



January 11, 2018

Via ECFS

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

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

Dear Secretary Dortch:

O1 Communications, Inc. (“O1”) hereby respectfully responds to the January 5, 2018 letter filed by T-Mobile USA, Inc. (“T-Mobile”) in the above-referenced proceedings.¹ As discussed below, T-Mobile’s letter includes a number of misleading and/or inaccurate statements along with specious arguments that seek to justify its anticompetitive conduct. The Commission should address such inappropriate conduct immediately by adopting the proposed Direct Connect Rule.²

First, T-Mobile’s assertion that it “does not refuse to provide direct connections”³ is misleading, because—as T-Mobile itself admits—it is only willing to establish a direct connection with other carriers, including O1, *solely* for the exchange of “retail” traffic.⁴ As such, T-Mobile admittedly does not permit direct connections to be used for wholesale traffic (*e.g.*, voice traffic carried by intermediate providers for other service providers). This is consistent with O1’s experience. While it is difficult to even identify and separate retail and wholesale traffic, in an effort to compromise, O1 is attempting to work with T-Mobile to devise a

¹ 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 Jan. 5, 2018 Letter”).

² See Letter from Michel Singer Nelson, Counsel and Vice President of Regulatory and Public Policy, O1, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 at presentation p.1 (Jan. 8, 2018) (“O1’s Jan. 8, 2018 Letter”) (describing the “Direct Connect Rule”); *see also* 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).

³ T-Mobile’s Jan. 5, 2018 Letter, at 2 (stating that T-Mobile is willing to establish a direct connection with a carrier that “seeks to use the direct connection solely for the exchange of traffic destined to, or originated by, its own end users”).

⁴ *Id.*

methodology to do so; however, it has proven challenging to even agree to definitions of "wholesale" vs. "retail" traffic. Moreover, as another carrier noted, T-Mobile's traffic segregation requirement is entirely nonsensical, since T-Mobile is ultimately receiving the "same un-segregated mix of retail and wholesale traffic...it is just sent via the forced metering arrangements" from Inteliquent.⁵

Second, while T-Mobile claims that under its latest agreement with Inteliquent that T-Mobile "does not receive any revenue in the form of payments, credits, or other type of benefit,"⁶ T-Mobile conspicuously minimizes the fact that under the original 2015 agreement with Inteliquent that T-Mobile *did receive credits*. Moreover, T-Mobile has not produced its current agreement with Inteliquent on the record so that the Commission and parties may evaluate the validity of T-Mobile's claim. Nor has T-Mobile provided a full explanation of how any rate Inteliquent assesses T-Mobile is derived (even if the rate is \$0 or Inteliquent otherwise provides valuable services to T-Mobile for free or at reduced rates). Without such information, the Commission cannot rely on the credibility of T-Mobile's carefully-worded assertions.

In any event, as a consequence of the T-Mobile and Inteliquent agreement, T-Mobile has provided Inteliquent with a "bottleneck monopol[y]" that has allowed Inteliquent to extensively and artificially raise its rates for routing traffic to T-Mobile.⁷ Although T-Mobile's offer to allow direct connections for "retail" traffic provides alternative routes for carriers that have retail-focused business plans, carriers providing wholesale services (either exclusively or comingled with retail services, such as O1) are effectively forced to route traffic through Inteliquent at rates it unilaterally sets. Indeed, as explained in earlier filings, Inteliquent's rates for terminating traffic to T-Mobile skyrocketed by 400% shortly after the exclusive agreement between T-Mobile and Inteliquent was announced in 2015. The rates in the competitive marketplace for this traffic (when direct connections were in place between T-Mobile and multiple carriers for wholesale and retail traffic) rose from an average of \$0.0005 per MOU to an astounding \$0.002 per MOU. Competition in the tandem/transit market had previously driven the rate down; however, the opposite has occurred since Inteliquent generally serves as T-Mobile's "sole

⁵ *Informal Complaint by CenturyLink Communications, LLC Against T-Mobile USA, Inc. and Request for Mediation*, File No. EB-16-MDIC-0020, at 6 (filed Nov. 10, 2016). As O1 explained previously, for years prior to 2015, O1 and T-Mobile had direct connections in place and exchanged millions of minutes of all types of traffic at bill-and-keep; however, when T-Mobile apparently changed its interconnection policy in 2015, T-Mobile disconnected its direct connects with O1. See O1's Jan. 8, 2018 Letter, at presentation p.3.

