply Comments of Wholesale Voice Line Coalition (filed Nov. 24, 2015); Comments of Wholesale Voice Line Coalition (filed Oct. 26, 2015).

<sup>4</sup> *Technology Transitions Order and Further Notice*, 30 FCC Rcd at 9454 ¶ 148 n. 507 citing *Ex Parte* Letter from T. Jones, Counsel for Granite Telecommunications, LLC to M. Dortch, FCC, GN Docket No. 13-5 et al., Attachment at 4 (filed June 3, 2015) (“Granite June 3, 2015 *Ex Parte*”).

<sup>5</sup> Comments of Granite Telecommunications, LLC, GN Docket No. 12-353 (filed Jan. 28, 2013), See Exhibit F, (Jan. 6, 2012 Letter from William Roughton, General Attorney, AT&T, to Marlene H. Dortch, extending term of June 2, 2009 Agreement between AT&T and EveryCall Communications, Inc. and amendment through Dec. 31, 2014).

<sup>6</sup> *Technology Transitions Order and Further Notice*, 30 FCC Rcd at 9457 ¶ 152.

<sup>7</sup> *Id.* at 9444 ¶ 132.

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end date.<sup>8</sup> The Commission should now revisit the end date and extend it as recommended by Granite.

Granite's letter indicates that it has been unsuccessful in negotiating an amendment to its agreement with AT&T for Commercial Wholesale Platform service,<sup>9</sup> despite AT&T's February 2014 representations that it would have an IP replacement for its TDM platform service.<sup>10</sup> Plainly, the need for a regulatory backstop has not abated. Granite has proposed that the Commission extend the end date until such times as the Commission concludes an investigation into competition for wholesale platform services. The Wholesale Voice Line Coalition endorses this proposal.

The Commission established the special access proceeding as the end date because it sought to ensure that "the competition that exists today is not undermined, at least until the Commission completes its full, data-driven evaluation of the special access market."<sup>11</sup> But that evaluation has not reviewed voice grade services such as those offered by the members of the Wholesale Voice Line Coalition.<sup>12</sup> Thus, if the Commission adheres to the special access proceeding as its end date, it would eliminate the regulatory backstop that protects competition for retail customers served by platform services.

And because the members of the Coalition rely on ILEC inputs to provide their service, the lack of a regulatory backstop would allow the ILECs to deprive their customers of competitive choice. The absence of alternative sources of supply, and the economic impracticability of competitive construction of facilities, at the customer locations that are currently served through the wholesale voice platform means that if there is no regulatory requirement to offer wholesale service, the ILEC will have monopoly control of supply at those locations and no incentive to provide access to such locations under reasonable rates, terms and conditions.<sup>13</sup>

Prematurely ending the regulatory backstop adopted in the *Technology Transitions Order* thus would deprive the customers served by wholesale platform services the benefits of competition undermining one of the Commission's core values underlying the IP transition. The Commission should thus, as urged by Granite, "tie the expiration of the regulatory backstop for wholesale platform services to the conclusion of an examination of the relevant market" for wholesale platform services, rather than the special access market.

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<sup>8</sup> *Id.* at 9457 ¶ 152.

<sup>9</sup> Granite April 5, 2016 Ex Parte at 1.

<sup>10</sup> AT&T Proposal for Wire Center Trials, GN Docket Nos. 13-5, 12-353 at Ex. E at Local Wholesale Complete Product Data Sheets (Feb. 27, 2014).

<sup>11</sup> *Technology Transitions Order and Further Notice*, 30 FCC Rcd at 9451 ¶ 142.

<sup>12</sup> See Wholesale Voice Line Coalition Comments at 14-16.

<sup>13</sup> See *id.* at 9-10.

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Respectfully submitted,

*/s/ Eric J. Branfman*

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