**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| GRANITE TELECOMMUNICATIONS, LLC,Complainant,v.OHIO Bell Telephone Company D/B/A AT&T OHIO  Defendant. | Case No. 17-1713-TP-CSS |
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**AMENDED COMPLAINT OF GRANITE TELECOMMUNICATIONS, LLC**

**(PUBLIC VERSION)**

Pursuant to Ohio Revised Code (“O.R.C.”) Section 4905.26, 4927.21, and 4907.21, Ohio Administrative Code Chapter (“O.A.C.”) 4901-9, and O.A.C. Section 4901-1-06, Granite Telecommunications, LLC, by and through its undersigned counsel, respectfully submits this Amended Complaint against Ohio Bell Telephone Company d/b/a AT&T Ohio seeking resolution of a dispute between Complainant and Defendant arising out of the Defendant’s unjust, unreasonable and discriminatory pricing practices in the provision of wholesale voice services, which harm competition and consumers in Ohio and across the nation. AT&T has threatened Granite with disconnection, and its anti-competitive tactics have already caused Granite to lose customers. In support of its Complaint, Granite alleges as follows:

# PARTIES AND JURISDICTION

1. Complainant Granite Telecommunications, LLC (“Granite”) is a corporation organized under the laws of the state of Delaware with its principal place of business in Quincy, Massachusetts. Granite is qualified to do business in Ohio and is a telecommunications carrier certified to provide telecommunications services in Ohio.
2. Defendant Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T”) is a company qualified to do business in Ohio and is authorized to provide telecommunications services in this state.
3. AT&T is an incumbent local exchange carrier (“ILEC”) as that term is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, specifically in 47 U.S.C. § 251(h).
4. The Commission has jurisdiction over this Complaint pursuant to Ohio Public Utilities Code Sections 4905.02, 4905.04, 4905.26, 4905.31, 4905.32, and 4927.21 and Sections 201 and 202 of the Communications Act of 1934 (the “Act”).

