



Communications

January 8, 2018

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation
WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter provides notice that on January 4, 2018, the undersigned and Philip Macres, Principal, Klein Law Group PLLC, on behalf of O1 Communications, Inc. ("O1"), met separately with:

- (1) Jay Schwarz, Wireline Advisor to Chairman Pai;¹
- (2) Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn;²
- (3) Amy Bender, Legal Advisor, Wireline, to Commissioner O'Rielly;³
- (4) Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; and
- (5) Wireline Competition Bureau ("WCB") staff that included Lisa Hone(*), Pamela Arluk, Lynne Engledow, Victoria Goldberg(*), Gil Strobel(*), John Hunter, Irina Asoskov(*), Gregory Capobianco, Rhonda Lien(*), Joseph Price, Douglas Slotten(*), and Shane Taylor(*).⁴ David Sieradzki from the Wireless Telecommunications Bureau also joined this meeting.

During each of these meetings, the attached handout was distributed and discussed along with related points previously made in filed comments.⁵

¹ Brad Jenkins, Chief Executive Officer, and Jim Beausoleil, Chief Financial Officer, of O1 also participated in this meeting via teleconference.

² Mr. Aiken participated telephonically.

³ See note 1, *supra*.

⁴ *Id.*; Individuals noted with an asterisk "("*)" participated in this meeting via teleconference.

⁵ Reply Comments of O1 Communications, Inc., WC Docket Nos. 10-90; CC Docket No. 01-92, at 2 & 3-9 (filed Nov. 20, 2017), *available at* <https://ecfsapi.fcc.gov/file/112025414323/o1replycomments11202017.pdf>.

In addition, O1 discussed examples of the financial impact on O1 that are associated with AT&T Mobility's and T-Mobile's disconnections of O1's direct connects and the competitive market for tandem switched access services for calls destined to AT&T Mobility and T-Mobile.

O1 explained that before AT&T Mobility disconnected O1's direct connections (which had been in place since 2011) the parties agreed to exchange all traffic at bill-and-keep and thus, O1's per minute of use ("MOU") charges were zero (\$0). After AT&T Mobility disconnected the direct connections in early 2016, if O1 were to route those same MOUs through AT&T California's access tandems (which is AT&T Mobility's ILEC affiliate), the approximate cost (which is provided for purposes of illustration and assumes a fixed number of MOUs) would have risen to \$154,000 per month (or \$1,848,000 annually).⁶ On the other hand, if O1 would have routed the traffic through AT&T Corp.'s IP long distance service, AVOICS, the same number of MOUs would have cost O1 approximately \$122,500 per month (or \$1,470,000 annually).⁷

In addition to experiencing an increase in the per MOU rate to transmit calls to AT&T Mobility's customers, O1 was also forced to add connections to AT&T California's tandems and experienced an associated increase in its monthly trunking costs. Moreover, O1 lost customers that limited the number of intermediate carriers through which O1 could route traffic and the revenue associated with those customers.

As to T-Mobile's disconnections of O1's IP-based direct connections that had been in place since 2011, O1's cost to route traffic to T-Mobile was zero (\$0). After T-Mobile disconnected O1's direct connections in late 2015, O1 was forced to route its traffic destined to T-Mobile through AT&T California's tandems at its tariffed switched access rates. For illustration purposes and assuming a fixed number of MOUs per month, the same number of MOUs that cost O1 nothing over the direct connections, would cost O1 approximately \$154,000 per month⁸ (or \$1,848,000 annually) at AT&T California's tariffed rates plus the cost of the additional trunking (O1 understands AT&T California then routed O1's traffic to Inteliquent). If O1 routed the traffic directly through Inteliquent before its direct connects were disconnected, O1's costs would have been \$33,000 per month (or \$396,000 annually); however, after the disconnection Inteliquent's rates increased; O1's costs would have increased to approximately \$142,000 per month (or

⁶ This figure assumes that 50% of the traffic would have been subject to AT&T California's interstate tariffed rates and 50% of the traffic would have been subject to AT&T California's intrastate tariffed rate and, for simplicity, averages AT&T California's three interstate zone MOU rates.

