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

In the Matter of	)	
	)	
Updating the Intercarrier Compensation	)	WC Docket No. 18-155
Regime to Eliminate Access Arbitrage	)	

REPLY COMMENTS OF PEERLESS NETWORK, INC. AND AFFINITY NETWORK, INC. D/B/A ANI NETWORKS

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Peerless Network, Inc. ("Peerless") and Affinity Network, Inc. d/b/a ANI Networks ("ANI") respectfully submit these reply comments pursuant to the Notice of Proposed Rulemaking issued by the Federal Communications Commission ("FCC" or "Commission") in the above-referenced proceeding.[1]

Introduction and Summary

The Commission received comments from many parties in this proceeding that strongly support the proposition that providing direct connects to interested carriers is critical to eliminating arbitrage and, consequentially, support adoption of CenturyLink's Proposed Direct Connect Rule.[2] More specifically, many carriers commenting in this proceeding agreed that CenturyLink's Proposed Direct Connect Rule is critical to addressing arbitrage because it will eliminate the

[1] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, 83 Fed. Reg. 30628 (rel. June 5, 2018) ("*NPRM*").

[2] CenturyLink's proposed rule requires carriers "(i) to permit requesting carriers to directly interconnect their networks for the termination of access traffic; or (ii) if the carrier receiving a request for direct interconnection for the termination of access traffic nevertheless prefers to receive such traffic through indirect interconnection, to bear financial responsibility for the costs of receiving traffic from the point of direct interconnection they prefer" ("CenturyLink's Proposed Direct Connect Rule"). *See* Letter from Timothy M. Boucher, Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-98, 01-92; WC Docket Nos. 07-135, 10-90, 18-155, at 1 (filed May 21, 2018) ("CenturyLink's May 21, 2018 Letter").

financial incentives that currently encourage terminating carriers to refuse direct connect requests for all or certain types of traffic. Moreover, the adoption of CenturyLink's Proposed Direct Connect Rule would serve to eliminate arbitrage industry-wide, and not just for centralized equal access ("CEA") providers in three states.

For reasons discussed below, Peerless and ANI urge the Commission to reject the arguments made by opponents of CenturyLink's Proposed Direct Connect Rule, particularly the incorrect, nonsensical and/or misleading arguments made by carriers currently engaged in access arbitrage and benefitting from the *status quo*. T-Mobile's attempts to legitimatize its arbitrage activities, exploitation of its bottleneck monopoly over access to its end users, and intransigence—which will undoubtedly get worse when T-Mobile doubles its size by buying Sprint—should not be tolerated.

The Commission is also urged to recognize that T-Mobile's purported concerns with fraud and robocalls, and the supposed "tools" Inteliquent provides to combat such calls, do not provide a credible basis for refusing direct connects with Peerless (and other carriers) for wholesale traffic. In addition, no credence should be given to claims that any benefits resulting from the adoption of CenturyLink's Proposed Direct Connect Rule would be outweighed by costs of implementing such a requirement.

The Commission should also reject incorrect assertions that adopting a direct connect requirement would risk prejudging the network edge or jeopardizing the benefits of CEA networks. However, in the event that the Commission want to proceed with extreme caution with respect to CEA networks, an exception to CenturyLink's Proposed Direct Connect Rule could be carved out for CEA networks.

Peerless and ANI also urge the Commission to reject arguments that it does not have the authority to adopt CenturyLink's Proposed Direct Connect Rule because the Commission does in fact have ample authority pursuant to Commission precedent and Sections 251(a), 201, and 202 of the Communications Act of 1934, as amended (the "Act"). Finally, ANI also urges the Commission to adopt reasonable measures to address "crank-back arbitrage."

