

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

In the Matter of:)	
)	
Applications of T-Mobile US, Inc.)	
)	WT Docket No. 18-197
and)	
)	
Sprint Corporation)	
)	
For Consent To Transfer Control of)	
Licenses and Authorizations)	

**REPLY IN SUPPORT OF
PETITION TO DENY OF CARRIERX, LLC**

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SUMMARY

On August 27, 2018, CarrierX, LLC (“Free Conferencing”) submitted a Petition to Deny the merger application of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) due to the danger the merger poses to the consumer and the market. That danger arises from T-Mobile’s discriminatory and deceptive pricing policy that interrupts calls to certain conferencing applications with a message that the T-Mobile customer, despite his “unlimited plan,” will be charged one cent per minute to complete his call (hereinafter, the “One-Cent Policy”). The One-Cent Policy, if not stopped by the Commission, will be spread to millions of Sprint subscribers. Only a short time after the companies announced the merger application, one Sprint subsidiary instituted an identical policy. The risk of it spreading and causing even greater harm is real. The One-Cent Policy poses this danger to the consumer because it is not intended to raise revenue for T-Mobile; it is intended to block calls. For consumers who use its pre-paid products, T-Mobile simply blocks these calls, as they have no process for paying the one-cent charge. T-Mobile disconnects the call. For consumers using post-paid products, T-Mobile instructs consumers to hang up to avoid additional charges. The consumer has no notice, either prior to signing a contract with T-Mobile or after, which telephone numbers will be subject to an additional charge if called. Instead, the consumer is bombarded with T-Mobile advertisements as the “uncarrier,” who provides “unlimited” everything at what is supposed to be half the price of the other carriers.

Worse yet, T-Mobile's purported reasoning to the public for the One-Cent Policy is false and misleading. T-Mobile claims that calls to certain telephone numbers tend to cost more to complete and that the additional charge to the consumer offsets this cost. If T-Mobile has provided the Commission with the relevant information, the Commission will understand from a review of T-Mobile's internal documents its claims are not true. The One-Cent Policy primarily targets calls by consumers to free conference call services. There is nothing special about calls to these services other than the fact that millions of people rely upon these services everyday – to pray, conduct business, run elections, speak to family and friends and, in some instances, help save lives. T-Mobile does not want its subscribers to actually use the “unlimited” plans they paid for, and so it has set out to destroy the services that consumers call most.

The One-Cent Policy poses a danger to the market because T-Mobile uses the policy to coerce third party applications to establish contract with it at the rates it demands. In exchange, T-Mobile will not subject calls to that company to its One-Cent Policy. T-Mobile's market power to coerce pricing with the One-Cent Policy will grow substantially should the Commission approve the merger. Moreover, if the free conference call companies are destroyed, there is far less competition in the market and the cost of conferencing will increase for the consumer. Free Conferencing alone has received more than 10,000 complaints about the One-Cent Policy.

For these reasons, and the reasons set forth below and in Free Conferencing's petition the Commission should approve the merger **on the condition that the**

Applicants cease the One-Cent Policy. The Commission should prohibit the
Applicants from instituting any discriminatory and deceptive pricing policies.

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I. INTRODUCTION.

T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”, and collectively with T-Mobile, the “Applicants”) have opposed CarrierX, LLC’s (“Free Conferencing”) Petition to Deny on baseless procedural grounds. The Applicants mischaracterize Free Conferencing’s Petition to avoid addressing the discriminatory and unfair One-Cent Policy that is now harming millions of T-Mobile customers and, with the proposed merger, threatens to expand to another 54 million Sprint customers.

In their joint opposition, the Applicants make no attempt to address the merits of Free Conferencing’s petition, which illuminates for the Commission T-Mobile’s ongoing call-blocking scheme that stops its own consumers from using the least costly conferencing service available to them. The Applicants’ considered refusal even to address Free Conferencing’s petition shows that the Applicants cannot justify T-Mobile’s ongoing efforts to reduce traffic to the least costly conferencing services available to consumers. It also makes clear that the Applicants intend to expand T-Mobile’s traffic blocking/reduction scheme to Sprint if the Commission approves their merger.¹

Furthermore, the Applicants’ mischaracterization of Free Conferencing’s petition by claiming that the petition only seeks to obtain leverage in a lawsuit involving T-

¹ T-Mobile had initially refused to provide Free Conferencing’s counsel with documents it submitted to the Commission in connection with this merger proceeding, including any information that addresses the issues raised in Free Conferencing’s petition. Only yesterday did T-Mobile withdraw its objection after the Commission indicated that Free Conferencing is entitled to receive the information it requested.