# BACKGROUND

1. This matter involves a scheme by AT&T to exploit its status as a monopoly provider of wholesale voice services in multiple locations in Ohio to eliminate Granite as a competitive threat in the provision of communications platforms to businesses that operate in Ohio and whose business AT&T would like to obtain for itself.
2. Granite is a competitive provider of communications services that specializes, among other things, in managing more than 52,000 business lines that carry voice traffic to more than 21,000 business locations in Ohio. It provides a “voice platform” that allows businesses with many locations to operate seamlessly in the communications among and between them. For example, a typical Granite customer like a large multi-location retailer has hundreds of retail locations across the nation and dozens within the borders of Ohio. No single retail store requires large amounts of advanced telecommunications services (unlike, say, a research university or large corporate headquarters). But it is essential to the far-flung business that all of its locations are supplied with a seamless voice platform that includes voice service and added value services, like customer support and one-stop billing service, that makes up a robust voice platform.
3. Granite’s voice platform provides the convenience of all of these services in a single package, often in competition with the ILEC, which is the traditional voice provider in any location and typically reaches every business in a city or town. Granite is successful in supplying enterprise customers and is among the most efficient non-ILEC providers of such services in the United States, building on the economies of scale it has achieved through its business acumen and success. Indeed, Granite provides heightened customer support and technical assistance and creates efficiencies for its customers in multiple ways, including by having dedicated teams who possess expertise with each customer’s unique communications infrastructure and preferences, allowing Granite to resolve operational issues more effectively and the underlying customer to utilize its internal resources for other matters (like running the customer’s own businesses). That is why customers whose operations typically span the footprint of multiple ILECs prefer Granite. Granite’s customers include more than 85 of the Fortune 100 companies. In Ohio, Granite provides services to, among others, some of the largest retailers, restaurants, hospitality companies, real estate companies, health care providers, banks and financial service companies, public utilities and governmental agencies.
4. No provider other than the ILEC in its home territory has the physical infrastructure in place to provide voice service to and from every business location, but it is of course critical to Granite and its customers that Granite’s service is ubiquitous. That is why Granite purchases wholesale voice platform services through long-term contracts with all of the major incumbent telephone carriers across the country, including AT&T. Granite then packages these wholesale services into its retail voice platform services. Granite cannot operate effectively in Ohio without access to AT&T’s network.
5. AT&T, as an essential facilities provider, provides the telecommunications infrastructure to Granite on a wholesale basis, but also competes with Granite in the retail voice market. At the same time AT&T is, and has long been, the only provider of wholesale services in many locations in which Granite operates, and also offers retail services in these locations. Unlike a residential customer or a small business that purchases one line for a single location, the purchasers in the market for retail voice services in which AT&T and Granite are competing are typically large businesses that: (i) require connectivity to many locations—usually dozens within a state and hundreds or thousands nationwide; (ii) demand several lines in each location; and (iii) enter into long-term fixed contracts lasting several years. Typical entities in this market include Fortune 1000 companies and governmental agencies.
6. When an ILEC sells more lines in more places as part of a long-term contract, industry practice and economic principles dictate that per line rates will be lower. That is why retail rate plans offered by an ILEC will usually be much lower than, say, a standalone business line. After all, the ILEC is selling many more lines in many more places, yielding economies of scale, and the ILEC is able to secure a contractual term for the use of the service. Wholesale services purchased by companies like Granite have these characteristics, and the prices offered under such contracts should accordingly be lower than for other types of services.[[1]](#footnote-1)
7. In addition, as a matter of industry practice and simple economics, wholesale rates are understood to be lower than the equivalent retail service in this voice-platform market. Granite’s Complaint does not pertain to its interconnection agreement with AT&T. Nevertheless, it is telling that Granite’s interconnection agreement with AT&T sets the resale discount rate at 20.29% in Ohio. That is because the provision of the wholesale version of a service is less expensive; the wholesale seller (like AT&T) need not incur costs, like billing and other back-office functions, that it would have to shoulder were it selling the same service to a large retail customer (costs that entities like Granite incur).
8. Furthermore, there is no apparent reason why wholesale rates for these services should be rising significantly. Traditional voice services such as those that Granite provides are typically delivered over copper infrastructure, in whole or in part. Of course, that copper wiring has been substantially written off and there is very little new investment or product improvement being made in the copper-based service.[[2]](#footnote-2) In these kinds of circumstances, large price increases typically represent the exercise of market power, because there are no increased costs that justify large increases.
9. All the ILECs with which Granite deals other than AT&T seem to recognize these economic realities. For example, **[BEGIN CONFIDENTIAL INFORMATION]** Verizon charges Granite approximately $22.00 per line in the Verizon East states for wholesale voice platform services **[END CONFIDENTIAL INFORMATION].** That contract was recently renewed for **[BEGIN CONFIDENTIAL INFORMATION]** fouryears **[END CONFIDENTIAL INFORMATION]** with minimal price increases: **[BEGIN CONFIDENTIAL INFORMATION]** $0.45 in August 2017 and $0.50 in August 2019; a total increase of about 4% until the end of 2021 **[END CONFIDENTIAL INFORMATION]**.
10. AT&T has taken a very different approach, one calculated to eliminate Granite as a competitive threat in the Ohio retail market which AT&T already dominates. Granite has had a contract, called the Local Wholesale Complete Agreement (“LWC Agreement”), since 2004 with AT&T for wholesale voice services in 12 states, including Ohio, and the current contract expires on December 31, 2017. Granite and AT&T also have an interconnection agreement in Ohio. This complaint pertains to the LWC Agreement, not the interconnection agreement.[[3]](#footnote-3)
11. Of course, and this is the crux of the matter, AT&T, the provider of essential wholesale services, is simultaneously the leading competitor to Granite for the same customers in the retail market. In other words, AT&T is both the provider of an essential input to Granite and a competitor to Granite, as this chart demonstrates:

