

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of)	
)	
Updating the Intercarrier)	WC Docket No. 18-155
Compensation Regime to Eliminate)	
Arbitrage)	
)	

COMMENTS OF O1 COMMUNICATIONS, INC.

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O1 Communications, Inc. ("O1") respectfully files these Comments pursuant to the Commission's July 2, 2018 Public Notice¹ and in response to the Commission's May 17, 2018 Notice of Proposed Rulemaking ("Access Arbitrage NPRM").²

I. INTRODUCTION AND SUMMARY

O1 is a California-based competitive local exchange ("CLEC") and interexchange carrier ("IXC") that provides a variety of services including wholesale and retail interconnected and non-interconnected Voice over Internet Protocol ("VoIP") services.³ O1's services enable its small and medium business, VoIP provider and IXC customers to send and receive local, long distance and toll free voice calls to and from customers of other VoIP providers and carriers. O1's connectivity to other providers is comprised of both direct and indirect connections. In some situations, O1 may choose to interconnect to another carrier through an incumbent local exchange carrier ("ILEC") tandem or through the tandem of a competing tandem provider. In other situations, O1 chooses to establish direct interconnections with another carrier in order to reduce its transit and switched access expenses and enable more efficient routing between O1's and the interconnecting carrier's network. In a third scenario, O1 hands the call off to another IXC with whom O1 has entered into a wholesale service arrangement by which the other IXC terminates the traffic through its own direct connections. Decisions about which option to use are based on economics and O1's network efficiencies. Unfortunately, however, O1's experience

¹ *Wireline Competition Bureau Announces Comment Dates for NPRM on Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket 18-155 (rel. July 2, 2018)

² *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 (rel. June 5, 2018) ("Access Arbitrage NPRM").

³ O1 provides services on its own as well as in conjunction with its affiliates, Vaya Telecom, Inc. and Inter Vista Networking, Inc.

is that its method of interconnection is often determined not by O1, but by the unilateral decisions of the terminating carriers.

These Comments will focus on the questions in the Access Arbitrage NPRM that address an "access arbitrage scheme involving a revenue sharing or other type of agreement between an intermediate access provider and a terminating carrier" such as a Commercial Mobile Radio Service ("CMRS") provider⁴ and will describe the harm caused to competition and consumers when the networks serving the called party require networks serving the calling party to route their traffic only indirectly, through affiliated or unaffiliated partner networks that hold a bottleneck monopoly on the only route available to reach the called parties.

II. DISCUSSION

A. Terminating Carriers Should Have an Obligation to Allow Direct Connection If Requested.

As demonstrated by the Comments filed last fall in response to the Commission's request to refresh the record in the long-standing intercarrier compensation dockets,⁵ terminating carriers should have the obligation to accept a request for direct termination because the originating carriers with the obligation to pay for the call should be able to determine which option – direct or indirect connection -- makes the most sense.⁶ This would also promote the continuation of healthy competition in the transit market. The Carrier Coalition demonstrated that requiring terminating carriers to permit direct connection "is necessary to stop arbitrage schemes under which certain terminating carriers require traffic to be sent through a designated intermediate

⁴ Access Arbitrage NPRM at ¶31.

⁵ *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (rel. Sept. 8, 2017) ("Notice").

⁶ Comments of CenturyLink, WC Docket No. 01-92 (Oct. 26, 2017) ("CenturyLink Comments") at 8-9.

carrier partner that imposes charges that the terminating carrier could not impose itself."⁷

Moreover, requiring direct connection "will increase the availability of competitive routing and interconnection services" and "promote competition among intermediate carriers, which will drive costs down, improve service quality and spur innovation."⁸ Additionally, the Coalition pointed out that requiring direct connection furthers redundancy, which "promotes public safety and reduces traffic concentration problems, such as network outages and traffic disruptions."⁹

AT&T also encouraged the Commission to adopt a rule "that the carrier that bears the financial responsibility to deliver traffic to (or from) the edge has the unfettered right to choose how and by what arrangements it will deliver that traffic to (or from) the designated network edge" because, it too observes carrier tactics designed to force a sending carrier to use inefficient and costly arrangements to deliver traffic to their network.¹⁰ AT&T explains, "Under the current Commission rules, there is a mismatch because the sending carrier can be obliged in most cases to deliver and pay the costs of transporting the call to the terminating end office, but then some terminating carriers and/or intermediate transport providers have insisted that they have the right to dictate the transport route used by the sending carrier," which creates arbitrage activities.¹¹ AT&T therefore urges the Commission to adopt a rule that "[t]he receiving carrier would be obligated to accept the traffic at its edge, and could not refuse to interconnect at that point, or

⁷ Comments of Peerless Network, Inc., West Telecom Services, LLC, Peninsula Fiber Network, LLC, Alpha Connect, LLC, Rural Telephone Service Company, Inc., Nex Tech, LLC and Tennessee Independent Telecommunications Group, LLC, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("Carrier Coalition Comments") 11-22.

