August 22, 2013

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

Re: Connect America Fund, WC Docket No. 10-90; *A National Broadband Plan for Our Future,* GN Docket No. 09-51; *High Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; *Federal State Joint Board on Universal Service*, CC Docket No. 96-45.

Dear Ms. Dortch:

O1 Communications, Inc. has been certified as a competitive local exchange carrier ("CLEC") in California since 1998. O1's network and services have evolved over time to what is now primarily an Internet Protocol ("IP") based network. Today, O1 provides a diverse set of telecommunications and IP enabled services to a diverse set of customers, which includes partnering with Voice over Internet Protocol ("VoIP") service providers to provide over the top ("OTT") VoIP services to retail customers. In addition, O1's network supports other carriers' IP and telecommunications services to small and medium businesses. In total, O1 has approximately 440,000 active telephone numbers in California and is currently in the process of expanding its network and services to additional states across the country. O1's transition to an IP-based network is precisely the kind of network transition that the Commission is trying to support in its several IP transition-related proceedings.

Despite the Federal Communications Commission's ("FCC's" or "Commission's") expressed intention to resolve intercarrier compensation disputes through issuance of its *ICC Reform Order,*[1] intercarrier compensation disputes continue to permeate daily business in the industry, and are particularly acute for IP providers, the technologically evolving segment of the industry that the Commission intends to encourage and support. For instance, O1 has been attempting to resolve intercarrier compensation disputes without success with AT&T's interexchange entities and separately with Verizon's interexchange entities for years. Both AT&T and Verizon refuse to pay O1 for the end office switching functions associated with VoIP services provided

[1]*See, In the Matter of Developing an Unified Intercarrier Compensation Regime*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("ICC Reform Order") at para. 968.

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to OTT VoIP customers. Since January 1, 2012, this issue alone has tied up millions of dollars; capital that O1 would like to invest into its network and the company.

The point of the VoIP Symmetry rule is to permit a CLEC, like O1, and its OTT partner to charge a local switching access charge when they perform the end office switching function as AT&T and Verizon do when AT&T and Verizon and their facilities based VoIP partner perform those identical functions.[2] AT&T and Verizon demand full payment for these call flows but refuse to pay when the same traffic flows in the reverse direction. AT&T and Verizon also collect revenue from their retail customers who benefit from O1 and its VoIP partners' services and pay less in underlying costs. To interpret the rule as suggested by AT&T and Verizon would result in a *lack* of symmetry and discriminatory treatment against O1 and its VoIP partners. AT&T's and Verizon's reading is not a viable interpretation of the rule and completely undermines the Commission's purpose to ensure that "providers that have undertaken or choose to undertake such [IP network] 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]

This Commission has long recognized the value of OTT VoIP services and the driving effect they have had in bringing choice and lower priced voice services to consumers.[4] Denying reciprocal access charges to service providers using this business model results in the very unfair discrimination the Commission intended to avoid and harms the ability of OTT VoIP services to continue to compete. The Commission's rule was designed to be effective now, during the transition, and not at some time in the distant future. For all the reasons set forth by Level 3 and Bandwidth in their *ex partes* filed in this matter, as well as supporting advocacy of other CLECs, O1 agrees that end office switching charges are compensable when a CLEC and an OTT VoIP provider jointly provide voice communications services to a retail customer. See, e.g., August 6, 2013 Letter from John T. Nakahata and Tamar Finn. ("*Level 3/Bandwidth Letter*")

O1 also shares Level 3 and Bandwidth's view that a decision from this Commission is imperative since despite months and months of negotiations, parties have been unable to resolve their disputes without Commission intervention. O1 recently was forced to file a complaint against Verizon at the California Public Utilities Commission ("CPUC"), which asks the CPUC to decide this issue, among other matters. As pointed out, a decision by the FCC would curtail the possibility of inconsistent rulings among state commissions and various state and federal courts on how to apply the Commission's VoIP Symmetry Rule. *See, Level 3/Bandwidth Letter* at pp. 4-6.

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[2] ICC Reform Order, para. 970.

[3] ICC Reform Order, para. 968 (emphasis added).

[4] *In the Matter of IP-Enabled Services,* Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) at para. 11.

O1 also joins in the request that the Commission address this issue expeditiously in order to bring stability and certainty to the market and to eliminate the significant costs associated with litigation, particularly against competitors with substantially more human and financial resources than O1. O1 would prefer to focus its limited resources and energy on expanding its network to provide additional services to its customers rather than engaging in protracted litigation with interexchange carriers in attempt to collect intercarrier compensation.

Thank you for the opportunity to comment on this important issue. Please contact me with any questions you may have.

Sincerely,

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