Mobile's intermediate carrier ignores the fact that the petition highlights *the significant harm to the consumer, and moreover, the harm to the conferencing market*. Free Conferencing has raised a colorable claim under the Communications Act as it relates to this merger. New evidence submitted to the Commission, in connection with WC Docket 18-155, further supports Free Conferencing's petition and shows that the harm to the public by blocking calls to these conferencing services is critical and real. In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage; WC Docket 18-155. T-Mobile's pricing policy inhibits the ability of poor and rural communities to make or participate in multi-party calls. The pricing policy and call-blocking scheme also makes free conference calling services inaccessible to innumerable organizations that rely on them, including illness support groups, non-profit organizations, pro bono legal services, religious organizations, faith based support groups, twelve-step programs, addiction support networks and veteran service and support organizations. T-Mobile's pricing policy is blatantly discriminatory, and the merger should be permitted to go forward **only on the condition that T-Mobile terminates the One-Cent Policy and certifies that the policy will not, in any form, be reenacted either by T-Mobile or any component of the merged enterprise.**

II. **FREE CONFERENCING HAS STANDING AS A PARTY IN INTEREST.**

To distract the Commission from the merits of Free Conferencing's petition, the Applicants halfheartedly, and incorrectly, argue in a footnote that Free Conferencing lacks standing as a party in interest. However, it is apparent from Free Conferencing's petition that it has standing.

“The standards for determining whether a person is a ‘party in interest’ are not set forth in section 309(d) or elsewhere in the act.” *In re Application of Northco Microwave, Inc. (KCK70), Bennington, Vt.*, 1 F.C.C.2d 350, 351 (1965). “However, it is well established that under the test provided by the *Sanders Brothers* case, the touchstone of any determination of who is a ‘party in interest’ from an economic standpoint is one of direct and immediate competitive injury which gives ‘standing’ without reaching the level of a legal right.” *Id.*² “Further, the injury must be reasonably certain and definite, and not nominal or speculative.” *Id.* “Thus, to show that it is a ‘party in interest,’ the petitioner must establish that a grant of the application complained of would result in or be reasonably likely to result in some injury of a direct, tangible and substantial nature.” *Id.*

In its petition, Free Conferencing specifically identified the economic damage both Free Conferencing and its customers suffer as a result of T-Mobile’s One-Cent Policy:

The One-Cent Policy has caused Free Conferencing significant damage to its business. As soon as the One-Cent Policy went into effect, close to 70% of the traffic from T-Mobile customers disappeared in the first month ... The growth expectation for 2016 was stifled by the One-Cent Policy and carried over to 2017 and 2018 with a continued decline in minutes and users.

² Applicants’ Opposition complains that “these petitioners all fail to even assert standing.” Joint Opposition at 1, fn. 1. Free Conferencing located no authority requiring an affirmative statement of standing. Rather, a petition may contain mere “specific allegations of fact sufficient to show that the petitioner is a party in interest.” *In re Application of Mel-Eau Broadcasting Corp. and WMEG, Inc.*, 10 F.C.C.2d 537, 538 (1967).

Free Conferencing Petition to Deny, at 16-17. Further, Free Conferencing identified how transferring the licenses would result in further economic injury through Sprint's Boost Mobile's nearly identical policy:

Sprint's subsidiary, Boost Mobile recently adopted a call reduction plan almost identical to the One-Cent Policy in what could only be the best evidence of planned coordinated efforts between Sprint and T-Mobile. Boost Mobile's policy has only been in effect for a couple of weeks, but it also seems that the policy is primarily focused on charging its users that call Free Conferencing conferences.

Free Conferencing Petition to Deny, at 5. These facts demonstrate standing by showing the definite injury caused by T-Mobile's One-Cent Policy and how it will be exacerbated should the Commission permit the Applicants to merge, transfer permits, and extend the One-Cent Policy to current Sprint consumers.