⁷ This figure was calculated based on the rate charged to O1 for AT&T Corp.'s AVOICS long distance service. In fact, contrary to Commission rules, AT&T Mobility attempted to assess a per minute of use rate retroactively on O1 for interMTA minutes that O1 transmitted over the direct connections even though no agreement was in place to assess a per minute of use rate on that traffic.

⁸ See note 6, *supra*.

\$1,704,000 annually). The harm to competition caused by these increased costs translates to fewer choices and higher prices to consumers.

During one or more of the meetings, OI also emphasized that:

- The optimal approach for addressing traffic aggregation issues is a requirement that carriers provide direct interconnection at their network edge, for both originating and terminating traffic, where justified by traffic volumes.
- Despite the transition of terminating switched access rates to bill-and-keep, ***certain national wireless carriers are, on information and belief, engaging in traffic aggregation schemes at the terminating end of calls.*** By refusing direct interconnection (and in some cases terminating existing connections altogether) for all terminating traffic or certain types of terminating traffic (*e.g.*, interMTA and/or wholesale traffic), these wireless carriers are forcing such terminating traffic to be routed through their “intermediate carrier partners” or “affiliates” and, as a result, originating carriers no longer can terminate such traffic to these wireless carriers on a bill-and-keep basis.
- OI filed complaint proceedings against AT&T Mobility⁹ and T-Mobile¹⁰ before the California Public Utilities Commission, and the procedural posture of these proceedings was discussed.
- The market inefficiencies and anti-competitive effects created by the traffic aggregation and arbitrage schemes of these national wireless carriers far outweigh other traffic aggregation allegations.
- AT&T Mobility and T-Mobile have transitioned from what could possibly be characterized as “best practices” for direct connections to “worst practices” by disconnecting the direct connections and forcing poorer quality and inefficient indirect connections through their intermediate carrier partners.
- AT&T Mobility and T-Mobile are using the reference to indirect interconnections in Section 251(a)(1) as a shield against direct connections, even when such direct connections are more economically efficient than indirect interconnection and are thereby harming competition rather than promoting competition.
- The Commission may grant limited forbearance from the application of the language “or indirectly” in Section 251(a)(1) of the Act,¹¹ so that national wireless carriers make direct connections available to telecommunications carriers that seek

⁹ See California Public Utilities Commission, Docket No. C. 15-12-020.

¹⁰ See California Public Utilities Commission, Docket No. C. 15-11-018.

¹¹ 47 U.S.C. § 251(a)(1).

to send, via such direct connections, the amounts of traffic referenced in the proposed Direct Connect Rule.¹² We explained that the statutory forbearance criteria under 47 U.S.C. § 160(a) would be satisfied and that this relief is necessary because (1) certain wireless carriers are manipulating Section 251(a)(1) of the Act (which allows them to fulfill their general interconnection obligations through either direct or indirect connections with other telecommunications carriers) to engage in arbitrage schemes that involve denying direct connections to and imposing expensive, anticompetitive, and inefficient indirect routing on telecommunications carriers terminating certain types of traffic and (2) such wireless carriers are using their intermediate carrier partners to provide the indirect connections to assess charges that the wireless carriers could not assess directly.

- T-Mobile and AT&T Mobility are expected to marginalize the significance of this issue and their anticompetitive conduct.

Notably, on January 5, 2018 (which was the day after the OI's above-referenced meetings at the Commission), T-Mobile responded to an earlier filing on this topic and has already attempted to marginalize this serious issue by characterizing it as a "distracting debate."¹³ OI intends to respond separately to T-Mobile's January 5 Letter and address the various misleading statements contained in it.

If you have questions or need additional information, do not hesitate to contact me.

