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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

O1 Communications, Inc. (U6065C),

Complainant,

v.

New Cingular Wireless PCS, LLC (U3060C)  
and AT&T Mobility Wireless Operations  
Holdings, Inc. (U3021C),

Defendants.

C.15-12-020  
(Filed December 28, 2015)

**ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION TO COMPEL**

This ruling denies the motion to compel responses to data requests filed by O1 Communications, Incorporated.

**Background**

On December 28, 2015, O1 Communications Incorporated (U6065C) (O1 Communications) filed a complaint against New Cingular Wireless PCS, LLC (U3060C) (New Cingular Wireless) and AT&T Mobility Wireless Operations Holdings, Inc. (U3021C) (AT&T Mobility Wireless).<sup>1</sup>

In 2011, O1 Communications and AT&T Mobility entered into an Interim Traffic Exchange Agreement, which allowed direct interconnection between their networks. For several years, AT&T Mobility and O1 Communications attempted

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<sup>1</sup> New Cingular Wireless and AT&T Mobility Operations Holdings will be jointly referred to as AT&T Mobility for the remainder of this Ruling.

to negotiate an agreement that would allow the direct interconnection to continue. These negotiations were not successful.

O1 Communications filed a complaint against AT&T Mobility because, among other things, it was concerned that AT&T Mobility would disconnect the direct interconnection trunks between them. O1 Communications also filed a request that a temporary restraining order (TRO) be issued against AT&T Mobility to prevent AT&T Mobility from terminating the direct interconnection trunks while the complaint proceeding was pending. The TRO was denied and in February 2016, AT&T Mobility terminated the direct interconnection trunks between the networks.

In its complaint, O1 Communications requests the following relief:

1) prohibit AT&T Mobility from disconnecting the direct connection trunks between AT&T Mobility's network and O1 Communications' network; 2) require AT&T Mobility to interconnect with O1 Communications on terms and conditions no less favorable to O1 Communications than the terms and conditions that AT&T Mobility offers to its affiliates and/or other carriers for the delivery of transit and terminating traffic to AT&T Mobility; 3) award O1 Communications restitution to the extent O1 Communications incurs excess costs to route traffic to AT&T Mobility through a third party after AT&T Mobility disconnected the direct connection between AT&T Mobility's network and O1 Communications' network; and 4) issue appropriate fines and penalties against AT&T Mobility if the Commission finds any unlawful conduct or violation of Commission orders.

O1 Communications contends that it is being discriminated against because it believes that AT&T Mobility offers direct interconnection facilities to

other telecommunications carriers and VoIP providers, while refusing to do so for O1 Communications.<sup>2</sup>

### **1. The Motion to Compel**

On February 22, 2016, O1 Communications served its First Set of Data Requests to AT&T Mobility. This data request contained three questions seeking information about direct connection agreements that AT&T Mobility has with other providers. On March 8, 2016, AT&T Mobility provided its response to the data requests. Specifically, AT&T Mobility agreed to provide response to Request 1-1 and Request 1-2, but objected to Request 1-3. AT&T Mobility and O1 Communications attempted to resolve this dispute through meet and confer efforts. However, they were not successful in this endeavor.

On June 30, 2016, counsel for O1 Communications sent the Administrative Law Judge (ALJ) an e-mail notifying the ALJ of a potential discovery dispute and requested guidance on how best to address the discovery dispute in an expedited manner. The ALJ advised both AT&T Mobility and O1 Communications that they should attempt to resolve the dispute informally. The ALJ also advised counsel for O1 Communications that any motion to compel should be filed immediately so that a ruling could be issued prior to the date that testimony was due.

O1 Communications filed its motion to compel on July 5, 2016. AT&T Mobility agreed to a shortened time period in which to respond to the motion. AT&T Mobility filed its response to the motion to compel on July 11, 2016.

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<sup>2</sup> O1 Communications' motion to compel at 2.

## **2. Discussion**

Rule 10.1 of the Commission's Rules of Practice and Procedure provides in relevant part that "... any party may obtain discovery from any other party regarding any matter, not privileged that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence."