**AT&T Voice Network**

**AT&T Retail**

**Granite**

competes in the supply
of retail voice services for
multi-location, multi-line customers

self-supplies the multi-location multi-line inputs to retail voice services

provides inputs to wholesale voice platform

services

1. Under its existing LWC Agreement, AT&T charges Granite an average rate of **[BEGIN CONFIDENTIAL INFORMATION]** $23.43 **[END CONFIDENTIAL INFORMATION]** per line in Ohio, which is far above retail prices offered to customers that could choose Granite. For example, Granite recently bid for **[BEGIN CONFIDENTIAL INFORMATION]** JPMorgan’s **[END CONFIDENTIAL INFORMATION]** voice platform needs, which have been traditionally served by AT&T within its 21 state footprint. Granite’s efforts were rebuffed because its rates were uncompetitive: **[BEGIN CONFIDENTIAL INFORMATION]** Granite offered a $24 flat rate for its services, but AT&T has charged and will continue to charge JPMorgan a retail rate of $17 per line **[END CONFIDENTIAL INFORMATION]**. Similar efforts by Granite to attract business from **[BEGIN CONFIDENTIAL INFORMATION]** Duke Energy **[END CONFIDENTIAL INFORMATION]** also failed because Granite could not compete with AT&T’s retail rates. Furthermore, it is Granite’s understanding that AT&T is targeting existing Granite customers with lower retail rates, including **[BEGIN CONFIDENTIAL INFORMATION]** Sears which recently switched more than 400 lines in Ohio to AT&T’s retail services for a rate less than $26 per line **[END CONFIDENTIAL INFORMATION]**; a rate with which Granite cannot compete for the services requested by that customer. To the best of Granite’s knowledge, AT&T is maintaining prices for customers that would otherwise consider using Granite’s services and offering lower prices to current Granite customers to entice them to switch to AT&T retail.
2. **[BEGIN AT&T CONFIDENTIAL INFORMATION]** Granite has been negotiating for a renewal of its LWC Agreement, but AT&T is demanding astronomical increases. AT&T has demanded a price increase of over $10 in the 21 states in which it supplies wholesale voice platform services to Granite under the existing contract, a roughly 50% price increase in some cases.[[4]](#footnote-4) This per-line price would be phased in over three years, starting at $27.00 and increasing to $34.50 by 2020 **[END AT&T CONFIDENTIAL INFORMATION]**. The below chart sets out the per-line rates under the expiring LWC Agreement and AT&T’s proposed increases to the wholesale services it provides to Granite.

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|  | **Expiring LWC Agreement (average)** | **AT&T demands (based on $170 million spend)** | **Increase between 2017 and 2018-2020** |
| **2017** | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** OH: $23.43 **[END AT&T CONFIDENTIAL INFORMATION]** | N/A | N/A |
| **2018** | N/A | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** OH rate: $27.00 **[END AT&T CONFIDENTIAL INFORMATION]** | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** $3.57 (15.2%) **[END AT&T CONFIDENTIAL INFORMATION]** |
| **2019** | N/A | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** OH rate: $31.00 **[END AT&T CONFIDENTIAL INFORMATION]** | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** $7.57 (32.3%) **[END AT&T CONFIDENTIAL INFORMATION]** |
| **2020** | N/A | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** OH rate: $34.50 **[END AT&T CONFIDENTIAL INFORMATION]** | **[BEGIN AT&T CONFIDENTIAL INFORMATION]** $11.07 (47.2%) **[END AT&T CONFIDENTIAL INFORMATION]** |