Sincerely,

/s/ Michel Singer Nelson

Michel Singer Nelson
Counsel and Vice President of Regulatory
and Public Policy
OI Communications, Inc.

cc: Todd Daubert (all via email)
Jay Schwarz
Claude Aiken
Amy Bender

Peter Trachtenberg
David Sieradzki
John Hunter
Irina Asoskov

¹² To be clear, such forbearance would only prevent a wireless carrier from denying another carrier's Section 251(a)(1) request for direct connects to the wireless carrier in such circumstances. The proposed forbearance would not limit a telecommunications carrier from choosing to avail itself of indirect connections that may otherwise be available.

¹³ See Letter from Todd Daubert, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, FCC WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 (dated Jan. 5, 2018) ("T-Mobile's January 5 Letter").

Jamie Susskind
Travis Litman
Lisa Hone
Pam Arluk
Lynne Engledow
Victoria Goldberg
Gil Strobel

William Andrie
Gregory Capobianco
Edward Krachmer
Richard Kwiatkowski
Rhonda Lien
Joseph Price
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Shane Taylor

I. TO ADDRESS ARBITRAGE CONCERNS WITH THE ROUTING OF 8YY AND OTHER TYPES OF TRAFFIC, THE FCC SHOULD IMMEDIATELY ADOPT THE PROPOSED DIRECT CONNECT RULE.

- O1 supports Consolidated *et al.*'s proposal that all wireline and wireless carriers make direct connections available to requesting carriers that send or receive at least four (4) T-1s of originating and/or terminating traffic per month (or for IP networks or other modern technology, 200,000 monthly MOUs sustainable average over a 30-day period), **for all traffic—i.e., all local and long distance traffic along with all wholesale and retail traffic** (the “Four T1 Standard”), with a zero rate per MOU for all terminating traffic (“Direct Connect Rule”).¹
- O1 agrees that the Four T1 Standard is reasonable by industry standards.
- The Direct Connect Rule, if adopted, would help **stop harmful arbitrage schemes where direct connects are not made available.**
 - Requiring terminating carriers to make direct connections available would stop arbitrage schemes where terminating wireless carriers require traffic to be routed to them via their intermediate carrier partners that impose charges the wireless carriers cannot themselves impose.
- Adoption of the Direct Connect Rule would serve the public interest by promoting competition among intermediate carriers that, in turn, would:
 - Reduce costs of terminating traffic, improve service quality, and spur innovation
 - Promote network redundancy, which is essential to public safety and reducing network outages and service disruptions caused by traffic concentration

II. O1 HAS BEEN HARMED BY ARBITRAGE SCHEMES WHERE THE TERMINATING WIRELESS CARRIER DISCONNECTS O1'S EXISTING DIRECT CONNECTIONS AND FORCES O1 TO ROUTE TRAFFIC INDIRECTLY THROUGH THE WIRELESS CARRIER'S INTERMEDIATE CARRIER PARTNER(S).

- In late 2015 and early 2016, two national wireless carriers terminated their direct connections with O1—**direct connections that had been in place for years**—and required O1 to instead indirectly route traffic destined for such wireless carriers' end-users through their intermediate carrier partners.
- The disconnection of the direct connections forced O1 to pay the intermediate carrier partners' high transit rates, tariffed switched access rates, or inflated commercial rates.
- Upon information and belief, both wireless carriers benefit from the new, artificially created revenue streams their intermediate carrier partners receive as a result of the forced indirect routing.

¹ Letter from Philip Macres, Counsel for Consolidated Communications *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92, at Attachment p.2 (filed Dec. 4, 2017) (“Consolidated *et al.* Dec. 4, 2017 *Ex Parte* Notice”).

A. AT&T Mobility Forced O1 to Inefficiently Route Terminating Traffic Indirectly through AT&T Mobility's Intermediate Carrier Partners at Rates AT&T Mobility Could Not Directly Charge.