⁸ Id. at 21.

⁹ Id. at 22-23.

¹⁰ Comments of AT&T Services, Inc. to Refresh the Record, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("AT&T Comments") at 7-14.

¹¹ Id.

impose conditions or obligations on the interconnection (so long as the method of interconnection were technically feasible)." ¹²

O1 has likewise observed, and has been subjected to, arbitrage schemes whereby, when acting as terminating carriers for the called party, wireless carriers have unilaterally disconnected existing direct connections – *that had been in place for years* -- and have refused to permit O1 to continue to directly interconnect with their networks. Instead, O1 is forced to terminate all traffic through a single – or perhaps a limited few – intermediate carrier(s) designated by the wireless provider. After this occurred, instead of sending traffic directly at bill and keep, O1 is now required to pay a high transit or tariffed switched access rates, or inflated commercial rates of these single or select few intermediate carriers. ¹³

Upon information and belief, these wireless providers typically also simultaneously enter into agreements with the selected intermediate carrier(s) to terminate their traffic – by which the wireless provider obtains a credit or payment associated with the access charges imposed by the intermediate carriers for the transit/tandem services. In at least one case, where the intermediate carriers are affiliates of the wireless provider, an express agreement to revenue share may not exist but the corporate entity as a whole benefits from a revenue stream that would not be available if carriers were not forced to terminate all of their traffic destined to the wireless affiliate through the indirect routes of its affiliates.

¹² Id.

¹³ See *O1 Communications, Inc. v. T Mobile USA, Inc.*, Verified Complaint, California Public Utilities Commission Case No. 15-11-018 (November 30, 2015) The parties eventually jointly moved to dismiss the Complaint and attempted to explore arbitration or mediation alternatives, which efforts were not successful; *O1 Communications, Inc. v. New Cingular Wireless PCS, LLC*, Verified Complaint, California Public Utilities Commission Case No. 15-12-020 (December 28, 2015). The Complaint is currently pending.

B. AT&T Mobility Unilaterally Disconnected Direct Connections With O1 Forcing Costly and Inefficient Routing of Traffic to AT&T Mobility Customers.

For instance, for years AT&T Mobility and O1 transmitted traffic destined for each other's customers over direct connections at bill and keep. In early 2016, however, because O1 would not agree to unreasonable terms in a new agreement proposed by AT&T Mobility, AT&T Mobility refused to enter into the agreement with O1 and unilaterally disconnected the existing direct connections. One of the unreasonable conditions that O1 disputed required O1 to route all of its interMTA traffic, not over the existing direct connections (which would stay in place and be limited to intraMTA traffic only), but instead indirectly through separate facilities of AT&T IXC, AT&T Mobility's affiliated long distance entity, pursuant to a separate unregulated commercial agreement. Requiring O1 to route traffic indirectly through AT&T IXC's commercial product to reach AT&T Mobility customers not only imposed inefficient routing practices on O1 but also caused O1 to incur unnecessary transit/tandem access charges and gave AT&T IXC freedom to set unreasonably high prices to transit calls to AT&T Mobility's multi-million member customer base. Since the disconnection of the direct connections, AT&T IXC's commercial rate to transit the traffic has increased significantly.

The other primary indirect route available to reach AT&T Mobility's customer base is that of another AT&T affiliate, the ILEC, AT&T California. Rather than exchanging traffic with AT&T Mobility over the direct connections at bill and keep, disconnecting O1's direct connections forced O1 to purchase thousands of dollars of additional interconnection trunks and transit millions of minutes of use through AT&T California. O1 is but one of the hundreds of carriers whose customers call AT&T Mobility's customers. AT&T California's interstate and intrastate tariffed rate to transit traffic to AT&T Mobility is as high as \$0.0019190 in the Los

Angeles LATA and is either \$0.001156 or \$0.005265 in the other nine California LATAs.

Requiring sending carriers to route traffic indirectly through AT&T's ILEC affiliates imposes significant increased costs on the other carriers and generates millions of dollars of revenue for the ILEC that would not exist but for the refusal of AT&T Mobility to permit direct connections.

The third indirect route that O1 has been forced to use for a limited number of its customer calls destined to AT&T Mobility customers is through a few select direct connections that remain in place between AT&T Mobility and its preferred competitive carriers - thereby discriminating against O1, which is the subject of the ongoing case between O1 and AT&T Mobility at the California Public Utility Commission.¹⁴

C. T Mobile Unilaterally Disconnected Direct Connections with O1 Forcing Costly and Inefficient Routing of Traffic to T Mobile Customers.

