June 16, 2015

Ex Parte

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

Re: *Numbering Policies for Modern Communications*, WC Docket No. 13-97; *IP Enabled Services*, WC Docket No. 04-36; *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Connect America Fund*, WC Docket No. 10-90; *Numbering Resource Optimization*, CC Docket No. 99-200

Dear Ms. Dortch:

This addresses the upcoming Commission meeting when the Commission will consider a Report and Order establishing a process to authorize interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators. O1 Communications, Inc. ("O1") supports the Commission's step toward enacting rules to provide interconnected VoIP providers direct access to numbers. As Vonage notes in its June 10, 2015 *ex parte* on this issue, this step will enable IP interconnection, increase transparency and parity in the industry, reduce costs and allow deployment of new and innovative services.[1]

O1 also agrees, however, with the view that Bandwidth and Level 3 expressed in their recent *ex partes* that, before the Commission enacts rules to implement VoIP provider direct access to numbers, it must first address the effect this change will have on the intercarrier compensation system.[2] Doing so will promote the Commission's and Congressional goals to encourage the deployment of IP networks, protect competition, reduce intercarrier compensation disputes and avoid market distortions resulting from asymmetrical approaches to compensation.

[1] June 10, 2015 Letter from Brita Strandberg, Counsel to Vonage Holdings Corporation to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 13-97, et al. at p. 1.

[2] June 5, 2015 Letter from Greg Rogers, Bandwidth to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 12-353, et al; June 5, 2015 Letter from John Nakahata, Counsel to Level 3 to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 13-97 et al; June 12, 2015 Letter from Joseph Cavender, Level 3 to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 13-97 et al.

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In its February 11, 2015 Declaratory Ruling,[3] the Commission confirmed that the VoIP Symmetry Rule[4] "does not require and has never required, an entity to use a specific technology or its own facilities in order for the service it provides to be considered the functional equivalent of end office switching."[5] Accordingly, the FCC verified that when a CLEC partners with an over-the-top VoIP provider to exchange traffic with interconnected carriers, the CLEC may assess end office switching charges for the services.[6] Consequently, beginning at least with the effective date of the VoIP Symmetry Rule, December 29, 2011, interexchange carriers ("IXCs") have been obligated to compensate CLECs for end office switched access charges for toll calls originated or terminated by a CLEC partnering with a VoIP provider to provide services to an end user.

Level 3 proposes that the Commission ensure that, in allowing VoIP providers direct access to numbers, it does not impair a CLEC's ability to collect end office switched access charges when the CLEC or its VoIP partner provides end office functionality.[7] Level 3 proposes that the Commission clarify that for VoIP calls originated or terminated by a CLEC or its VoIP partner, the CLECs may collect end office switched access charges even when the CLEC is not associated with the calling or called party's telephone number in the NPAC database. O1 agrees with this recommendation.

In its OTT VoIP Ruling, the FCC stated that the functional equivalent of end office switching is comprised of the intelligence associated with call set up, supervision and management.[8] When O1 exchanges VoIP – PSTN calls on behalf of its VoIP customers to or from an IXC, O1 provides the call set up, supervision and management functions to initiate or complete the call. In addition, O1 provides the 8YY dip function for its customers' VoIP 8YY calls. Consequently, O1 is entitled to end office switched access and dip charges for these calls based on the general rule requiring the CLEC to be compensated for the functions it performs.

In its June 11, 2015 *ex parte*, AT&T argues that associating the telephone number with the CLEC seeking to apply the VoIP Symmetry Rule is necessary to protect against arbitrage and fraud, particularly with regard to originating access charges because it would be difficult to assess what function a CLEC may be performing if it is not associated with the number in the NPAC database.[9] The Commission should reject this argument.

First, a CLEC's association with the originating telephone number in the NPAC database is not necessary for the CLEC or its VoIP partner to provide call set up, supervision and management functions for originating calls. The CLEC or its VoIP partner provide the end office functions even without the CLEC's association with the telephone number, particularly for originating

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[3] *Connect America Fund*, Developing a Unified Intercarrier Compensation Regime, FCC 15-14, 30 FCC Rcd 1587 (2015) ("OTT VoIP Ruling").
[4] 47 C.F.R. Section 51.913(b).
[5] OTT VoIP Ruling at ¶¶ 3, 19-21.
[6] *Id.*
[7] June 5, 2015 Letter from John T. Nakahata, Counsel to Level 3 Communications, LLC to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-97, et al.
[8] OTT VoIP Ruling at ¶¶ 28-29.
[9] June 11, 2015 Letter from Henry Hultquist, AT&T, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-97, et al.

access charges. The Commission's adoption of AT&T's proposal would unfairly eliminate compensation to CLECs for functions they or their VoIP partner performs.