I. CenturyLink's Proposed Direct Connect Rule Is Supported by a Diverse Group of Industry Stakeholders.

A diverse group of industry stakeholders, including Peerless and ANI,[3] offer strong support for the Commission's adoption of CenturyLink's Proposed Direct Connect Rule. For example, AT&T – which has incumbent local exchange carrier ("ILEC"), competitive local exchange carrier ("CLEC"), interexchange carrier ("IXC") and wireless affiliated operating entities – supports CenturyLink's Proposed Direct Connect Rule because "it shifts the financial responsibility for the delivery of access traffic where a carrier declines to accept a *legitimate* request for direct interconnection for the purposes of delivering that traffic."[4] AT&T explains that a "LEC's denial of that legitimate request for direct connection would be improper, and any [carrier] that refuses a legitimate request for direct connection should have to bear responsibility for the costs of the delivery of that traffic to its end offices."[5] AT&T also agrees that CenturyLink's Proposed Direct Connect Rule "would improve efficiency, eliminate incentives for wasteful arbitrage, and align Commission policy with sound economic principles, thereby enhancing competition."[6]

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[3] *See* Comments of Peerless Network, Inc. and Affinity Network, Inc. d/b/a ANI Networks, WE Docket No. 18-155 (filed July 20, 2018) ("Peerless and ANI Comments").

[4] Comments of AT&T, WC Docket No. 18-155, at 5 (filed July 20, 2018) ("AT&T Comments") (emphasis in original).

[5] *Id.*

[6] *Id*. at 23.

For similar reasons ITTA – an industry stakeholder group providing broadband wireline and wireless voice, video, and other communications services to residential and business customers predominately in rural areas – urges the Commission to adopt CenturyLink's Proposed Direct Connect Rule and emphasizes that the Commission needs to apply it to "CMRS providers, which are not subject to the Commission's access stimulation rules."[7] Other CLECs also support the adoption of CenturyLink's Proposed Direct Connect Rule. For example, O1 Communications states that the adoption of CenturyLink's proposal "would enable other providers to compete in the market and thereby help to return the rates to call CMRS provider customers to a fraction of what they are today as a result of the efforts of some CMRS providers to manipulate the market."[8]

II. Arguments Against CenturyLink's Proposed Direct Connect Rule Are Specious and Should Be Rejected

While commenters, including Peerless and ANI, offer compelling support of CenturyLink's Proposed Direct Connect Rule, others – primarily T-Mobile and Inteliquent – oppose the rule and instead try to substantiate their self-serving arrangement under the guise of protecting customers from robocalling or other fraudulent activities. The Commission should not be swayed by such unsupported claims that seem to be made as more of a scare tactic than improving the "customer experience."

A. Attempts to restrict direct connects only for the exchange of retail traffic are hypocritical and nonsensical

T-Mobile argues that the FCC should endorse T-Mobile's denial of efficient direct connect arrangements when requested direct connects may be used to exchange both retail and wholesale

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[7] Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 18-155, at 6 (filed July 20, 2018) ("ITTA Comments").

[8] Comments of O1 Communications, Inc., WC Docket No. 18-155, at 12 (filed July 20, 2018) ("O1 Comments").

traffic. However, T-Mobile provides no compelling evidence to support its retail-only requirement, and indeed, T-Mobile's exclusive direct connect arrangement with Inteliquent belies T-Mobile's arbitrary restriction. Despite alleging unfounded harms about exchanging wholesale traffic over direct connects, T-Mobile hypocritically permits Inteliquent to deliver both wholesale and retail traffic over the direct connects. Moreover, T-Mobile's arbitrary restriction (1) leads to inefficient routing of traffic, (2) is "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[,]"[9] and (3) forces carriers, like Peerless, that T-Mobile unilaterally determines to be exchanging comingled retail and wholesale traffic to inefficiently route all traffic terminating to T-Mobile end users through T-Mobile's intermediate carrier partner, Inteliquent. [10]

The result of T-Mobile's position is to create a bottleneck for traffic terminating to T-Mobile that can be exploited for the gain of T-Mobile and its tandem partner, at the expense of the rest of the industry. The FCC should not endorse such a self-serving arrangement.