Accordingly, Free Conferencing has satisfied the pleading requirements to establish standing and the Commission must consider the merits of its petition.³

³ Even if Free Conferencing did not have standing, the Commission has a long history of considering petitioners' complaints or, at least, treating a defective petition to deny as an informal objection. See, e.g., *In re Application of Northco Microwave, Inc. (KCK70), Bennington, Vt.*, 1 F.C.C.2d 350, 351 (1965) ("Notwithstanding the fact that the petitioner has failed to establish its standing, the Commission considers it appropriate briefly to consider the merits of its objections."); *In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 F.C.C. Rcd 13967, 14021 n. 335 (2005) ("[E]ven absent standing, we still have discretion to consider their pleadings as information objections."); accord *In the Matter of Applications to Transfer Control of Licenses from Robert F. Broz to William B. Calcutt*, 20 F.C.C. Rcd 8848, 8852 n. 39 (2005) ("We note that in some cases the Commission has stated that petitions to deny are not permitted against involuntary assignment applications, but then has considered the pleadings on its merits as an informal objection, pursuant to Section 73.3586.").

III. FREE CONFERENCING'S PETITION IS NOT ABOUT A PRIVATE DISPUTE, BUT RATHER T-MOBILE'S CALL-BLOCKING SCHEME THAT HARMS MILLIONS OF T-MOBILE CONSUMERS AND THREATENS TO BE EXPANDED TO OVER 50 MILLION SPRINT CUSTOMERS.

The Applicants attempt to mischaracterize Free Conferencing's petition as a private dispute. To support their position, they cite cases for the proposition that it is not the Commission's role to resolve private disputes in the current situation.⁴

Whatever private disputes T-Mobile may have with Free Conferencing or other victims of the One-Cent Policy, such disputes have nothing to do with the substance of Free Conferencing's petition. Indeed, in Free Conferencing's twenty-eight page petition, the few, passive references to litigation are only to identify the source of documents that show T-Mobile's motive for implementing the One-Cent Policy, and that litigation was with a party other than T-Mobile.

The Applicants have made a considered decision to withhold from the Commission any explanation of the One-Cent Policy or why the merger does not threaten to expand to over 50 million Sprint customers a scheme that involves unlawful discrimination, unfair practices, and illegal blocking/reducing of calls. The Applicants offer no rebuttal to the merits of Free Conferencing's petition because they know T-Mobile's One-Cent Policy is indefensible. The Commission has repeatedly condemned any action by carriers to block or reduce telecommunications traffic. "Specifically,

⁴ The Applicant's argument on this point directly contradicts its argument on standing. On the one hand, T-Mobile claims Free Conferencing has suffered no harm and on the other hand claims that Free Conferencing articulates harm that is better suited to a private dispute. Neither argument is correct nor makes any sense.

Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.” *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, 22 F.C.C. Rcd 11629, 11631 (2007). Moreover, “carriers cannot engage in self-help by blocking traffic to LECs”. *Id.* This is precisely what the T-Mobile One-Cent Policy does - it is designed to stop T-Mobile’s own consumers from making conference calls with the least expensive conference call providers despite marketing its services as “unlimited” and its company as the “uncarrier.” Free Conferencing and other conferencing companies have perfected a model that uses modern technology to make conferencing services affordable to everyone in the US and the world at a fraction of the large carriers’ cost. The true victims of T-Mobile’s scheme are T-Mobile’s own consumers and the public at large. Not only are T-Mobile subscribers inhibited from reaching the free conference calling service by virtue of the One-Cent Policy, but consumers of other service providers that use free conference calling services to reach their members are harmed as well. When T-Mobile’s One-Cent Policy prevents its customers from using free conferencing services, consumers of AT&T, Verizon and other services are also harmed, because conference calls are destroyed when one or more of the expected conferencing participants are prevented from joining the conference. The impacts of T-Mobile’s pricing policy ripple through the public, and, after taking over Sprint, the reach of the call stifling policy threatens to be profound.