1. **[BEGIN AT&T CONFIDENTIAL INFORMATION]** To put AT&T’s claim in perspective, AT&T is seeking a 47% increase over three years **[END AT&T CONFIDENTIAL INFORMATION]**; whereas other ILECs with which Granite has negotiated agreements similar to the LWC Agreement (i.e., wholesale voice service agreements that are not interconnection agreements) have sought a much lower increase over a longer period. For example, **[BEGIN CONFIDENTIAL INFORMATION]** Verizon sought a 4% increase over five years. **[END CONFIDENTIAL INFORMATION].** AT&T has provided no convincing justification for the dramatic raise in these wholesale rates. But AT&T’s rationale, to the extent it is even comprehensible, is unconvincing. It is out of step not only with other ILECs (such as **[BEGIN CONFIDENTIAL INFORMATION]** Verizon **[END CONFIDENTIAL INFORMATION]**) that operate very similar voice networks as well as any understanding of the costs of providing wholesale services, it is also inconsistent with AT&T’s approach to retail rates that, as explained above, should be higher than its wholesale prices.
2. **[BEGIN AT&T CONFIDENTIAL INFORMATION]** Hiking the wholesale price by almost 50% **[END AT&T CONFIDENTIAL INFORMATION]** alone demonstrates AT&T’s attempt to reduce the competitive threat that Granite poses. But the widening gap between AT&T’s wholesale and retail rates for customers with whom it competes with Granite reinforces the point. If AT&T can offer retail rates for less than $20 per line per month, as evidenced by some of AT&T’s retail plan offerings, then there is no cost-based justification for AT&T’s demand for dramatically higher wholesale prices. On the other hand, if there is no separate cost-based justification for the current retail prices, then these moves merely reinforce the conclusion that AT&T, through a classic price squeeze, is creating a spread between wholesale inputs and retail prices that it does not expect Granite to be able to withstand.
3. Importantly, the services that AT&T sells Granite under the LWC Agreement and the services it offers to retail business customers at much lower prices are, upon information and belief, functionally identical. They deliver the same functionalities to the user, including dial tone, local and long distance connectivity, touch-tone dialing service, operator service, directory assistance service, access to emergency 911 service, caller identification (“Caller ID”) service, per call Caller ID blocking service, and access to telecommunications relay service. Moreover, the retail customers that receive lower prices from AT&T are, upon information and belief, similarly situated to Granite. Both the retail customers and Granite need to purchase several telephone lines at numerous locations pursuant to long-term agreements. Both the retail customers and Granite place a high priority on receiving high-quality, reliable telephone service.
4. The adverse impact of AT&T’s discriminatory prices on Granite is twofold. First, AT&T is using its wholesale pricing to disable Granite as an effective competitor for new customers—indeed it is threatening Granite with much higher input costs without justification. The spread is dramatic and unjustified; **[BEGIN AT&T CONFIDENTIAL INFORMATION]** in 2020, **[END AT&T CONFIDENTIAL INFORMATION]** AT&T wants Granite to pay **[BEGIN AT&T CONFIDENTIAL INFORMATION]** $34.50/line **[END AT&T CONFIDENTIAL INFORMATION]** while it was simultaneously offering its own retail customers multi-year contracts for as low as $17.00/line, **[BEGIN AT&T CONFIDENTIAL INFORMATION]** roughly half **[END AT&T CONFIDENTIAL INFORMATION]** of the price. AT&T well knows that Granite will be a much less effective competitor if it is paying **[BEGIN AT&T CONFIDENTIAL INFORMATION]** double **[END AT&T CONFIDENTIAL INFORMATION]** the retail rate.
5. Second, as Granite is **[BEGIN CONFIDENTIAL INFORMATION]** contractually prohibited from raising rates on its current retail customers, AT&T’s price increases would force Granite to sell below cost, and when those contracts expire, dramatically raise its own retail prices **[END CONFIDENTIAL INFORMATION]**. As AT&T well knows, there is no substitute for its wholesale services in many locations,[[5]](#footnote-5) and as AT&T also knows, Granite’s business in Ohio has been built on its reasonable expectation that AT&T would continue to provide wholesale services at commercially reasonable and lawful prices. AT&T is discriminating against Granite in the provision of voice services for the purpose of removing Granite as a competitor by charging Granite more than its own retail services operation pays for voice services. Thus, AT&T’s tactics will likely eliminate Granite as an effective competitor, either by forcing Granite to provide service at a loss if it accepts AT&T’s final offer for a new LWC agreement or by forcing Granite to withdraw from the market entirely.
6. The adverse impact on customers in Ohio is also severe. In the short term, **[BEGIN CONFIDENTIAL INFORMATION]** right after the current AT&T-Granite LWC Agreement expires, if Granite were to agree to AT&T’s final demand for a new LWC agreement many customers will lose access to the value-added services Granite provides. Granite will be forced to discontinue the services it offers when its current retail contracts expire because it would sell at a loss **[END CONFIDENTIAL INFORMATION]**. As AT&T erodes **[BEGIN CONFIDENTIAL INFORMATION]** Granite’s presence in Ohio **[END CONFIDENTIAL INFORMATION]**, AT&T will artificially increase its market share as a voice services provider in the Ohio markets in which Granite offers its services. That will enable AT&T to charge any prices it wants, including more than the extraordinary **[BEGIN AT&T CONFIDENTIAL INFORMATION]** 50% **[END AT&T CONFIDENTIAL INFORMATION]** increase it now demands from Granite. Of course, if Granite does not submit to AT&T’s final demand for a new LWC agreement, Granite will not be able to provide any services to its customers as of December 31, 2017.
7. Despite Granite’s efforts to resolve this dispute with AT&T in a professional manner, it has become clear to Granite that AT&T is not proceeding in good faith but, in fact, is using the threat of a refusal to deal with Granite as a means to kneecap a competitor and harm AT&T’s own customers. Accordingly, Granite informed AT&T that continuing discussions as of July 21, 2017 are fruitless and hereby seeks relief from the Commission to resolve this controversy by filing this Complaint.

