

March 15, 2018

Via ECFS

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

Re: *Ex Parte* Presentation: WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92

Dear Secretary Dortch:

Peerless Network, Inc. (“Peerless”) hereby respectfully responds to a number of misleading, inaccurate, and/or unsubstantiated assertions set forth in the January 5, 2018 letter filed by T-Mobile USA, Inc. (“T-Mobile”) in the above-referenced proceedings.¹ In addition, Peerless further explains the impropriety of T-Mobile’s position and provides the Federal Communications Commission (“Commission” or “FCC”) with an update on the status of Peerless’s efforts to obtain direct connections with T-Mobile, including T-Mobile’s ongoing failure to engage in good faith negotiations for such IP-to-IP connections.

I. Background

In 2017, Peerless, together with other carriers, filed comments in the above-captioned proceedings on proposed reforms to: (1) the 8YY access charge regime,² and (2) the network edge and regulatory treatment of tandem switching, transport, and transit service.³ One key issue raised in the latter set of comments is the urgent need for the Commission to adopt a Direct

¹ See Letter from Todd Daubert, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 (filed Jan. 5, 2018) (“T-Mobile’s Jan. 5 *Ex Parte* Letter”).

² See Comments of Consolidated Communications Companies *et al.* in Opposition to Ad Hoc’s Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 (filed July 31, 2017); Reply Comments of Consolidated Communications Companies *et al.*, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 (filed Aug. 15, 2017).

³ See Comments of Peerless Network, Inc. *et al.*, WC Docket No. 10-90, CC Docket No. 01-92 (filed Oct. 26, 2017) (“Carrier Coalition Comments”); Reply Comments of Peerless Network *et al.*, WC Docket No. 10-90; CC Docket No. 01-92, at 11-14 (filed Nov. 20, 2017).

Connect Requirement⁴ to stop arbitrage schemes, such as those certain terminating wireless carriers—like T-Mobile—engage in by requiring traffic to be sent through a designated intermediate carrier partner that imposes charges the terminating carrier cannot impose itself.⁵

T-Mobile is an appalling arbitrage abuser that has significantly harmed Peerless and other carriers and their ability to compete. For example, Peerless has been and continues to be harmed by T-Mobile’s termination of previously established direct connects.⁶ For several years (up until mid-December 2015), Peerless had direct connects with T-Mobile, which enabled Peerless to terminate all types of traffic regardless of jurisdiction to T-Mobile at no cost, *i.e.*, \$0. However, after T-Mobile entered into its 2015 arrangement with Inteliquent, T-Mobile informed Peerless that the direct connects would be terminated unless Peerless agreed to limiting the traffic sent to “retail” traffic only. While Peerless attempted to do so (which prompted a more than 80% reduction of the traffic Peerless formerly terminated to T-Mobile over the direct connects), T-Mobile billed Peerless over \$700,000 for such traffic because T-Mobile did not consider it retail traffic, even though the agreement did not specify what constituted “retail” traffic. Consequently, because Peerless’s traffic is comprised of traffic that T-Mobile deems to be comingled retail and wholesale traffic, which cannot easily be separated, T-Mobile’s actions have forced Peerless to inefficiently route all traffic terminating to T-Mobile end users, either directly or indirectly through T-Mobile’s intermediate carrier partner, Inteliquent.⁷

T-Mobile’s refusal to directly interconnect with Peerless (and other carriers) provides Inteliquent a “bottleneck monopol[y],” which has allowed Inteliquent to excessively and artificially raise its rates for routing traffic to T-Mobile end users.⁸ As O1 reports, Inteliquent’s

⁴ The proposed Direct Connect Requirement would require “all wireline and wireless carriers make direct connections available to requesting carriers that send or receive at least four (4) T-1s of originating and/or terminating traffic per month (or for IP networks or other modern technology, 200,000 monthly MOUs sustainable average over a 30-day period), ***for all traffic—i.e., all local and long distance traffic along with all wholesale and retail traffic***..., with a zero rate per MOU for all terminating traffic.” Carrier Coalition Comments at 11.

⁵ *Id.* at 14 & n.27.