Second, Verizon made 8YY arbitrage arguments when it proposed that the VoIP Symmetry Rule be limited to terminating access charges.[10] In its OTT VoIP Ruling, the FCC dismissed Verizon's arguments finding: (1) it was presented with no persuasive evidence to support claims that arbitrage existed with regard to 8YY traffic; (2) the access stimulation rules adequately address access stimulation if it relates to 8YY traffic; (3) IXCs are protected against potential arbitrage by the FCC's complaint process; and (4) the potential arbitrage schemes described as associated with 8YY traffic could arguably apply to all originating access charges and therefore, they should be considered generally in the originating access reform docket.[11]

These reasons apply equally to reject any argument that the VoIP Symmetry Rule should be limited to calls where the CLEC is associated with the calling party's telephone number in the NPAC database. AT&T has provided no evidence demonstrating that arbitrage schemes exist with regard to originating access charges. If access stimulation is the concern, it should be addressed by the FCC's access stimulation rules, not by an outright refusal to pay for functions that a CLEC or its VoIP partner provides. In addition, AT&T may raise any arbitrage complaints it may have with regard to originating access charges in a complaint proceeding or in the FCC's originating access reform docket. An unsubstantiated claim of arbitrage associated with originating access charges by OTT VoIP providers and their CLEC partners should not permit AT&T to forgo its obligation to compensate CLECs for end office switching functions performed by the CLEC or its VoIP partner.[12]

Moreover, adopting Level 3's proposal to permit the CLEC to collect end office access charges even when it is not associated with the telephone number presents no risk of double billing. The billing will be generated by the CLEC originating or terminating the call and not by the CLEC associated with the number in the NPAC database.

Requiring the CLEC to be associated with the calling party's telephone number to collect end office switched access charges is also inconsistent with Commission's and Congressional policy to advance the transition to all IP networks. As more VoIP providers obtain their own telephone numbers and are directly associated with telephone numbers in the NPAC database, it will become more common for CLECs partnering with VoIP providers to *not* be associated with the telephone number of the parties involved in the call flow. Because the Commission's rules do not permit VoIP providers themselves to collect access charges, the IXCs would experience an artificial windfall by insisting that the CLEC be associated with the telephone numbers to be compensated. The end office switching functions would still be performed by the CLEC or the

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[10] *See* January 13, 2015 letter from Verizon to Ms. Marlene Dortch, Secretary, FCC, WC Docket 01-92, et al cited in the OTT VoIP Ruling at note 7.

[11] OTT VoIP Ruling at ¶25.

[12] In its OTT VoIP Ruling, the FCC specifically refused to adopt AT&T's position as a limitation on the VoIP Symmetry Rule. The FCC stated: "We do not address the interpretation or application of our VoIP symmetry rule in cases where the LEC seeking to charge end office access charges does not assign the calling party telephone number." AT&T is using this footnote to refuse to pay CLEC access charges even when the CLEC is performing compensable functions. O1 asks the FCC to close the loop on this issue and put a stop to AT&T's latest access avoidance scheme.

VoIP partner but the IXC would be allowed to forgo payment for the functions. This would defeat the purposes of adopting the VoIP Symmetry Rule in the first place, which were to: (1) encourage the deployment of all-IP networks; (2) protect and promote competition in the voice marketplace; (3) reduce intercarrier compensation disputes; and (4) avoid marketplace distortions and arbitrage that could arise from an asymmetrical approach to compensation.[13]

O1 asks the Commission to adopt Level 3's proposal to ensure that CLECs are not prevented from collecting valid access charges for functions they perform and to reject AT&T's latest access avoidance scheme.

Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with your office for inclusion in the public record of the above referenced proceedings. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

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[13] OTT VoIP Ruling at ¶¶22-25.