O1 experienced similar gamesmanship from T Mobile. For years, O1 and T Mobile had a traffic exchange agreement ("TEA") in place which enabled the parties to establish two way direct connections using IP connection to exchange all traffic – both interMTA and intraMTA and both retail and wholesale -- between their networks. In August of 2015, T Mobile and a third party CLEC announced that they reached an agreement whereby the CLEC would act as T Mobile's "sole" transit provider. In other words, all phone calls destined to T Mobile's end users were going to be funneled through one CLEC in order to reach T Mobile's customer base. Upon information and belief, through this agreement, the CLEC shares the access revenue it receives from originating carriers with T Mobile.¹⁵

¹⁴ *Order Granting Rehearing of Decision 16-09-005 and Vacating the Decision, O1 Communications, Inc. v. New Cingular Wireless PCS, LLC*, California Public Utilities Commission, Case No. 15-12-020 (D. 17-08-016), issued Aug. 11, 2017.

¹⁵ T Mobile has attempted to deny that it engaged in revenue sharing with Inteliquent. 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 Letter"). Publicly

Shortly after this announcement, T Mobile disconnected O1's direct connections, blocking all traffic so that calls from O1's customers to T Mobile's customers could not be completed. Since O1's direct connections were disconnected, not only has O1 been forced to route traffic inefficiently to T Mobile's customers but the alternative routes that had previously been available to O1 to route traffic to T Mobile have increasingly been eliminated. For some time after the disconnection, O1 customers experienced high rates of post dial delay and non-completion because the alternative routes to transmit the traffic to T Mobile did not have sufficient capacity to handle the additional traffic that had previously been transmitted over the direct connections.

T Mobile's refusal to make available direct connections to O1 and other carriers while simultaneously forcing the delivery of their traffic through one CLEC, which in turn shares the access charge revenues with T Mobile, constitutes an unlawful access arbitrage scheme. T Mobile's refusal to allow direct connections denies O1 (and other carriers) economically efficient interconnection in order to enrich itself by receiving financial benefits which it otherwise would not be legally entitled to receive. Indeed, the rates of T Mobile's exclusive CLEC partner rose 400% after the announcement of the partnership. The rates in the competitive market 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 the arrangements were made for one CLEC generally

available excerpts of the agreement between T Mobile and Inteliquent show, however, that T Mobile received credits associated with the minutes of use routed through Inteliquent to reach T Mobile. Letter from John Barnicle and Philip Macres on behalf of Peerless Networks, Inc. to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92 (dated Mar. 15, 2018) at p. 9.

to serve as T Mobile's "sole interconnection provider."¹⁶ Of course, increased costs to carriers such as O1 has led to price increases to consumers and harms the public interest.

Since the disconnection of the direct connections, T Mobile has offered to enter into direct connection agreements with other carriers but limits its offering to the exchange of "retail" traffic over the direct connections.¹⁷ T Mobile continues to refuse to exchange wholesale traffic over such connections, despite its previous agreements to do so.¹⁸ T Mobile claims that its refusal to accept wholesale traffic over direct connections is necessary to ensure high service quality and minimize fraud and Robocalls on its network.¹⁹ Sending traffic indirectly, rather than directly does not, however, improve the quality of service. Rather, as the Commission concluded in its rural call completion docket, indirect routing often degrades the quality of the service. Moreover, fraud and Robocalls are not likely to be more prevalent in wholesale traffic than retail traffic. 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.

Additionally, T Mobile's attempted justification for its refusal to accept wholesale traffic over direct connections is without merit because T Mobile is receiving the same traffic indirectly that it had previously received directly. As noted by CenturyLink, T Mobile's segregation requirement is entirely nonsensical, since T Mobile is ultimately receiving the "same un-

¹⁶ 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).

¹⁷ T Mobile Letter at p. 2.

¹⁸ Letter from Michel Singer Nelson, O1 Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92 (dated Jan. 11, 2018).

¹⁹ T Mobile Letter at pp. 2-3.

segregated mix of retail and wholesale traffic ... it is just sent via the forced metering arrangements of T Mobile's tandem partner."²⁰

In 1995, when it examined rules governing interconnection of CMRS providers, the Commission assured industry participants that it "stands 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."²¹ As an example of potential abuses that may occur, the Commission described a situation where "LEC investment in, and affiliation with, the party denying interconnection an important factor in assessing whether such denial was motivated by an anticompetitive animus." The Commission observed that a CMRS carrier affiliated with a LEC may refuse direct connection to maintain the revenue stream to the LEC associated with transiting traffic between other carriers and the affiliated CMRS provider thereby "rais[ing] rivals' costs of doing business and hence hinder[ing] competition."²²

The two examples of abuse detailed above demonstrate that the time has come for the Commission to intercede to prevent CMRS providers, and perhaps others, from continuing to refuse reasonable requests for direct connection. Requiring terminating carriers to accept requests for direct connection would help prevent these abuses and the harm to competition and public interest that results.²³

D. The Commission Should Adopt A Rule Requiring Terminating Carriers To Accept Direct Connection Requests From Originating Carriers That Send To

²⁰ *Informal Complaint by CenturyLink Communications, LLC against T Mobile USA, Inc. and Request for Mediation*, File EB-16-MDIC-0020 at 6 (filed Nov. 10, 2016).