⁶ See Letter from Philip Macres, Counsel for Consolidated Communications Companies, Peerless Network, Inc., and West Telecom Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at Example 1 (diagram) (filed Dec. 4, 2017) (“Dec. 4 *Ex Parte* Letter”).

⁷ *Id.*

⁸ See *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 30 (2001); see also *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) To Facilitate*

rates skyrocketed by over 400% shortly after the exclusive agreement between T-Mobile and Inteliquent was announced in 2015.⁹ Similar to O1's experience,¹⁰ Peerless observed that the rates to terminate traffic to T-Mobile via an intermediate carrier rose from an average of \$0.0004 or less per MOU (when direct connections were in place between T-Mobile and multiple carriers) to an astounding \$0.002 per MOU.

To further put this in perspective, at its peak Peerless terminated over 1.1 billion MOUs over its direct connects to T-Mobile at \$0. If Peerless were terminating this amount of traffic to T-Mobile today (which would now need to be rerouted through Inteliquent), *Peerless's annual cost to terminate such traffic would cost over \$25 million.* Notably, Inteliquent is not the only one making money from the rerouting, because revenues Inteliquent receives to terminate the traffic as the bottleneck provider is—upon information and belief—shared, in some form, with T-Mobile.¹¹

Deployment of Competitive Service in Certain Metropolitan Statistical Areas, CC Docket No. 96-262, CCB/CPD File No. 01-190, Eighth Report and Order and Fifth Report and Order on Reconsideration, 19 FCC Rcd 9108, ¶¶ 17 & 119 (2004); *id* at n.59 (citing Verizon Wireless White Paper at 19 n.58 [“CMRS carriers wield as much ‘monopoly power’ here as CLECs....”]).

⁹ Letter from Michel Singer Nelson, Counsel and Vice President of Regulatory and Public Policy, O1 Communications, Inc. (“O1”), to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 2 (filed Jan. 11, 2018) (“O1’s Jan. 11 *Ex Parte* Letter”).

¹⁰ O1’s Jan. 11 *Ex Parte* Letter at 2.

¹¹ See Dec. 4 *Ex Parte* Letter at Example 1 (diagram). Public filings show that T-Mobile entered into an agreement with Inteliquent, Inc. in 2015 under which Inteliquent provides “credits” to T-Mobile for traffic routed to T-Mobile. See Section 9.B and Schedule 4 of the PSTN Services Attachment to the Telecom Master Services Agreement Between T-Mobile USA, Inc. and Inteliquent, Inc. (dated June 23, 2015) (stating that “[f]or Inbound Tandem IXC Service, Outbound 8YY Service, and Inbound Wholesale Service, **Provider shall provide T-Mobile with the credit set forth in Schedule 4 (Provider Services Rates and Credits)**...” (emphasis added) and Schedule 4 specifying “Provider Services Rates and Credits”). The complete redacted version of the Agreement and Service Schedule as filed on EDGAR on October 29, 2015 is available at https://www.sec.gov/Archives/edgar/data/1292653/000156459015008822/iqnt-ex101_201.htm; and https://www.sec.gov/Archives/edgar/data/1292653/000156459015008822/iqnt-ex102_225.htm, respectively; see also *Informal Complaint by CenturyLink Communications, LLC Against T-Mobile USA, Inc. and Request for Mediation*, File No. EB-16-MDIC-0020, at 2 (filed Nov. 10, 2016) (“CenturyLink Informal Complaint”). While T-Mobile asserts that CenturyLink’s complaint was “withdrawn or resolved in favor of T-Mobile,” it provides no record evidence that such characterizations are true. Nor could it provide an FCC decision finding in favor of T-Mobile in connection with an informal complaint proceeding, because the FCC does not issue

Based on this experience, Peerless joined several carriers in urging the Commission to immediately adopt the above-referenced “Direct Connect Requirement.”

II. T-Mobile’s Jan. 5 Ex Parte Letter Included Misleading, Inaccurate and Unsubstantiated Statements and Presented a Position that is Unjust and Unreasonable, Unreasonably Discriminatory, Anticompetitive, and Contrary to the Public Interest

On January 5, 2018, T-Mobile filed a letter in response to the Dec. 4 *Ex Parte* Letter.¹² Regrettably, instead of engaging in a forthright discussion on the proposed Direct Connect Requirement, T-Mobile erratically responded with a number of misleading, inaccurate, and/or unsubstantiated assertions.