# FIRST CLAIM: VIOLATION OF OHIO LAW (THREAT TO COMPETITION)

1. Granite restates and incorporates the allegations above as though repeated in full herein.
2. Sections 4905.02, 4905.04, 4905.26, 4905.31, and 4905.32 of the Ohio Public Utilities Code mandate the Commission to supervise public utilities in Ohio and ensure that competition in the telecommunications market is fair.
3. AT&T’s actions are anticompetitive. First, AT&T is engaging in a classic price squeeze by creating a spread between wholesale inputs and retail prices that it does not expect Granite to be able to withstand. Second, AT&T refuses to deal with Granite, demanding take-it-or-leave-it increases to its voice service rates without any cost justification. Third, AT&T is an essential facilities provider for Granite in Ohio, as Granite has no other avenue for procuring services in the locations currently serviced by AT&T. **[BEGIN CONFIDENTIAL INFORMATION]** Granitewould be forced to discontinue services to those customers or operate at a loss under AT&T’s proposed wholesale rate increase. **[END CONFIDENTIAL INFORMATION]**. Finally, AT&T’s actions point to one outcome harmful to Granite and consumers—increasing its dominant position in the provision of retail voice services while eliminating any competition.

# SECOND CLAIM: VIOLATION OF OHIO LAW (UNJUST AND UNREASONABLE CURRENT WHOLESALE RATES)

1. Granite restates and incorporates the allegations in the above paragraphs as though repeated in full herein.
2. AT&T’s current wholesale rates are unjust and unreasonable. AT&T has, upon information and belief, offered retail voice line services at lower prices than it has in its wholesale arrangements for the same or similar service.
3. Ohio Rev. Code section 4905.22 prohibits a public utility from receiving unjust and unreasonable rates for services it renders. Section 201(b) of the Act similarly prohibits any charges that are unjust and unreasonable, 47 U.S.C. § 201(b), and thus provides useful guidance here. The FCC has recognized that this kind of price squeeze is a serious competition problem. It has explained that ILECs have an incentive to “initiate a price squeeze to gain additional market share.” *See Regulatory Treatment of LEC Provision of Interexchange Services*, *Second Report and Order*, 12 FCC Rcd. 15756, 15849 ¶ 161 (1997). It has recognized circumstances in which “a price squeeze is evident, *such as when a monopolist’s wholesale rates exceed retail rates*.”  *INFONXX, Inc. v. New York Telephone Co.*, *Memorandum Opinion and Order*, 13 FCC Rcd. 3589, 3598 ¶ 18 (1997) (emphasis added) (citing *City of Mishawaka, Ind. v. American Elec. Power Co., Inc*., 616 F.2d 976 (7th Cir. 1980)); *see also* *Verizon Telephone Co. Tariff FCC Nos. 1 & 11, Transmittal No. 232*, *Order Designating Issues for Investigation*, 17 FCC Rcd. 23598, 23599 ¶ 3 (2002) (discussing concerns that a similar service provided by another ILEC was priced much lower, raising the possibility that the ILEC in question was charging unreasonably high rates.)
4. AT&T’s actions mimic those that the FCC has warned violate federal law. The wholesale rates that Granite pays exceed AT&T’s retail rates offered currently to certain customers. And AT&T has not convincingly justified that price difference. AT&T’s wholesale rates charged under the LWC Agreement are therefore unjust and unreasonable in violation of Ohio Rev. Code section 4905.22.