B. T-Mobile's defense that its denial of direct connects and use of Inteliquent as a homing tandem was done to reduce fraud and robocalling, facilitate the IP Transition, and improve quality of service does not withstand scrutiny

In an attempt to buttress its spurious claim that it should be able to restrict direct connects to retail traffic only, T-Mobile seizes upon industry "hot button" issues such as robocalling and

[9] 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, 2018 Letter") (citing Informal Complaint by CenturyLink Communications, LLC Against T-Mobile USA, Inc. and Request for Mediation, File No. EB-16-MDIC-0020, at 6 (filed Nov. 10, 2016)).

[10] Letter from John Barnicle, President and Chief Executive Officer, Peerless Network, Inc. and Philip Macres, Counsel for Peerless, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 2-3 (dated Mar. 15, 2018) ("Peerless's Mar. 15, 2018 Letter").

fraud in a thinly-veiled attempt to curry favor with the Commission. Peerless and ANI – like T-Mobile, Inteliquent and other carriers – have strong incentives to root out fraud and inappropriate robocalling over their networks. Peerless and ANI are motivated to prevent robocalls to ensure that such calls do not congest their networks, and to avoid consumer complaints – just to name a few. In fact, Peerless and ANI are members of the USTelecom's Industry Traceback Group.[11] What's more, Peerless and ANI have methods, procedures and processes in place to battle this wide-ranging industry problem. For instance, 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 (using its own tools) received *zero* trouble tickets associated with fraud or robocalls.[12] In short, T-Mobile's reliance on the issues of fraud and robocalling to discriminate against carriers in terms of direct connects is opportunistic and not supported by credible evidence.

In addition to voicing concerns about fraud and robocalls—concerns shared by a wide variety of industry stakeholders—T-Mobile discusses the supposed "tools" Inteliquent provides to combat fraudulent calls. According to T-Mobile, these "tools" used to eradicate fraudulent calling are so sophisticated that T-Mobile is comfortable allowing Inteliquent to send it both wholesale and retail traffic over a direct connect (while refusing to allow similar arrangements for other

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[11] USTelecom's Industry Traceback Group is "comprised of a broad range of network providers from the cable, wireline, wireless and wholesale industries, who are working collaboratively in order to identify the origin of these calls at their source" and its "ultimate goal…is to identify the source of the worst of these illegal calls, and further enable further enforcement actions by federal agencies." Testimony of Kevin Rupy, Vice President Law and Policy, USTelecom before the U.S. Senate Committee on Commerce Science and Transportation, *Abusive Robocalls and How We can Stop Them* (Apr. 18, 2018), *available at* https://www.ustelecom.org/blog/ustelecom-testifies-senate-robocalls.

[12] Peerless's Mar. 15, 2018 Letter at 8.

carriers).

This claim is at best misleading, but more accurately demonstrably false. The Federal Trade Commission ("FTC") publishes publicly-available data about consumer complaints with respect to the Do Not Call list[13] – or, in other words, complaints from consumers that received telemarketing calls despite having their telephone numbers on the Do Not Call list. Ironically, despite T-Mobile's claims about Inteliquent's alleged superior "tools" for rooting out fraud, Inteliquent is consistently at the top of the list of complaints, oftentimes surpassing the next three carriers combined. Given (a) the relatively large number of consumer complaints attributed to Inteliquent *and* (b) the fact that Inteliquent now handles nearly 100% of the wholesale traffic sent to T-Mobile (under the exclusive, discriminatory arrangement between the two), it is no wonder that T-Mobile is seeing more robocalls in wholesale traffic than in retail traffic received over direct connects – all of which directly relates to *Inteliquent's* handling of wholesale traffic.[14] Further, according to an industry report,[15] T-Mobile was "the second worst carrier in March [2018], with subscribers having received an average of 14.8 robocalls."[16] In short, the available data contradicts T-Mobile's claims about Inteliquent's abilities to eliminate fraud and robocalling, and in turn, T-Mobile's primary reason for discriminating among carriers when establishing direct connects.