First, T-Mobile’s assertion that it “does not refuse to provide direct connections”¹³ was misleading, because—as the Jan. 5 *Ex Parte* Letter concedes—T-Mobile will only establish direct connects under certain (T-Mobile-imposed) conditions. Critically, one such condition is that the carriers seeking direct connects must “seek to use the direct connection solely for the exchange of traffic destined to, or originated by, its own end user customers.”¹⁴ In other words, T-Mobile is not willing to provide direct connects for wholesale traffic.

As a practical matter, T-Mobile’s wholesale traffic condition restricts *all* traffic for carriers like Peerless that seek to terminate comingled wholesale and retail traffic. Because it is not possible for Peerless to segregate wholesale from retail traffic in the manner that T-Mobile requires, Peerless is effectively barred from sending any traffic to T-Mobile via direct connections.

Second, regardless of what T-Mobile claims, T-Mobile’s denial of direct connects based on its wholesale traffic restriction is unjust and unreasonable, as well as unreasonably discriminatory, anticompetitive, and contrary to the public interest.¹⁵ Indeed, T-Mobile permits Inteliquent to deliver both *retail and wholesale traffic* via direct connects, but at the same time refuses to permit Peerless to do so, even though Peerless is similarly situated to Inteliquent. As

decisions on the substance of informal complaints. Moreover, even if CenturyLink withdrew its informal complaint, that does not mean its claims were not true.

¹² See T-Mobile’s Jan. 5 *Ex Parte* Letter at 1-3.

¹³ T-Mobile’s Jan. 5 *Ex Parte* Letter at 2.

¹⁴ *Id.* (stating that T-Mobile is willing to establish a direct connection with a carrier that “seeks to use the direct connection solely for the exchange of traffic destined to, or originated by, its own end user customers”).

¹⁵ See also Competitive Carrier Coalition Comments at 17-23.

O1 and CenturyLink noted, T-Mobile's traffic segregation requirements are "entirely nonsensical, since T-Mobile is ultimately receiving the 'same un-segregated mix of retail and wholesale traffic...it is just sent via the forced metering arrangements' from Inteliquent."¹⁶

T-Mobile's discriminatory conduct further impedes the availability of competitive routing and interconnection services,¹⁷ because carriers like Peerless and O1 are forced to send traffic through T-Mobile's intermediate carrier partner, Inteliquent. Moreover, other carriers, such as small rural carriers, among others, that do not have the resources and/or technology in place to direct connect with T-Mobile are also forced to send their traffic through Inteliquent and pay its excessive charges. To make matters worse, in contravention to the *ICC/CAF Transformation Order's* objectives, T-Mobile's indirect arbitrage routing scheme "creates" rather than "eliminate[s] competitive distortions between wireline and wireless services."¹⁸ In fact, T-Mobile's denial of direct connections provides T-Mobile (and Inteliquent) with an "unfair competitive advantage" that is obviously "motivated by anticompetitive animus."¹⁹ T-Mobile's conduct therefore directly defies the FCC's *CMRS Interconnection Order*, because such conduct is not based on a just and reasonable business decision, but rather is "anticompetitive," "has raised rivals' costs of doing business," and has "hinder[ed] competition."²⁰

While these resulting impacts of T-Mobile's conduct are bad enough, the T-Mobile imposed bottleneck destroys sufficient redundancy that, in turn, increases risk to public safety and exposure to network outages and service disruptions.²¹ Indeed, the Level 3 Nationwide

¹⁶ Letter from Michel Singer Nelson, Counsel and Vice President of Regulatory and Public Policy, O1, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 2 (filed Jan. 11, 2018) ("O1's Jan. 11 *Ex Parte* Letter") (citing CenturyLink Informal Complaint, at 6).

¹⁷ See also Carrier Coalition Comments at 21 (explaining that "the Direct Connect Requirement will increase the availability of competitive routing and interconnection services.").

¹⁸ *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, ¶¶ 9 & 34 (2011) ("*ICC/CAF Transformation Order*") (emphasis added, subsequent history omitted).

¹⁹ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666, ¶ 43 (1995) ("*CMRS Interconnection Order*").