# THIRD CLAIM: VIOLATION OF OHIO LAW (UNJUST AND UNREASONABLE FUTURE WHOLESALE RATES)

1. Granite restates and incorporates the allegations in the above paragraphs as though repeated in full herein.
2. Ohio Revised Code Section 4905.22 provides:  “All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.” AT&T has “demanded” wholesale rates for a future LWC Agreement that are significantly higher than the wholesale rates in the parties’ current LWC Agreement and that, upon information and belief, exceed the prices that AT&T charges certain of its retail customers. AT&T’s future wholesale rates are therefore unjust and reasonable in violation of Ohio Revised Code Section 4905.22.

# FOURTH CLAIM: VIOLATION OF OHIO LAW (DISCRIMINATORY RATES AND PRACTICES)

1. Granite restates and incorporates the allegations in the above paragraphs as though repeated in full herein.
2. AT&T has, upon information and belief, targeted customers that are using and would use Granite as their provider and is self-provisioning voice services at a rate lower than it charges and will charge Granite.
3. Ohio Revised Code section 4905.33(A) states that a public utility may not

charge, demand, collect, or receive . . . greater or lesser compensation for any services rendered, or to be rendered, except as provided in Chapters 4901, 4903, 4905, 4907, 4909, 4921, and 4923 of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.

Section 4905.35(A) prohibits a public utility from giving any “undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.” The Ohio Supreme Court has determined that these statutes should be applied as follows:

(1) for there to be a violation of R.C. 4905.33, there must be a showing that an entity similarly situated to the complainant is charged rates different from those charged the complainant for the same service, and (2) for there to be a violation of R.C. 4905.35, there must be a showing that an entity similarly situated to the complainant has received preferential or advantageous treatment by virtue of the charge payable by it compared to the charge payable by the complainant for the same

service.

*AT&T Communications of Ohio, Inc., v. Pub. Utils. Comm’n of Ohio*, 88 Ohio St.3d 549, 554; 728 N.E.2d 371, 376 (2000).