²¹ *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 1066, 10687 (rel. Apr. 20, 1995) at ¶43.

²² *Id.*

²³ Carrier Coalition Comments at 20-23.

Or Receive From the Terminating Carrier At Least 200,000 Monthly Minutes Of Use ("MOUs").

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. As described above, AT&T Mobility and T Mobile have transitioned from what could possibly be "best practices" -- direct connections to exchange all traffic at bill and keep -- to "worst practices" by forcing poorer quality, inefficient and more expensive indirect connections through their intermediate carrier partners. To stop these harmful schemes where carriers deny requests for direct connections and impose inefficient and expensive alternatives, the Commission should adopt a rule that all wireline and wireless carriers make direct connections available to requesting carriers that send or receive at least 200,000 MOUs sustainable average over a 30-day period for all traffic, including local, long distance, wholesale and retail traffic at a zero rate per MOU ("Direct Connect Rule").²⁴ Not only would this rule stop these harmful arbitrage schemes, but it would also 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. It would also promote network redundancy, which is essential to public safety and reducing network outages and service disruptions caused by traffic concentration.²⁵

In the Access Arbitrage NPRM, the Commission suggested that to resolve this arbitrage scheme as well as the access stimulation abuses described in the NPRM, a potential alternative to requiring terminating carriers to accept direct connections would be to require the carrier that refuses direct connections to bear the financial responsibility for the delivery of terminating

²⁴ Carrier Coalition Comments at 7-13.

²⁵ Id. at 20-23.

traffic to their end office, or functional equivalent.²⁶ The Commission explains that a "LEC that does not offer direct connections to IXCs would bear all financial responsibility for applicable intermediate access provider terminating charges normally assessed to an IXC (from the point of indirect interconnection to the [LEC's] end office or functional equivalent), and would be prohibited from assessing transport charges for any portion of transport between the intermediate access provider and the LEC's end office or functional equivalent that the LEC, itself, provides."²⁷

While O1 prefers a requirement for direct connection consistent with the Direct Connect Rule, O1 would also support alternatively requiring the terminating carrier to bear the financial responsibility for its refusal as long as the proposal includes clear guidelines on how the process would work and a mechanism to enforce the rule to ensure terminating carriers actually pay the costs and do not engage in self-help non-payment tactics. As a third, similar alternative, O1 supports the direct connect rule proposed by CenturyLink earlier this year, which requires carriers to permit requesting carriers to directly interconnect their networks for the termination of access traffic or, if the carrier receiving the request for direct connection prefers to receive such traffic through indirect connection, the terminating carrier should bear financial responsibility for the costs of receiving traffic from the point of direct interconnection they prefer. Again, the process for parties to enforce the requirement that the terminating carrier bear the cost of the transport must be clear, enforceable and enforced.

Shifting the financial burden of the switching and transport from the originating carrier to the terminating carrier in this abusive situation would remove financial incentives that currently drive terminating carriers to impose inefficient and expensive interconnection requirements on

²⁶ Access Arbitrage NPRM at ¶¶10-13, 31.

²⁷ Id. at ¶¶10-11.

originating carriers. It also would enable other providers to compete in the market and thereby help to return the rates to call CMRS provider customers to a fraction of what they are today as a result of the efforts of some CMRS providers to manipulate the market.

III. CONCLUSION

O1 supports the Commission's efforts to curb abuses that exist with interconnection and intercarrier compensation. O1 urges the Commission to adopt a rule that prevents terminating carriers from refusing to accept requests for direct interconnection from IXCs and originating carriers that today bear the costs of interconnection. Under the current Commission rules, some terminating carriers refuse requests for direct interconnection, forcing the sending carriers to use inefficient and costly arrangements to deliver traffic to their networks. A rule requiring direct interconnection when requested by a sending carrier would prevent these harmful tactics and (i) promote healthy competition in the transit market, which will drive costs down, improve service quality and spur innovation and (ii) further redundancy, which promotes public safety and reduces traffic congestion problems, such as network outages and traffic disruptions.

Thank you for the opportunity to provide comments on this very important topic.

Dated this 20th day of July 2018.

Respectfully Submitted,

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