- *Background.* Prior to AT&T Mobility disconnecting O1's direct connections, AT&T Mobility and O1 had been exchanging all traffic destined to each other's networks over direct connections at bill-and-keep.
 - AT&T Mobility demanded that O1 re-negotiate the direct connection agreement. Under the new agreement, instead of continuing to exchange all traffic – both intraMTA and interMTA – over the direct connections, O1 was required to route the interMTA traffic indirectly to AT&T Mobility through its long distance affiliate AT&T Corp. using its Voice Over IP Connect Service (“AVOICS”).
 - AT&T Mobility ultimately forced O1 to route calls inefficiently, although AT&T Mobility was “willing” to leave the direct connections connected only for the delivery of intraMTA traffic.
- Routing both interMTA and intraMTA traffic over the same direct connections is efficient and technically feasible; the only apparent basis for AT&T Mobility's new requirement was to create a new revenue stream in the routing of interMTA traffic.
- *Impact of indirect routing.* Requiring interMTA traffic to be routed through AT&T Corp. allowed it to set rates unilaterally and at unreasonable levels, as such rates are not subject to regulation or competition.
 - Since the disconnection of O1's direct connections, AT&T Corp.'s AVOICS rates have increased significantly. Consequently, O1 does not route traffic destined for AT&T Mobility's end-users through AT&T Corp's AVOICS.
 - Without direct connections to AT&T Mobility, O1's primary alternative route for delivering traffic to AT&T Mobility's end-users is through its ILEC affiliates at their transit or tariffed tandem switched access rates.
 - O1 had to purchase additional interconnection trunks from one of AT&T Mobility's ILEC affiliates to route calls destined to AT&T Mobility's end users.
 - Requiring O1 and the other carriers to route terminating traffic destined for AT&T Mobility's end-users through its ILEC affiliate generates millions of dollars of revenue for the ILEC that would not exist absent AT&T Mobility's refusal to allow O1 to send interMTA traffic over direct connections.
 - To the extent that any indirect routes to deliver traffic to AT&T Mobility's end-users are available through any non-affiliated carriers, such options are only available because AT&T Mobility is discriminating against O1 and many others to the advantage of a limited number of CLECs that AT&T Mobility has granted direct connections for interMTA traffic.
 - O1 is currently engaged in litigation with AT&T Mobility at the California Public Utilities Commission to address this discrimination.²

² See *O1 Communications, Inc. v. New Cingular Wireless PCS, LLC*, Docket No. C.15-12-020 (Cal. P.U.C.).

B. T-Mobile Terminated Direct Connections to O1, Forcing O1 to Inefficiently Route Terminating Traffic Indirectly through T-Mobile's Intermediate Carrier Partner at Rates T-Mobile Could Not Directly Charge.

- *Background.* For years, O1 and T-Mobile had direct connections in place and exchanged millions of minutes of all types of traffic at bill-and-keep.
- *T-Mobile's partnership with Inteliquent.* In August 2015, T-Mobile and Inteliquent (a third-party CLEC) publicly announced an agreement through which Inteliquent would generally serve as T-Mobile's "**sole** interconnection provider."³ That is, virtually all phone calls destined to T-Mobile's end users were to be routed from other carriers through Inteliquent.
 - The redacted agreement that O1 has reviewed regarding T-Mobile's arrangement with Inteliquent shows that T-Mobile receives "credits" against its bill to compensate it for most types of minutes of use that are routed through Inteliquent to T-Mobile's end users. In other words, T-Mobile is compensated for most types of calls terminated to its end users that Inteliquent routes to T-Mobile, a revenue stream that would not exist but for this arrangement.⁴
 - This arrangement **permits T-Mobile to financially benefit from a revenue stream that is not permitted under federal intercarrier compensation rules**, because wireless carriers are not permitted to charge for terminating traffic to their customers without an agreement with the calling party's carrier.
- Shortly after the announcement of T-Mobile's partnership with Inteliquent (and with only one day's notice to O1), T-Mobile disconnected its direct connections with O1, blocking all traffic so that calls from O1's customers (both wholesale and retail) to T-Mobile's end users could not be completed.
- *Impact of indirect routing requirement.* As a result of the disconnection, Inteliquent's rates to route traffic indirectly through it **increased by 400%. Inteliquent's rate increase skyrocketed O1's costs that were previously at bill-and-keep (i.e., 0) with T-Mobile.** In addition, **O1's customers experienced high rates of post dial delay and non-completion of their telephone calls** because the indirect routes available to get traffic from O1's customers to T-Mobile's end users did not have sufficient capacity to handle the sudden increase of traffic, which had previously been exchanged over direct connections.
 - Today, T-Mobile continues to force O1 to route traffic through indirect routes that ultimately include T-Mobile's artificially inserted intermediate carrier partner, i.e., Inteliquent, which charges unreasonably high rates for O1 to terminate traffic to T-Mobile's end users.