1. AT&T’s conduct constitutes unlawful discrimination and preferential treatment under these standards. As explained, AT&T has offered retail customers that are similarly-situated to Granite substantially lower prices than AT&T offers to Granite for what is, upon information and belief, a like and contemporaneous business telephone service. This is true both regard to the prices that AT&T charges under the parties’ existing LWC Agreement and that AT&T proposes for the parties’ future agreement. And, on information and belief, AT&T’s own retail operation does not pay as much for the provision of AT&T voice services as AT&T charges, and intends to charge, Granite. There is no justification for the difference in prices that AT&T charges retail customers and its own retail operation on the one hand and Granite on the other hand. AT&T’s conduct therefore violates Rev. Code section 4905.33.
2. Moreover, AT&T’s retail operation received preferential and advantageous treatment by virtue of the lower prices that it appears to pay as compared to the charges that Granite pays or would pay in the future under AT&T’s proposed rates for the future. This is because the lower charges allow AT&T’s retail operation to charge retail customers prices for business telephone service that Granite cannot match, thereby enabling AT&T’s retail operation to win customers it would not otherwise likely win. This form of discrimination can be inferred from the difference in prices that AT&T charges Granite and AT&T’s retail customers. The Commission has recognized that, when a telecommunications carrier offers its own retail services and also offers those services at wholesale to companies that resell the services, the carrier is effectively operating a “retail arm” that is a “customer” of the carrier’s wholesale operation, even when the retail arm is not a separate company.[[6]](#footnote-6) Moreover, there is no justification for the preferential treatment AT&T provides its retail operation. Accordingly, AT&T’s preferential treatment of its retail operation constitutes a violation of Rev. Code section 4905.35.
3. Further, Section 202(a) of the Act prohibits any common carrier from making unreasonable discrimination in charges or to make or give any undue or unreasonable preference or advantage to any particular person, 47 U.S.C. § 202(a), and should provide guidance to the Commission in this case. Under 47 U.S.C. § 202(a) of the Communications Act, discrimination is unlawful if (1) the services are “like”; (2) there is a price difference between the services; and (3) that difference is unreasonable. *See, e.g.,* *Competitive Telecomms. Ass’n v. FCC*, 998 F.2d 1058, 1061 (D.C. Cir. 1993); *Nina Shahin v. Verizon Delaware LLC, Verizon Long Distance, and Verizon Online, LLC*, Memorandum Opinion and Order, 29 FCC Rcd. 4200, ¶ 9 (2014).[[7]](#footnote-7) AT&T’s conduct meets each one of these requirements. As explained, the business telephone service that AT&T offers its retail customers and Granite are identical. They are therefore “like” services. As also explained, AT&T charges selected business customers rates far below the prices it charges and proposes to charge Granite for the same service. Finally, there is no justification for this difference in price. AT&T’s conduct therefore violates section 202(a) of the Communications Act.
4. In sum, AT&T is unlawfully discriminating by targeting price cuts to current and potential Granite customers for identical services. And it has offered no explanation for either the price increase demands on Granite, or made efforts to address Granite’s potential solutions.

# FIFTH CLAIM:

1. Granite restates and incorporates the allegations in the above paragraphs as though repeated in full herein.
2. Ohio Revised Code section 4927.03(C) states that sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35 apply to telephone companies “to the extent necessary for the commission to carry out sections 4927.01-4927.21.” This means that sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905 apply to the extent necessary for the Commission to rule on a complaint filed against AT&T under Section 4927.21. That provision requires that the Commission hear complaints against a telephone company “alleging that any rate, practice, or service . . . is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any provision of sections 4927.01 to 4927.20.” O.R.C. § 4927.21(A). As explained in the First, Second, Third, and Fourth Claims, AT&T’s rates and practices for and in connection with wholesale services provided now and proposed for the future are unjust, unreasonable, unjustly discriminatory, and unjustly preferential under O.R.C. §§ 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35. Applying those provisions to AT&T’s conduct pursuant section 4927.03(C) yields the same conclusion. Thus, AT&T has violated the prohibition against unjust, unreasonable, or unjustly discriminatory rates and practices under section 4927.03(C).

# PRAYER FOR RELIEF

WHEREFORE, Granite respectfully requests the following relief:

1. That the Commission conclude that AT&T’s actions threaten competition in violation of state and federal laws;
2. That the Commission conclude that the current rates received by AT&T are unjust and unreasonable under state and federal laws;
3. That the Commission conclude that the future rates AT&T demands are unjust and unreasonable under state and federal laws;
4. That the Commission conclude that AT&T’s rates are unjustly and unreasonably discriminatory and preferential under state and federal laws;
5. That the Commission prohibit AT&T from terminating service under the existing LWC Agreement, and from imposing new rates or terms, pending the entry of a final Order by this Commission that determines the issues raised in this Complaint; and
6. That the Commission mandate changes to the wholesale prices that AT&T charges Granite under the existing and future LWC Agreements as needed to ensure that those rates are just, reasonable, not unjustly or unreasonably discriminatory or preferential.

 Respectfully submitted,

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|   | /s/ Michael D. Dortch Michael D. Dortch (0043897)Richard R. Parsons (0082270)Justin M. Dortch (0090048)KRAVITZ, BROWN & DORTCH, LLC65 East State Street, Suite 200Columbus, Ohio 43215Tel: 614-464-2000Fax: 614-464-2002E-mail: mdortch@kravitzllc.com*Counsel for Granite Telecommunications, LLC* |
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**CERTIFICATE OF SERVICE**

The PUCO’s e-filing system will serve notice of this filing upon all parties of record registered with the PUCO’s e-filing system.

