November 16, 2018 ***Ex Parte***

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: WC Docket No. 10-90 & CC Docket No. 01-92 – CenturyLink Petition for Forbearance

Dear Ms. Dortch:

On November 1, 2018, Michel Singer Nelson, representing O1 Communications ("O1"); David Aldworth, Alexander I. Schneider and Robert H. Jackson, representing Teliax, Inc. ("Teliax"), met with Commissioner Carr and Jamie Susskind with respect to O1's and Teliax's previously presented positions in the above-numbered proceedings.

During the meeting, Ms. Susskind asked the O1 and Teliax representatives for an estimate of the amount of money subject to the disputes between local exchange carriers ("LECs") and the AT&T and Verizon interexchange carriers ("IXC") over the *VoIP Symmetry Rule*[1] and the switched access charges that apply to over-the-top VoIP traffic. While the representatives could not provide an estimate at that time on an individual company or industry wide basis, O1 agreed to provide information to Commissioner Carr's office about the difference between the rates for end office switched access service, which is the service that the LECs argue that they provide, and tandem switched access service, which is the access service that the IXCs sometimes argue that is provided for over-the-top VoIP services.

Attached are spreadsheets that use AT&T California's tariffed interstate originating switched access rates as examples of the difference between the rates for end office switched access service and tandem switched access service. The rates for AT&T California, the dominant incumbent LEC in California, are those that competitive LECs mirror when operating in AT&T California's territory.

AT&T California's tandem switched access rates are classified into three zones, the highest of which is zone 3, set at $0.0023590 per minute of use. As the spreadsheet shows, the highest tandem switched access rate is less than one-third of the end office switched access rate, which is $0.0073160 per minute of use. Consequently, using a sample of ten million switched access minutes, the difference between revenues for end office switched access service and

[1] 47 C.F.R. §51.913

4359 Town Center Boulevard, Suite 217 • El Dorado Hills, CA 95762 • (888) 444-1111

tandem switched access service for the same amount of traffic is significant: $49,570 ($73,160 at the end office rate minus $23,590 at the tandem switched access rate). Using AT&T California's lowest tandem switched access rate in California results in an even larger difference: the zone 1 rate ($.0006765 per minute of use), is only 9.25% of its end office switched access rate. The same ten million minutes of use at the end office switched access rate would earn $73,160 versus $6,765 earned at the zone 1 tandem switched access rate, a difference of $66,395. At these figures, imagine the revenue difference between VoIP-based and TDM-based networks for the billions of minutes of use exchanged in the United States in a month!

Accordingly, under the IXCs' theory, at the zone 3 rate, IP based carriers working with retail VoIP providers such as Vonage or Google to provide local exchange services to consumers would earn less than one-third of the revenue that TDM-based carriers earn for carrying the very same ten million minutes of use. At the zone 1 rate, IP-based carriers would earn less than 10% for those same minutes of use! Not only are the LECs partnering with VoIP providers providing the same functions to enable a call to process to and from end users as the TDM providers but allowing TDM-based services to earn significantly more for the same minutes of use greatly discourages the transition from TDM services to IP-based voice services. It also has the effect of throwing the Commission's technology-neutral goal for intercarrier compensation reform (*Transformation Order*[2] at para. 1340) down the drain and into the ocean never to be seen again.

As the Commission held in the *Transformation Order,* a primary reason that it adopted the *VoIP Symmetry Rule* was to level the playing field for intercarrier compensation for VoIP services so that IP-based LECs would not be penalized by earning less revenue for the same services offered by their TDM-based counterparts and TDM-based providers would no longer be dis-incentivized to move to IP-based networks because of the loss of intercarrier compensation revenue that would result:

> *Scope of Charges Imposed by Retail VoIP Providers' LEC Partners.* Some commenters express concern that, absent Commission clarification, certain LECs that provide wholesale inputs to retail VoIP services might not be able to collect all the same intercarrier compensation charges as LECs relying entirely on TDM networks. In particular, providers cite disputes arising from their use of IP technology as well as the structure of the relationship between retail VoIP service providers and their wholesale carrier partners. For the reasons described above, we believe a symmetric approach to VoIP-PSTN intercarrier compensation is warranted for all LECs. One of the goals of our reform is to promote investment in and deployment of IP networks. Although we believe that our comprehensive reforms best advance this goal, during the transition we do not want to disadvantage providers that already have made these investments. Consequently, we allow providers that have undertaken or choose to undertake such deployment the same opportunity, during the transition, to collect intercarrier compensation under our prospective VoIP-PSTN intercarrier compensation regime as those providers that have not yet undertaken that network conversion.[3]

[2] *Connect America Fund,* 26 FCC Rcd 17663 (Nov. 2011) ("*Transformation Order*").

[3] *Id.,* para. 968; *see also*, para. 942 ("The Commission has recognized concerns about asymmetric payment associated with VoIP traffic today, including marketplace distortions that

Interpreting the *VoIP Symmetry Rule* as argued by AT&T and Verizon to restrict the intercarrier compensation rates that can be charged by retail VoIP provider LEC partners to no more than 10% - 30% of those charged by TDM providers for the same minute of use is contrary to this clearly stated Commission goal and would severely reduce the revenues to LECs that partner with VoIP providers vis-a-vis the revenues collected by the TDM providers that have largely failed to upgrade their networks to IP technology.

These figures emphasize the extreme economic harm that would result to the VoIP segment of the industry if the Commission were now, seven years after adopting the *VoIP Symmetry Rule,* hold that LECs partnering with retail VoIP service providers to provide over-the-top VoIP services were only entitled to a fraction of the revenue to which TDM-based providers are entitled. What is more, a retroactive application of such a ruling would be catastrophic, potentially requiring LECs partnering with retail VoIP providers to refund hundreds of millions of dollars to IXCs.

O1 and Teliax reiterate the request set forth in their Comments in this proceeding that (1) the Commission confirm that the *VoIP Symmetry Rule* applies to over-the-top VoIP services permitting LECs that partner with retail VoIP service providers to collect end office switched access charges for their services, and (2) to the extent the Commission changes its interpretation of the *VoIP Symmetry Rule* and holds that tandem switched access charges should apply, such a ruling be applied prospectively only.

Sincerely,

Michel Singer Nelson
Counsel and Vice President of Regulatory and Public Policy
mnelson@o1.com
916 235 2026

Enclosures

cc: Commissioner Carr
Jamie Susskind

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give one category of providers an artificial regulatory advantage in costs and revenues relative to other market participants."); para. 948 ("As discussed above, our prospective regime for VoIP-PSTN intercarrier compensation is symmetrical, and thus avoids the marketplace distortions that could arise from an asymmetrical approach to compensation. In particular, the record does not demonstrate that our approach advantages in the aggregate providers relying on TDM networks relative to VoIP providers or vice versa, ...").