³ See Inteliquent Press Release, Inteliquent Announces Entry Into Breakthrough Agreement (dated Aug. 17, 2015) (emphasis added), available at <http://ir.inteliquent.com/releasedetail.cfm?releaseid=927943>; see also Letter from Ronald W. Del Sesto, Jr., Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-25 *et al.*, at attached FCC Presentation p.5 (filed May 24, 2016).

⁴ See Letter from Philip J. Macres, Principal, Klein Law Group, PLLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at n.8 and Exhibit A, (filed Dec. 20, 2017).

III. THE FCC SHOULD IMMEDIATELY INTERCEDE AND ADOPT THE PROPOSED DIRECT CONNECT RULE.

A. The FCC Stated It Would “Intercede” If a CMRS provider “Refuses a Reasonable Request to Interconnect” to “Gain an Unfair Competitive Advantage.”

- In the 1995 proceeding on wireless interconnection, the FCC assured the industry that while it initially was not requiring wireless providers to directly interconnect with other carriers upon request, that it was **“ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect,”** and that it would be **“particularly vigilant in policing, where they exist, any efforts by CMRS providers to deny interconnection in order to gain an unfair competitive advantage”** or the denial is otherwise “motivated by anticompetitive animus.”⁵
- The FCC observed that one situation that would warrant requiring wireless providers to directly interconnect would be where the wireless provider is affiliated with a LEC and the wireless provider refuses direct connection in order to maintain the revenue stream to the LEC associated with routing traffic between other carriers and the affiliated wireless provider. The FCC found that this would raise the competitors’ “costs of doing business and hence hinder competition.”⁶
 - The two examples addressed above with AT&T Mobility and T-Mobile represent the type situation cited by the FCC that would warrant ordering wireless providers to directly interconnect with requesting wireline carriers.
 - While T-Mobile and Inteliquent are not corporate affiliates, the agreement between them for the Inteliquent to be T-Mobile’s “sole interconnection provider” makes them affiliated in the context of partnering to route traffic from other carriers that is destined for T-Mobile’s customers and sharing the financial gain associated with intercepting such traffic.

B. The FCC Can Immediately Adopt the Direct Connect Rule Because It Already Issued an FNPRM on When and Who May Seek Section 251(a)(1) Direct Connects.

- The FCC may immediately adopt the proposed Direct Connect Rule pursuant to the Further Notice of Proposed Rulemaking associated with the *2011 USF/ICC Transformation Order*, which specifically asked:

Should the Commission interpret section 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should we otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?⁷

⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666, ¶ 43 (1995).

⁶ *Id.*

⁷ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 1383 (2011) (“*2011 USF/ICC Transformation Order*”) (subsequent history omitted); *see also id.*, ¶¶ 833-842 (discussing the Commission’s direct and ancillary authority under Sections 201, 251(a)(1), 251(b)(5) and 332 to allow ILECs to request interconnection from a CMRS provider and to invoke the Section 252 negotiation and arbitration procedures to resolve disputes).