A. The Value Of Free Conference Calling Services.

As the host of conference call services, Free Conferencing is uniquely positioned to observe and understand the “on-the-ground” harm of T-Mobile’s One-Cent Policy. As background, Free Conferencing’s landmark service, FreeConferenceCall.com, a conference calling platform that does not charge its users an organizer fee, currently has over 40 million conferencing users worldwide. FreeConferenceCall.com is used in over 800,000 business and by nearly all Fortune 500 companies. Free Conferencing is so successful with its model that it can deliver its service without charging its users an organizer fee (like other fee-based conferencing companies). Free Conferencing earns revenue from the ordinary charges paid by telecom carriers to connect the calls. Many fee-based conferencing companies receive the same fees, but they also charge a user a fee for using a conferencing service. Free Conferencing does not. This model works for the consumer. Free Conferencing adds between 3,000-4,000 new users every day. It handles over a billion minutes of calls per month. Its users cover every walk of life, business, governmental and non-governmental organizations, from individual consumers connecting with family members, to small businesses, to the American Red Cross, the Word Bank, Teach for America, Marriott, and hundreds of political election campaigns across America. As the most recognized conferencing and collaboration provider, it has unique insight into how the proposed merger targets the Applicants’ customers with discriminatory and deceptive pricing policies.

The nonprofit organizations, small businesses, support groups, legal aid services, religious institutions, government agencies, and everyday Americans that have come to

rely upon free conference calling and audio broadcasting services will undoubtedly suffer if the Commission permits the merger without requiring T-Mobile to cease this policy. Free Conferencing, and others, provide individuals with the opportunity to use the long-distance plans that they purchase from T-Mobile, and soon, Sprint – plans that T-Mobile designed and marketed knowing that access charges were a variable cost – without incurring additional out-of-pocket costs. Free conference calling services permit individuals, political campaigns, and businesses to host large-scale conference calls without incurring a per-person, per-minute fee, as would be required if these groups were to host calls using a traditional 1-800 dial-in number. It allows those consumers to use something they have already paid for – *e.g.*, an unlimited long-distance plan – to obtain a service they enjoy without needlessly paying more out of pocket for the phone call. Free Conferencing and other companies that have prospered using the “free” model have, through the use of the most modern technology, found a way to deliver high quality conferencing service for a fraction of the cost of companies that still charge organizer fees. The “free” model -- which is the more efficient, customer friendly model -- lowers the price of conference calls for consumers throughout the U.S. and the world. This is a model for which the Commission should provide unwavering support.

In recent months, the public has been informing the Commission as to the value a free conference calling service provides. Over 800 public comments from consumers have been filed on the WB Docket 18-155, *Updating The Inter-carrier Compensation Regime To Eliminate Access Arbitrage*, urging the Commission to take measures to protect the

free conference calling model. Those public filings detail how consumers rely on these services. For example, in just a random sampling of a dozen, consumers inform the Commission that free conference calling services provide access to: prayer calls, widow support groups, an Amish and Mennonite Conference line, weekly family calls, pro bono legal services and an addiction support group. In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage; WC Docket 18-155. A Google search reveals a myriad of other uses of free calling services including the only access to news, information and prayer to Haitians during Hurricane Matthew.⁵

While these comments were provided in a separate proceeding, they have the utmost importance here. T-Mobile created its One-Cent Policy to coerce people to stop using these services, the very services that help the needy, poor, and disabled gain access to a variety of different organizations. Those harmed most by the loss of access to free conference calling services are the people T-Mobile and Sprint aggressively pursue in their marketing with their lower monthly unlimited post-paid plans and variety of pre-paid products that do not require credit checks.

B. T-Mobile's Purported Reasoning For The One-Cent Policy Is Based On Lies.

From the One-Cent Policy's inception in October 2016 until year-end 2017, Free Conferencing has received over 10,000 consumer complaints from T-Mobile customers about the One-Cent Policy, their inability to get accurate information from T-Mobile

⁵ See <https://vimeo.com/189164097>.

about its policy, and related issues.⁶ Many more have complained to T-Mobile directly.⁷ T-Mobile's One-Cent Policy has the effect of blocking, choking, reducing and restricting this traffic. *See* Free Conferencing Petition to Deny, Appendices A at ¶ 4 ("Divine Prayer Line followers have fallen 90% in the past two years as a direct result of T-Mobile's policy."), and B at ¶ 5 ("In the past two years, the number of callers has dropped by 80%. Mountain of Ministries' followers reported to me that they have stopped calling because of T-Mobile's policy to charge for the call when they had purchased unlimited plans.").