²⁰ *CMRS Interconnection Order*, ¶ 43 (explaining that the Commission would look at whether a "party denying interconnection was a reasonable business decision or a form of anticompetitive conduct intended to raise rivals' costs of doing business and hence hinder competition.").

²¹ See Carrier Coalition Comments at 22.

Outage on October 4, 2016²² and the *Katrina Report* demonstrates the critical necessity of and the public interest in having redundant switching pathways and redundant traffic routing.²³ As the New York Public Service Commission explained, “the redundancy resulting from alternative tandem switching options enhances the diversity and reliability of the public switched telephone network. These objectives have consistently been recognized on several occasions, particularly as a response to lessons of the September 11, 2001 attacks and Hurricane Katrina.”²⁴ Relatedly, the FCC previously noted “that the interconnectivity of mobile communications networks promotes the public interest because it enhances access to all networks, provides valuable network redundancy, allows for greater flexibility in communications, and makes communications services more attractive to consumers. It is one further step toward a ubiquitous ‘network of networks.’”²⁵ Given T-Mobile’s position, under which T-Mobile has apparently chosen to flout such FCC goals and implicit directives on interconnectivity, it is not surprising that T-Mobile asks that the FCC “look past this distraction.”²⁶

T-Mobile attempts to justify its position by arguing it is somehow designed to (a) “provid[e] the highest quality service...and expedit[e] the IP Transition” and (b) address issues with “fraud and robocalls.”²⁷ Neither of these assertions withstand scrutiny. As O1 explained, “[s]ending traffic indirectly, rather than directly, does not improve the quality of service. Rather, indirect routing degrades the quality of the service.”²⁸ Contrary to T-Mobile’s claims, T-Mobile’s decision to sever direct connects was clearly not driven by service quality and efficient

²² See Level 3 Nationwide Outage October 4, 2016, Public Safety and Homeland Security Bureau, Cyber Security and Communications Reliability Division Staff Report (Mar. 13, 2018, available at https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0313/DOC-349661A1.pdf).

²³ *Id.* at 22-23 (citing and quoting *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communic’ns Networks*, EB Docket No. 06-119, Notice of Proposed Rulemaking, 21 FCC Rcd 7320, Append. B at 14 (2006), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-06-83A1.pdf (discussing the need for “redundant pathways” because the “switches that failed, especially the tandems, had widespread effects on a broad variety of communications in and out of the Katrina region.”) (“*Katrina Report*”)).

²⁴ *Petition of Neutral Tandem - New York, LLC for Interconnection with Level 3 Communications and Request for Order Preventing Service Disruption*, Case No. 07-C-0233, Order Preventing Service Disruption and Requiring Continuation of Interim Interconnection, 2007 WL 1802691* (N.Y. Pub. Serv. Comm’n June 20, 2007).

²⁵ *CMRS Interconnection Order*, ¶ 28.

²⁶ T-Mobile’s Jan. 5 *Ex Parte* Letter at 3.

²⁷ *Id.* at 2-3.

²⁸ O1’s Jan. 11 *Ex Parte* Letter at 3.

considerations, because, like O1, Peerless's direct connects were "*efficient, IP-based connections that complied with T-Mobile's POI requirement.*"²⁹ As O1 noted, contrary to T-Mobile's claims,³⁰ it is T-Mobile's actions that have "turn[ed] the clock back" on ICC reform and direct IP transition.³¹

Moreover, T-Mobile's recent establishment of peering arrangements with other wireless carriers exacerbate the risk of reduced service quality associated with the Inteliquent bottleneck. Indeed, because Inteliquent apparently relies heavily on revenues generated as generally being T-Mobile's "sole interconnection provider,"³² these peering arrangements appear to have resulted in a sharp decline in the overall amount of traffic routed through Inteliquent, which has, in turn, significantly and adversely impacted its financial stability.³³ Because Inteliquent serves as T-

²⁹ *Id.* at 3.

³⁰ T-Mobile's Jan. 5 *Ex Parte* Letter at 3.

³¹ *Id.* T-Mobile's other rationale for opposing direct connections are purely related to issues it has with direct connecting to ILECs, which is inapposite since Peerless is not an ILEC. *See id.* at 3.