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[13] *See Do Not Call (DNC) Reported Calls Data*, Federal Trade Commission, *available at* https://www.ftc.gov/site-information/open-government/data-sets/do-not-call-data.

[14] T-Mobile claims that if it "were to establish direct connections with carriers that seek to exchange Wholesale Traffic, T-Mobile maintains that it would be nearly impossible for T-Mobile to identify, and therefore stop, the parties who are originating the robocalls." T-Mobile Comments at 6-7. However, if T-Mobile can stop parties initiating robocalls associated with retail traffic, it should be able to do so for wholesale traffic. In addition, given Inteliquent's complaint record, it actually makes more sense for T-Mobile to not use Inteliquent to handle wholesale traffic.

[15] Zack Epstein, *New Report Reveals Which Wireless Carriers Get the Most Robocalls*, BGR (Apr. 20, 2018), *available at* https://bgr.com/2018/04/20/how-to-stop-robocalls-you-cant-sry/.

[16] *Id.*

T-Mobile's (along with Inteliquent's) contentions that it justifiably denied direct connects for wholesale traffic so as to "facilitate the IP Transition" and "improve overall service quality,"[17] are specious as well. 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."[18] Contrary to T-Mobile's claims, T-Mobile's decision to sever direct connects was clearly not driven by service quality and efficiency considerations, because, like O1, Peerless's direct connects were "*efficient, IP-based connections that complied with T-Mobile's POI requirement.*"[19]

As O1 noted, contrary to T-Mobile's claims, T-Mobile's actions in severing direct connects for wholesale traffic have "turn[ed] the clock back" on intercarrier compensation reform and the IP transition.[20] As O1 emphasized, T-Mobile "has transitioned from what could possibly be 'best practices' -- direct connections to exchange all traffic at bill and keep -- to 'worst practices' by forcing poorer quality, inefficient and more expensive indirect connections through [its] intermediate carrier partner[]" Inteliquent.[21] To make matters worse, by refusing to allow direct connects and "negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic,"[22] T-Mobile is violating *ICC/CAF Transformation Order*.

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[17] T-Mobile Comments at 9; *see also* Inteliquent Comments at 8-9.

[18] O1's Jan. 11, 2018 Letter at 3; O1 Comments at 8.

[19] O1's Jan. 11, 2018 Letter at 3.

[20] *Id.*

[21] O1 Comments at 10; Letter from Michel Singer Nelson, Counsel and Vice President of Regulatory and Public Policy, O1 Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 at 3 (filed Jan. 8, 2018) ("O1's Jan. 8, 2018 Letter").

[22] *Connect America Fund; A National Broadband Plan for Our Future, et al.*, WC Docket Nos. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 652 (2011) ("*USF/CAF Transformation Order*")(subsequent history omitted) (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

C. T-Mobile's attempt to justify its anticompetitive actions against wholesale carriers and the smaller carriers they serve based on the amount of wholesale traffic T-Mobile receives should not be countenanced

T-Mobile wrongly claims that because 75% of all of T-Mobile's voice traffic originated or received by T-Mobile's customers is retail traffic exchanged over direct connects, it can justifiably exploit wholesale carriers and the smaller carriers they serve. Contrary to T-Mobile's claims, many other carriers, such as small rural carriers and VoIP providers, simply do not have the resources and/or technology in place to directly connect with T-Mobile are also forced to send their traffic through Inteliquent and pay its exorbitant rates, rather than the reduced rates that would be available if others had direct connects to T-Mobile. Moreover, the reduced amount of traffic has been prompted by recent anticompetitive peering arrangements among the national wireless carriers,[23] so of course amount of traffic routed through Inteliquent has decreased, but that does not legitimize exploiting its bottleneck monopoly to its end users.