### **2.1. Data Request**

O1 Communications Request 1-3 requested that AT&T Mobility "provide a copy of all Traffic Exchange Agreements that You have entered into or been in effect since January 2012."<sup>3</sup> AT&T Mobility objected to this request by stating that it has as many as 1,000 agreements in place throughout the country and declined to produce any documents until O1 Communications narrowed the scope of the request.<sup>4</sup>

On May 17, 2016, O1 Communications issued a Second Set of Data Requests to AT&T Mobility, seeking copies of the "direct connection agreements for each of the providers identified in response to Data Requests 1-1 and 1-2."<sup>5</sup> On June 7, 2016, AT&T Mobility indicated that it would provide copies of agreements with other providers for direct connection facilities only in

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<sup>3</sup> O1 Communications' motion to compel at 4.

<sup>4</sup> O1 Communications' motion to compel at 5.

<sup>5</sup> O1 Communications' motion to compel at 5-6.

California, but would not produce agreements that include California in addition to other states.<sup>6</sup> Additionally, AT&T Mobility indicated that prior to producing these items, it would need to seek consent from the signatories.<sup>7</sup>

In its response to the motion to compel, AT&T Mobility states that it will produce all agreements back to January 2013 between AT&T Mobility and other carriers that address direct interconnection in California.<sup>8</sup> As a result, AT&T Mobility believes that O1 Communications' motion to compel is now moot.

In its motion to compel, O1 Communications requests data going back to January 2012.<sup>9</sup> O1 Communications contends that it needs this information to establish its claim of discrimination. However, in its motion to compel, O1 Communications has failed to establish how it was potentially being discriminated against prior to 2016, considering the fact that AT&T Mobility did not disconnect the direct interconnection between itself and O1 Communications until February 2016. Additionally, O1 Communications' motion to compel fails to establish how agreements reached by AT&T Mobility that address direct interconnection in other states are relevant to this proceeding.

In spite of this, AT&T Mobility has agreed to produce all agreements dating back to January 2013 between AT&T Mobility and other carriers that address direct interconnection in California.<sup>10</sup> This is an adequate compromise.

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<sup>6</sup> O1 Communications' motion to compel at 6.

<sup>7</sup> O1 Communications' motion to compel at 6.

<sup>8</sup> AT&T Mobility's response to motion to compel at 1.

<sup>9</sup> AT&T Mobility contends in its response to the motion to compel that it does not have records allowing it to identify agreements prior to January 1, 2013 that have since expired.

<sup>10</sup> At no point did AT&T Mobility make a request to submit anonymized responses to O1 Communications' Data Requests 1-3 and 2-1. In the June 21, 2016 Ruling granting in part

*Footnote continued on next page*

Therefore, O1 Communications' motion to compel is now moot. Even if the motion to compel was not moot, O1 Communications' has failed to establish how contracts entered into prior to the time that AT&T Mobility disconnected the direct interconnection trunks between its network and O1 Communications' network in February 2016 is relevant to its claim.

### **3. Conclusion**

O1 Communications' motion to compel responses to Data Requests 1-3 and 2-1 is denied. AT&T Mobility has subsequently agreed to produce all agreements dating back to January 2013 between itself and other carriers that address direct interconnection in California.

#### **IT IS THEREFORE RULED that:**

1. As agreed to in its Response to the motion to compel, AT&T Mobility Wireless Operations Holdings, Inc. (AT&T Mobility) shall produce all agreements dating back to January 2013 between AT&T Mobility and other carriers that address direct interconnection in California.
2. O1 Communications, Inc.'s motion to compel discovery responses to data requests numbers 1-3 and 2-1 is now moot.

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and denying in part AT&T Mobility's motion to compel, the ALJ compelled O1 Communications to produce certain documents, but agreed with O1 Communications' argument that the responses should be anonymized and/or redacted responses.

3. O1 Communications Inc.'s motion to compel discovery responses to data requests number 1-3 and 2-1 is denied.

Dated July 14, 2016, at San Francisco, California.

          /s/ GERALD F. KELLY            
Gerald F. Kelly  
Administrative Law Judge