³² As O1 previously noted, in August 2015, T-Mobile and Inteliquent publicly announced an agreement through which Inteliquent would generally serve as T-Mobile's "*sole* interconnection provider." Letter from Michel Singer Nelson, Counsel and Vice President of Regulatory and Public Policy, O1, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at presentation p.3 & n.3 (filed Jan. 8, 2018) (citing Inteliquent Press Release, Inteliquent Announces Entry Into Breakthrough Agreement (Aug. 17, 2015) (emphasis added), available at <http://ir.inteliquent.com/releasedetail.cfm?releaseid=927943>; see also Letter from Ronald W. Del Sesto, Jr., Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-25 *et al.*, at attached FCC Presentation p.5 (filed May 24, 2016)). That is, virtually all phone calls destined to T-Mobile's end users were to be routed from other carriers through Inteliquent.

³³ See Stocks and Financial Services Press Releases, Onvoy LLC Rating Lowered To #B-# From #B#; Debt Ratings Outlook Stable (Jan. 30, 2018), available at <http://www.thailand4.com/.fin/2018-01-30/eb04a3ef6311868aae16b571905f71a3/> (reporting that S&P Global Ratings lowered its corporate credit rating on Onvoy LLC (d/b/a/ Inteliquent) because of a "deterioration in Onvoy's operating and financial performance due to accelerated declines in voice traffic in the company's switching business driven by peering arrangements (which enable carrier interconnection) between U.S. wireless carriers. The loss of Onvoy's voice traffic primarily stems from T-Mobile establishing direct connections with AT&T and Verizon to route long-distance calls, effectively replacing the company as a facilitator of long-distance voice traffic between the carriers. As a result of the significant reduction in minutes of use (MOU), we expect a sharp decline in revenue and EBITDA margins along with weaker credit metrics in fiscal year 2018 compared with our previous forecast.").

Mobile's intermediate carrier partner and has a bottleneck monopoly in that respect,³⁴ if Inteliquent is ever unable to continue operating and routing traffic (e.g. due to a potential exhaustion of financial resources—which is a real and presently looming concern,³⁵ cyberattacks, or other events) the absence of sufficient alternative carriers with direct connects to T-Mobile for wholesale traffic could quickly compromise “the ubiquity and reliability of the nation’s telecommunications network,” which “is of paramount importance to the explicit goals of the Communications Act of 1934, as amended.”³⁶ As a Wireless Priority Service (“WPS”) carrier (and if T-Mobile is a provider of Government Emergency Telecom Services (“GETS”)), T-Mobile has heightened mission critical responsibilities to United States citizens for helping to maintain crucial telecommunications infrastructure during national security and emergency situations; however, T-Mobility’s ability to effectively serve in this role would be abruptly and significantly compromised if there was an Inteliquent outage.

Nor are T-Mobile’s purported concerns with fraud and robocalls a credible basis for refusing direct connects with Peerless for wholesale traffic.³⁷ When direct connects were in place between T-Mobile and Peerless, Peerless processed nearly *30 billion minutes of wholesale and retail traffic* for T-Mobile over a 5-year period and received *zero* trouble tickets associated with fraud or robocalls—and only three trouble tickets overall (which did not pertain fraud or robocall issues) that were associated with traffic that Peerless sent to T-Mobile. For this reason and because retail traffic—which T-Mobile claims it will receive directly—may also contain fraud or robocalls, T-Mobile’s claim that it does not accept wholesale traffic due to fraud and robocall concerns does not withstand scrutiny.

Given Peerless’s impeccable record in having *no fraud or robocalling trouble tickets associated with the billions of MOUs* it sent and hopes to send to T-Mobile again, T-Mobile’s purported fraud and robocalling concerns do not provide a legitimate basis for denying direct connects to Peerless. Rather, such articulated concerns are nothing but misleading excuses, which lead Peerless to believe T-Mobile’s true motive for denying direct connects for wholesale traffic is purely based on the arbitrage revenues, credits, or other consideration or *quid pro quo* it

³⁴ See related discussion in Section I, above.