D. The benefits of shifting the costs of indirect interconnection to wireless and other terminating carriers far outweigh the perceived costs

While Inteliquent argues otherwise,[24] the Commission should recognize that the benefits of adopting CenturyLink's Proposed Direct Connect Rule far outweigh any alleged costs. Peerless disagrees with Inteliquent's claim that CenturyLink's Proposed Direct Connect Rule eliminates the benefit derived from forcing wholesale carriers to pay high MOU to send traffic through

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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.").

[23] Peerless's Mar. 15, 2018 Letter at n.33.

[24] Inteliquent Comments at 11.

Inteliquent (instead of sending such traffic at bill-and-keep directly)—namely, that this provides wholesale carriers an incentive to ferret out unlawful traffic. As explained above, however, wholesale carriers already have sufficient incentives to reduce or eliminate robocalling, and many carriers (such as Peerless and ANI) have already taken the necessary steps to do so. Furthermore, Inteliquent has no room to hypothesize on how to disincent carriers from routing robocall traffic because there are more robocalling complaints associated with Inteliquent's telephone numbers than with any other carrier.

Moreover, as previously discussed, the benefits of a rule change would be significant.[25] Inteliquent self-servingly asserts that any benefits resulting from the adoption of CenturyLink's Proposed Direct Connect Rule would be modest at best because it is highly profitable for Inteliquent to serve as T-Mobile's sole intermediate tandem partner.

While Inteliquent benefits from and urges the Commission to keep the *status quo*, the record demonstrates that carriers such as Peerless and O1 have been harmed.[26] The cost to the industry at large is tens of millions of dollars per year. Such costs are not just placed on intermediate carriers, but also on the small rural wireline and wireless carriers and VoIP providers that do not have the resources for direct connects. Such carriers' costs have skyrocketed since wireless carriers, such as T-Mobile, exploit their bottleneck monopolies over their end users by forcing certain traffic be routed over their intermediate carrier partners that assess rates far exceeding the rates that would otherwise be charged if other intermediate carriers had direct

[25] *See* Peerless and ANI Comments at 2.

[26] Peerless's Mar. 15, 2018 Letter at 1-12; O1 Comments at 5-9; O1's Jan. 8, 2018 Letter, at Presentation at 2-3; O1's Jan. 11, 2018 Letter at 1-3.

connects.[27] Such significant cost increases to carriers such as Peerless and ANI are contrary to the public interest because they ultimately lead to price increases for consumers

In addition, contrary to T-Mobile's claims,[28] maintaining the *status quo* is harmful to competition. Since severing direct connects to carriers like Peerless and O1, competition to send such traffic directly to T-Mobile has been crushed. As Peerless and ANI explained, adoption of CenturyLink's Direct Connect Proposal will enhance, not destroy, competition among intermediate carriers sending traffic to terminating carriers, such as T-Mobile.[29]

E. The Commission should reject the arguments made by other carriers against the adoption of CenturyLink's Proposed Direct Connect Rule or need not apply it to CEA networks to address such concerns.

Peerless and ANI disagree with commenters, such as NTCA, that assert it is "premature to consider broader rules regarding direct interconnection" or that direct connects "risks prejudging the network edge …"[30]

Establishing efficient interconnection will not prejudice the "network edge," *i.e.*, "the point where bill-and-keep applies," but rather will ensure efficient traffic because terminating carriers that decline direct connect requests would be required to bear the financial responsibility for the forced indirect routing.[31] Nor should the cost of indirectly routing all or certain types of terminating

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[27] T-Mobile and Inteliquent offer no credible defense of Inteliquent's rate setting practices. *See* T-Mobile Comments at 8; Inteliquent Comments at 11. Any claims that the intermediate carrier partner's rates are not unjust and unreasonable because the rates are tariffed and "benchmarked to the rate of the competing ILEC" (*id.*) are spurious because "the monthly charges for direct connections can often be substantially lower than per-MOU rates for an equivalent amount of traffic." *NPRM*, ¶ 13.

