



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Granite  
Telecommunications, LLC (U6842C) to  
Expand its Certificate of Public Convenience  
and Necessity to Include Additional Service  
Territories.

Application 16-01-008  
(Filed January 21, 2016)

**JOINT MOTION  
FOR APPROVAL OF SETTLEMENT AGREEMENT**

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August 15, 2016

## **I. INTRODUCTION**

Pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Enforcement Division ("CPED") and Granite Telecommunications, LLC. ("Granite") (collectively, the "Parties") respectfully request that the Commission approve and adopt the proposed attached Settlement Agreement, which resolves all of the issues in CPED's Protest in this proceeding. The Parties believe the proposed settlement is in the public interest, reasonable in light of the record, and consistent with the law. The Parties urge the Commission to approve the Settlement Agreement without modification, a copy of which is attached as Appendix A.

## **II. FACTUAL BACKGROUND**

The Parties have jointly agreed to an undisputed set of facts that form the basis of this agreement and upon which the Commission can base its review of the reasonableness of this Agreement, which are recited in the Settlement Agreement, as follows:

Granite is a Delaware limited liability company with its principal place of business located at 100 Newport Avenue Extension, Quincy, MA 02171. In 2003, Granite applied for authority to provide limited facilities-based and resold local exchange and interexchange telecommunications services in California Application ("A.") 03-08-026, which Decision ("D.") 03-12-048 granted.

On January 9, 2016, Granite filed A.16-01-008 requesting to expand its existing authority to provide limited facilities based and resold local exchange telecommunication services in California ("Original Application"). CPED protested the Original Application on February 11, 2016.

Granite's Original Application states that Granite has not "been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries" nor "is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for

failure to comply with any law, rule or order.” However, CPED staff determined Granite has two instances of a “Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier before the Federal Communications Commission” (“FCC”) in 2004 and 2008. CPED’s Protest alleges that Granite violated Rule 1.1 of the Commission’s Rules of Practice and Procedure in its Application. Under Rule 1.1, any person who transacts business with the Commission agrees to not “...mislead the Commission or its staff by an artifice or false statement of fact or law.”

In Granite’s Reply to CPED’s Protest, Granite states that they were “entirely unaware of the existence of the two informal slamming complaints and the resulting decisions” and “[I]t was never Granite’s intent to mislead the commission through the obfuscation of facts or be anything other than truthful, as sworn by Granite’s Chief Operations Officer.”

CPED’s Protest further alleges that Granite did not provide sufficient proof of financial responsibility. D.95-12-056 and D.91-10-041 require CPCN applicants to provide proof of financial responsibility. The Decision states:

To prove sufficient financial resources, facilities-based applicants are required to demonstrate that they possess a minimum of \$100,000 in unencumbered cash; non-facilities-based applicants are required to demonstrate that they possess a minimum of \$25,000 in unencumbered cash.

Subsequent to filing the Protest, Granite met and conferred with CPED and provided additional documentation. Granite submitted an Amended Application on March 22, 2016 with the additional financial documentation and disclosure of the FCC complaints (“Amended Application”). The Amended Application replaced the Original Application in its entirety. CPED did not protest the Amended Application.

### **III. THE PROPOSED SETTLEMENT AGREEMENT**

#### **A. Joint Statement of the Case**

After settlement discussions, the Parties agreed to a joint factual statement of the case as the factual basis on which to base a resolution of this case. The joint factual statement of the case is set forth in the proposed attached Settlement Agreement.

#### **B. Acknowledgement**

Granite acknowledges that Rule 1.1 requires applicants to provide true and accurate information in documents filed at the Commission, and the Application requires Granite to disclose whether the applicant has not “been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries” nor “is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order” and that Granite did not disclose the existence of those complaints. In the attached proposed Settlement, Granite states that it will fully meet its regulatory and legal obligations in California in the future. Subject to Granite’s ongoing compliance with this Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, Granite and CPED acknowledge that all issues raised in CPED’s protest of Granite’s application for an expanded CPCN will have been fully resolved.

#### **C. Payment**

In order to resolve the legal issues CPED raised in its Protest, Granite will pay a \$15,000 penalty to the State of California General Fund. Granite will pay the \$15,000 within 30 days after the calendar date of the Commission’s approval of this Settlement Agreement and approval of its expanded CPCN application.

**D. Reporting Requirements**

For a period of one year following the effective date of the Commission decision granting A.16-01-008 (“Effective Date”), Granite will report information regarding all California customers who have terminated with Granite or been provided with a credit to the Chief of the Utility Enforcement Branch (“UEB”) and Investigator, Brian Hom. The reports will be submitted on a quarterly basis. The first report will cover the time period between the effective date of the Commission decision granting A.16-01-008 (“Effective Date”) and the end of the calendar quarter following the calendar quarter in which the Effective Date falls. The remaining three (3) reports will cover the subsequent calendar quarters. The credit reports should provide data including company name, address, BTN, invoice date, description, and credit amount, broken down by month. The termination reports should provide data including company name, parent account number, address, BTN, and date of termination, broken down by month. The reports will be submitted via email.

**IV. THE PROPOSED SETTLEMENT IS REASONABLE IN LIGHT OF THE RECORD, CONSISTENT WITH THE LAW AND PRECEDENT, AND IN THE PUBLIC INTEREST**

Pursuant to Rule 12.1(d) of the Commission’s Rules of Practice and Procedure, settlements must be reasonable in light of the record, consistent with the law, and in the public interest. The Parties believe that the proposed settlement in this matter satisfies each of those criteria, and therefore recommend that the Commission approve and adopt the proposed settlement.

**A. The Proposed Settlement Is Reasonable In Light Of the Record**

CPED has engaged in discovery, including written data requests and review of financial documents Granite provided, and believes there is a sufficient factual record in this case. Based on the discovery obtained by CPED and Granite’s voluntary disclosures, the Parties have agreed to an undisputed set of facts upon which the Commission can form the official record, which is set forth in the

Settlement Agreement. The Parties believe the Settlement Agreement addresses the issue of FCC investigation as well as violations of statutes, laws, or public utilities' rules and failure to provide adequate proof of financial viability in a reasonable manner in light of the record.

**B. The Proposed Settlement Is Consistent With The Law And Precedent**

Nothing in the Settlement Agreement contravenes any statute or Commission decision or rule. Granite acknowledges that Rule 1.1 requires applicants to provide true and accurate information in documents filed at the Commission, and the Application requires Granite to disclose whether the applicant "received consumer complaints" and that Granite did not disclose the existence of all consumer complaints. Granite further acknowledges that its financial showing was insufficient. Granite commits to full compliance with those provisions. Granite agrees to make a payment totaling \$15,000 to the State's General Fund as a result. Therefore, the Settlement Agreement is consistent with and enforces applicable law.

**C. The Proposed Settlement Is In The Public Interest**

The Settlement Agreement is consistent with the Commission's well-established policy of supporting the resolution of disputed matters through settlement, reflects a reasonable compromise between the Settling Parties' positions, and will avoid the time, expense and uncertainty of evidentiary hearings and further litigation. Accordingly, the Settlement Agreement is in the public interest and should be adopted by the Commission without material change.

**V. CONCLUSION**

For the reasons stated above, the Parties believe the proposed Settlement Agreement resolves all of the issues set forth in CPED's Protest, and that the proposed Settlement Agreement is reasonable in the light of the record, consistent with the law and precedent, and in the public interest. Therefore, the Parties

jointly request that the Commission adopt the proposed Settlement Agreement in the form attached as Appendix A.

Respectfully submitted,

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