³⁵ See note 33, *supra*. For example, if Inteliquent continues to experience a decline in revenues due to T-Mobile’s peering arrangements with other national wireless carriers, which are diverting traffic that Inteliquent would have otherwise handled, Inteliquent could ultimately be forced to declare bankruptcy and disavow its partnership agreement with T-Mobile. See also *Onvoy, LLC -- Moody’s downgrades Onvoy to B3; outlook stable*, Business Insider (Jan. 8, 2018), available at <http://markets.businessinsider.com/news/bonds/onvoy-llc-moody-s-downgrades-onvoy-to-b3-outlook-stable-1012688195> (citing *Rating Action: Moody’s downgrades Onvoy to B3; outlook stable*).

³⁶ *ICC/CAF Transformation Order*, ¶ 734.

³⁷ T-Mobile’s Jan. 5 *Ex Parte* Letter at 3, n.12.

obtains, either directly or indirectly, by forcing carriers like Peerless and O1 to route their traffic through Inteliquent. *Indeed, if that were not the case, T-Mobile would not be financially impacted by Peerless's direct connect request for wholesale traffic and would have no good reason to deny Peerless's request or similar requests made by other carriers.*

Third, T-Mobile's assertions concerning revenue sharing arrangements with Inteliquent are misleading or unsubstantiated.³⁸ These assertions are misleading because T-Mobile failed to mention that it *did* receive credits under its previous agreement with Inteliquent.³⁹ Further, while T-Mobile claims this is not the case under "the current pricing structure,"⁴⁰ it provides absolutely no evidence (such as a copy of the current version of its agreement with Inteliquent) to corroborate its carefully worded claim that it no longer receives any consideration of any kind (which could conceivably be some type of payments, credits, or artificial rate reductions—perhaps even below Inteliquent's cost) for services Inteliquent provides to T-Mobile.⁴¹ Without such evidence, the Commission should proceed with the "presumption that revenue sharing is [also] occurring" under the current pricing structure.⁴² Moreover, the Commission should be mindful that if it were true that T-Mobile is not obtaining any type of benefit from Inteliquent, then, as noted above, T-Mobile would not be financially impacted by Peerless's direct connect request for wholesale traffic and would have no good reason to deny Peerless's request.

It cannot be overemphasized that as a result of the apparent revenue sharing arrangement, T-Mobile has and likely continues to unlawfully "indirectly" charge for access services, via Inteliquent, which T-Mobile is not otherwise permitted to assess directly, absent an agreement.⁴³ Not only do T-Mobile's actions defy the Commission's orders and rules on this issue, but also drives prices up in contravention of the overarching goal of the *ICC/CAF Transformation Order*, which was supposed to be fair to consumers, with hundreds of millions of Americans paying less on their wireless and long distance bills than they should in the form of hidden, inefficient charges.⁴⁴

³⁸ *See id.* at 2 (stating that under its latest agreement with Inteliquent, T-Mobile "does not receive any revenue in the form of payments, credits, or other type of benefit").

³⁹ O1's Jan. 11 *Ex Parte* Letter at 2.

⁴⁰ T-Mobile's Jan. 5 *Ex Parte* Letter at 2.

⁴¹ *See id.*

⁴² *ICC/CAF Transformation Order*, ¶ 699.

⁴³ *See* Carrier Coalition Comments at 18; Dec. 4 *Ex Parte* Letter at Example 1 (diagram).

⁴⁴ *See ICC/CAF Transformation Order*, ¶ 9 (explaining that "the current ICC system is unfair for consumers, with hundreds of millions of Americans paying more on their wireless and long distance bills than they should in the form of hidden, inefficient charges.").

In short, contrary to T-Mobile claims, no reasonable basis exists to justify its discriminatory and anticompetitive actions that are contrary to FCC orders and the public interest, especially since Peerless's traffic volumes far exceed the threshold that justifies direct connects under accepted industry standards.⁴⁵ As such, T-Mobile's refusal to allow Peerless to directly connect for *all* traffic, only offering to provide direct connections for retail traffic and not for wholesale long distance traffic, is clearly unjust and unreasonable.⁴⁶

III. T-Mobile Refuses to Engage in Good Faith Negotiations with Peerless to Reach a Mutually Agreeable IP-to-IP Interconnection Agreement