⁶ T-Mobile's Jan. 5, 2018 Letter at 2.

⁷ *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 30 (2001); see also *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Eighth Report and Order and Fifth Report and Order on Reconsideration, 19 FCC Rcd 9108, ¶¶ 17 & 119 (2004); id at n.59 (citing Verizon Wireless White Paper at 19 n.58 ("CMRS carriers wield as much 'monopoly power' here as CLECs....")).

interconnection provider.”⁸ Of course, the increased cost to carriers such as O1 has led to price increases to consumers and harms the public interest.

Third, T-Mobile’s assertion that its interconnection decisions are driven by its goals to “provid[e] the highest quality service...and expedit[e] the IP Transition” is specious.⁹ Sending traffic indirectly, rather than directly, does not improve the quality of service. Rather, indirect routing degrades the quality of the service. Moreover, contrary to T-Mobile’s claims, because O1’s prior direct connects to T-Mobile that it disconnected *were efficient, IP-based connections that complied with T-Mobile’s POI requirements*, T-Mobile’s actions have “turned the clock back” on ICC reform and direct IP interconnection. As such, T-Mobile’s rationale for disconnecting direct connects defies logic and does not otherwise withstand scrutiny.

Lastly, T-Mobile’s claims that it does not accept wholesale traffic due to concerns with fraud and robocalls are disingenuous for two reasons. First, as noted above, T-Mobile is receiving the same traffic indirectly through Inteliquent. Second, fraud and robocalls are not likely to be more prevalent with wholesale traffic than retail traffic, and T-Mobile has failed to provide any evidence demonstrating otherwise. While T-Mobile states it has implemented measures with Inteliquent to reduce the amount of fraud and robocalls terminated to T-Mobile, it ignores the fact that both retail and wholesale carriers have an economic incentive to limit unlawful traffic from their networks in order to provide the highest quality services to their customers. If one network is frequently subject to more fraudulent traffic or robocalls than others, customers will naturally avoid that network and choose to route their traffic to networks that do not subject their customers to such abuse. While O1 has been, and is continuing to be, willing to work with T-Mobile to implement measures to protect our networks and consumers from fraud and robocalling, this objective does not justify T-Mobile imposing inefficient, indirect routing requirements, increased costs, and degraded service quality on carriers that offer services to both wholesale and retail customers. This is by no means a legitimate basis for T-Mobile to offer preferential terms to Inteliquent for the exchange of traffic compared to the terms offered to other carriers.

At bottom, T-Mobile’s assertions are misleading, inaccurate and/or otherwise lack merit. A close evaluation of its claims and the factual record demonstrates that T-Mobile’s conduct is providing T-Mobile and Inteliquent with an “unfair competitive advantage” that is “motivated by anticompetitive animus,” which the Commission should address promptly.¹⁰ That said, the Commission should immediately open an investigation into this improper conduct, and should extensively question T-Mobile and Inteliquent on their exclusive arrangement and T-Mobile’s disconnections of direct connects. In the meantime, in order to prevent imminent harm to competition and promote the public interest, O1 urges the Commission to stop such ongoing abuse by immediately issuing an order that adopts the proposed Direct Connect Rule.

⁸ 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).

⁹ T-Mobile’s Jan. 5, 2018 Letter at 2-3.

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

Please contact me if you have any questions or would like additional information about the issues discussed in this letter.

Sincerely,

/s/ Michel Singer Nelson

Michel Singer Nelson
Counsel and Vice President of Regulatory
and Public Policy
O1 Communications, Inc.

/s/ Philip Macres

Philip Macres
Principal
Klein Law Group^{PLLC}

Outside Counsel for O1 Communications,
Inc.

cc: Todd Daubert (all via email)
Jay Schwarz
Claude Aiken
Amy Bender
Jamie Susskind
Travis Litman
Lisa Hone
Pam Arluk
Lynne Engledow
Victoria Goldberg
Gil Strobel

Peter Trachtenberg
David Sieradzki
John Hunter
Irina Asoskov
William Andrle
Gregory Capobianco
Edward Krachmer
Richard Kwiatkowski
Rhonda Lien
Joseph Price
Douglas Slotten
Shane Taylor