Further, I hereby certify that a true and accurate copy of the foregoing was served upon the following counsel for AT&T on , by electronic mail:

Mark R. Ortlieb J. Tyson Covey

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 /s/ Michael D. Dortch

 Michael D. Dortch

1. While AT&T offers voice services to various types of retail customers with rack rates ranging from tens to hundreds of dollars per line, our Complaint focuses on AT&T’s behavior in the voice services market described in paragraph 7. [↑](#footnote-ref-1)
2. *See, e.g.*, Sean Buckley, *AT&T Joins ILEC Chorus on Copper Retirement, Says Competitors Have Enough Notice*, Fierce Telecom (Jan. 11, 2016), http://www.fiercetelecom.com/telecom/at-t-joins-ilec-chorus-copper-retirement-says-competitors-have-enough-notice (describing AT&T’s desire to quickly transition from copper networks to modern ones); Jon Brodkin, *Verizon, AT&T Leaving Landline Phone Networks to Rot, Complaint Says*, Ars Technica (May 13, 2014), https://
arstechnica.com/tech-policy/2014/05/verizon-att-forcing-customers-off-landline-phones-complaint-says/ (describing allegations that AT&T is allowing copper lines to degrade to force transition to fiber). [↑](#footnote-ref-2)
3. Unlike the interconnection agreement, the LWC Agreement is not governed by Sections 251 and 252 of the Act. Instead, the intrastate services provided by AT&T under the LWC Agreement are subject to the Commission’s jurisdiction under the public utility statutes in Ohio, such as Ohio Revised Code Sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35. The FCC does not have jurisdiction over intrastate services provided under the LWC Agreement, although it does have jurisdiction, under Sections 201(b) and 202(a) of the Communications Act, over the interstate and international services provided under the LWC Agreement. [↑](#footnote-ref-3)
4. Granite and AT&T have agreements in other states with similar price increase demands. Ohio is part of the 12-state negotiations. [↑](#footnote-ref-4)
5. According to a 2015 survey of Granite’s customers, the ILEC is the only facilities-based provider in 60-85% of Granite’s customer locations; neither cable nor fiber is generally economically feasible at the vast majority of Granite’s customers’ locations and wireless services lack the necessary features and functionality to serve as a replacement service. *See* Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, to Marlene Dortch, FCC, GN Docket No. 13-5, at 2 (July 27, 2015) (stating that the CIOs of Brooks Brothers and Pier 1 Imports “explained that only companies like Granite have been willing and able to offer TDM-based telephone service to all of the companies’ store locations” and that Pier 1 CIO further “explained that incumbent LECs have been unwilling to provide Pier 1 service outside of the incumbent LECs’ territory”). [↑](#footnote-ref-5)
6. *See* *Complaint of Westside Cellular, Inc. dba Cellnet v. New Par Companies dba AirTouch Cellular & Cincinnati SMSA L.P*., No. 93-1758-RC-CSS, Opinion and Order, at 51 (Ohio P.U.C. Jan. 18, 2001) (“*Westside Cellular*”) (finding that, where Ameritech offered services directly to end users at retail and also at wholesale to companies including Cellnet, “[b]oth Cellnet and Ameritech Mobile’s retail are wholesale customers of Ameritech Mobile’s wholesale”). [↑](#footnote-ref-6)
7. Once it is established that the services are like and there is a price difference between them, the burden shifts to the defendant to prove that the price difference is reasonable. *See MCI Telecomms. Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990); *Nat’l Commc’ns Ass’n Inc. v. AT&T Corp.*, 238 F.3d 124, 130 (2d Cir. 2001). Accordingly, by pleading facts sufficient to show that the wholesale and retail services at issue are “like” and that there is a price difference between them, Granite has established a *prima facie* claim under Section 202(a). [↑](#footnote-ref-7)