T-Mobile, and now, Sprint subsidiary Boost Mobile, do not tell users the truth about their policy. It is hard to keep track of the many different stories told by T-Mobile's website, customer service representatives, blog writers and the actual interrupting messages heard by T-Mobile subscribers when they are targeted by the One-Cent Policy. None, though, tell the real motives behind the policy- which is to stifle traffic and block calls. T-Mobile's website states the following about the One-Cent Policy:

Calls to chat lines, radio broadcast lines, and similar services aren't included in your plan. T-Mobile charges \$.01 per minute for calls to these numbers.

⁶ Free Conferencing's database with logged customer service complaints can be produced at the request of the Commission. In its Petition filed on August 27, 2018, Free Conferencing stated that it received about 15,000 customer complaints related to the One-Cent Policy. Free Conferencing's customer service database contains over 10,000 but tracking was not done with precision by various customer service representatives and Free Conferencing estimates there were thousands more submitted and not logged in that database.

⁷ *See e.g.*, <https://support.t-mobile.com/thread/142060>.

Out-of-plan calls tend to cost more for T-Mobile to complete, and this small fee helps us to manage those costs.⁸

This statement is not true. Free Conferencing is unable to tell the Commission why it is untrue because doing so would breach a Confidentiality Order entered by the Northern District of Illinois in pending litigation.⁹ However, Free Conferencing urges the Commission to demand review, if it has not already, of T-Mobile's contract with its primary intermediate provider, Inteliquent, to evaluate the truth of this statement.

T-Mobile also tells its users that calls to the telephone numbers targeted by the One-Cent Policy are "out of plan" and "have always been out of plan" – another lie. T-Mobile's terms and conditions do not identify any out of plan numbers and do not state with any certainty what will or will not incur an additional charge. As detailed by Free Conferencing in its Petition, T-Mobile customer service representatives inform the public that there is no consistency on how numbers are targeted and that the "list" of targeted numbers changes frequently. Despite that, T-Mobile tells its customers on its website and on every interrupting message that calls to these numbers are "out of plan." Moreover, consumers using T-Mobile's pre-paid plans are completely blocked from making certain calls and are told different plans must be purchased – plans that

⁸ <https://support.t-mobile.com/docs/DOC-33322>.

⁹ Free Conferencing sought relief from the Order so that it could provide the Commission a handful of relevant documents, on a confidential basis, that would enlighten the Commission as to the real motives and falsehoods told by T-Mobile. T-Mobile vigorously objected and the Court refrained from providing Free Conferencing with the relief sought. Free Conferencing continues to urge the Commission to investigate T-Mobile's misrepresentations on its own.

generally are not even marketed as options for consumers. Here are currently what T-Mobile's interrupting messages tell consumers:

- **Interrupting Message T-Mobile For Post-Paid Customers:**

"The number you are calling is outside your plan and will incur a one cent per minute charge if you continue. **You can hang up now** to avoid the charge."

- **Interrupting Message T-Mobile For Pre-Paid Customers:**

"The number you are dialing is outside of your plan and would incur a one cent per minute charge. You can add to your balance by dialing 611 from your phone, online at myt-mobile.com or visiting your retail store." *(The call is then dropped by T-Mobile.)*

- **Interrupting Message For MetroPCS Pre-Paid Customers:**

"The number you are dialing is not included in your MetroPCS rate plan. To call this number, please purchase the select shared calling service. To do so, please dial 611 from your handset or you can visit a MetroPCS store. Thank you." *(The call is then dropped by MetroPCS.)*

T-Mobile also tells the public that "most conference lines provided by employers aren't subject to this charge," giving consumers the impression that there is something proper about a conference call line provided by employers. However, Free Conferencing sells a business-centric conferencing product for a nominal user fee and that service is also targeted by the One-Cent Policy. Finally, T-Mobile customer service personnel have frequently told its subscribers that Free Conferencing is the source of the charge. Such misrepresentations are evident from T-Mobile blog posts and calls into Free Conferencing's customer service lines.