Finally, T-Mobile's portrayal of the parties' discussions concerning a potential interconnection agreement is incomplete and misleading. In fact, T-Mobile's position on such discussions warrants FCC intervention. While Peerless has continuously sought to work with T-Mobile, such efforts have largely been ignored. To date, T-Mobile has only presented a new interconnection agreement that would provide direct connections on an IP-to-IP basis for Peerless's retail traffic, with no direct connections for Peerless's wholesale traffic. Notably, the agreement that T-Mobile did provide Peerless is vastly different than the one T-Mobile has (or at least had prior to the latest amendment) with Inteliquent, which allows Inteliquent to send both retail and wholesale traffic over the direct connects it has with T-Mobile. The agreement is also vastly different than the one Peerless had with T-Mobile (which allowed both types of traffic to be sent over direct connects) before it terminated Peerless's direct connects in 2015.

To make matters worse, since January 5, 2018, T-Mobile's only response to Peerless's efforts to negotiate has been to condition any further discussions on Peerless signing a Nondisclosure Agreement ("NDA"), which, among other restrictions, *would conveniently "gag" Peerless from discussing anything related to T-Mobile's direct connection issues with the Commission (or filing a Section 208 complaint), including these discussions.*⁴⁷ Contrary to T-Mobile's claims, such provisions are by no means "industry standard." T-Mobile refuses to work with Peerless unless such NDA is signed, and has wholly rejected Peerless's efforts to discuss reasonable changes to the terms of the proposed NDA. As such, T-Mobile is not only refusing Peerless's requests for direct connections for all traffic, but is also effectively refusing to "negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of

⁴⁵ Carrier Coalition Comments at 12-13.

⁴⁶ Such unjust and unreasonable conduct violates Section 201(b) and 202(a) of the Act. See 47 U.S.C. §§ 201(b) & 202(a).

⁴⁷ Upon request from the Commission, Peerless will provide T-Mobile's template interconnection agreement and NDA subject to confidential treatment pursuant to 47 C.F.R. § 0.457 & 0.459.

voice traffic.”⁴⁸ Absent Commission intervention, it appears that T-Mobile is unlikely to alter its approach to direct connect requests.

IV. Conclusion

As demonstrated above, T-Mobile’s conduct in denying direct connections and forcing carriers to use its intermediate carrier partner Inteliquent is patently unlawful, anticompetitive, and contrary to the public interest. As the Commission previously proclaimed, it needs to intercede immediately because T-Mobile is “deny[ing] interconnection in order to gain an unfair competitive advantage” and is otherwise engaging in a “form of anticompetitive conduct intended to raise rivals’ costs of doing business and hence hinder competition.”⁴⁹

Based on the foregoing, Peerless agrees with O1 that it is necessary for the Commission to immediately initiate an investigation into T-Mobile’s improper conduct, and extensively question T-Mobile and Inteliquent on their exclusive partnership arrangement, as well as T-Mobile’s disconnections of direct connects. In addition, Peerless urges the Commission to prevent further imminent harm to competition and the redundancy/survivability of the nation’s telecommunications networks by immediately issuing an order adopting the proposed Direct Connect Requirement.⁵⁰

⁴⁸ *ICC/CAF Transformation Order*, ¶ 652 (stating that “[w] also make clear our expectation that carriers will negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.”); *id.* ¶ 1011 (explaining that “we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise. Moreover, we expect such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic.”).

⁴⁹ *See CMRS Interconnection Order*, ¶ 43 (“reiterate[ing] that the Commission stands ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect. We will be particularly vigilant in policing, where they exist, any efforts by CMRS providers to deny interconnection in order to gain an unfair competitive advantage.”).

⁵⁰ As explained previously, the Commission can impose the Direct Connect Requirement as a short-term solution pursuant to the Further Notice of Proposed Rulemaking associated with the *2011 USF/ICC Transformation Order*. *See* Dec. 4 *Ex Parte* Letter at 3 & n.4 (citing and quoting *2011 USF/ICC Transformation Order*, ¶ 1383 (asking “[s]hould the Commission interpret section 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should we otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?”)).

Please contact us if you have any questions or would like additional information about the issues discussed in this letter.

Sincerely,

/s/ John Barnicle

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/s/ Philip Macres

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