IV. THE MERGER AND THREATENED SPREAD OF THE ONE-CENT POLICY TO SPRINT WILL STIFLE COMPETITION AND ENABLE THE APPLICANTS TO COERCE THE MARKET.

If T-Mobile and Sprint are given the chance, they will destroy the free conference call model, which does not charge consumers organizer fees for conducting a conference call, thereby destroying competition in the market place and raising the price of conference calls across the board. T-Mobile and others in the industry have claimed that in practice, the elimination of free conference calling services would result in a reduction in the cost of long-distance plans. There is absolutely no data to support that claim. In fact, the exact opposite is likely. Without “free” high quality options, AT&T, Comcast and other providers of conferencing services, who already charge between 3-5 cents per minute for their conferencing services, will have no less costly competition and thus no motivation to provide better or more affordable services. Consumers will be left paying \$25-50 every time they wish to organize a conference call.

T-Mobile’s policy not only stifles competition in the market, it is also used by T-Mobile as a tool to coerce favorable deals. T-Mobiles uses the One-Cent Policy to exert its market power and if the Commission approves the proposed merger, that market power will greatly expanded. It is well-known in the industry that T-Mobile, either directly or through an intermediate provider, has agreed to remove the One-Cent Policy from certain conferencing telephone numbers offered by other companies if those companies would enter into economically favorable direct connection deals with T-Mobile. T-Mobile knows the harm the One-Cent Policy has on a conference call

provider's business and exploits that as leverage – offering to remove the One-Cent charge if the provider agrees to a deal with T-Mobile.

For example, a competing free conference call provider, Turbobridge, told Free Conferencing that, whenever one of Turbobridge's telephone numbers becomes subject to the One-Cent Policy, it contacts T-Mobile's intermediate provider (Inteliquent) and that telephone number is automatically removed from T-Mobile's "list." T-Mobile has made deals with Citrix and another company called Eltopia agreeing to make sure certain telephone numbers will not be subject to the One-Cent Policy if those companies agreed to T-Mobile's terms.

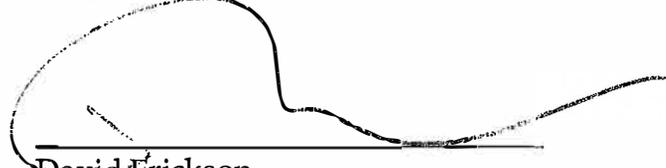
If the Commission permits T-Mobile to merge with Sprint without restricting these unlawful and discriminatory practices, T-Mobile will have even more market power to deploy the coercive power of its One-Cent Policy against competitors and consumers. The Commission should put a stop to these tactics and force T-Mobile to terminate the One-Cent Policy completely.

V. CONCLUSION.

Free Conferencing hereby respectfully requests, for the reasons discussed above and those stated in its Petition to Deny, that the Commission not approve the transfer of licenses and/or authorizations from Sprint to T-Mobile. In the alternative, Free Conferencing respectfully requests that the Commission condition the transfer of such licenses on the enforceable cessation of T-Mobile's discriminatory "One-Cent Policy" subject to the Commission's continuing oversight over this transaction.

October 31, 2018

Respectfully submitted,



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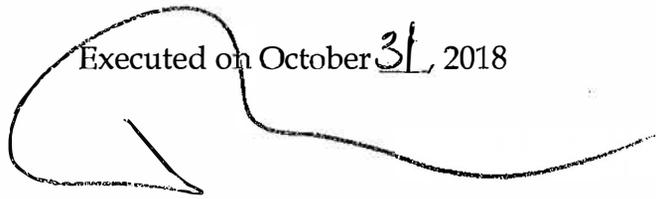
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DECLARATION

I declare under penalty of perjury that the facts contained within the foregoing Reply in Support of Petition to Deny of CarrierX, LLC, except for those facts for which official notice may be taken, are true and correct to the best of my information, knowledge and belief.

Executed on October 31, 2018



David Erickson
Chief Executive Officer
CarrierX, LLC

CERTIFICATE OF SERVICE

I, Lauren J. Coppola, hereby certify that on October 31, 2018, I caused a true and correct copy of the foregoing Reply in Support of Petition to Deny of CarrierX, LLC to be served by electronic mail and/or First Class Mail upon the following:

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