[28] T-Mobile Comments at 9.

[29] Peerless and ANI Comments at 7-8.

[30] Comments of NTCA–The Rural Broadband Association, WC Docket No. 18-155, at 9-10 (July 20, 2018).

[31] Peerless and ANI Comments at 6.

traffic be imposed on the carrier that seeks to route such traffic over direct connects.[32] This is clearly not a new or novel networking construct because most ILECs have long offered direct connects to their end offices via tariffs or interconnection agreements.[33]

Moreover, NTCA is overlooking the very significant fact that many rural carriers simply do not have the resources to directly connect to wireless providers like T-Mobile. Consequently, such rural carriers rely on intermediate carriers to terminate traffic to wireless providers and, due to arbitrage schemes and the corresponding decrease in competitive alternatives, are forced to pay the excessive charges assessed by intermediate carrier partners, rather than the reduced rates that would be available if there were alternative, competitive intermediate carriers with direct connects to the terminating wireless provider.

Peerless and ANI also disagree with the Iowa Communications Alliance criticisms of the CenturyLink's Proposed Direct Connect Rule, claiming that a direct connect requirement would jeopardize the benefits of CEA networks[34] or that it is just "an attempt to dismantle existing CEA networks."[35] Peerless and ANI Comments suggested that if the Commission has any reservations about applying CenturyLink's Proposed Direct Connect Rule to LECs subtending CEA networks,

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[32] *Id*.

[33] *Id*.

[34] Initial Comments of the Iowa Communications Alliance, WC Docket No. 18-155, at 1 (filed July 20, 2018) ("Iowa Communications Alliance Comments"). NTCA's concerns are also presumably centered around CEA networks since ILECs and RLECs *outside* of CEA networks that concur in the NECA Tariff *already offer direct connects* via Direct-Trunked Transport. *See* Peerless and ANI Comments at 6-7.

[35] Iowa Communications Alliance Comments, at 2.

it may exempt access stimulating LECs within CEA networks from the application of CenturyLink's proposed rule.[36]

Further, Verizon provides no evidence to support its claims that CenturyLink's recommended expansion of the Commission's Proposed Rule to cover all LECs does not materially advance the FCC's goals beyond what the Commission's more limited proposal already accomplishes,[37] or that the costs and burdens of CenturyLink's recommendations substantially outweigh that benefit.[38] Perhaps the "cost" that Verizon fears is actually the "reduced revenues" it would receive if its wireless affiliate were not permitted to continue forcing interMTA traffic through its ILEC or IXC affiliates at rates that are far more expensive on a per MOU basis than sending the traffic over direct connects to Verizon Wireless.

III. The Commission Has the Authority to Adopt CenturyLink's Direct Connect Proposal and Doing So Serves the Public Interest

Certain commenters in this proceeding, such as T-Mobile, argue that the Commission *cannot* adopt CenturyLink's Proposed Direct Rule because doing so would not comport with Sections 251(a), 201, and 202 of the Communications Act of 1934, as amended (the "Act"), or

A. The Commission has authority to adopt CenturyLink's Proposed Direct Connect Rule pursuant to Section 251(a)

As CenturyLink and Peerless explained previously,[39] the Commission has authority to adopt a direct connect requirement because Section 251(a) provides that "[e]ach

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[36] Peerless Comments at 10. The Commission could then apply the Commission's Proposed Rule (*see NPRM*, ¶ 9 & App. A Proposed Rule 51.914(a)) exclusively to the CEA networks.

[37] *See* Comments of Verizon, WC Docket No. 18-155, at 7 (filed July 20, 2018).

[38] *Id*.

[39] *See, e.g.* Comments of CenturyLink, WC Docket No. 18-155, at 14-18 (filed July 20, 2018) ("CenturyLink Comments"); *See* Reply Comments of Peerless Network, Inc. *et al.*, WC Docket No. 10-90; CC Docket No. 01-92, at 15-17 (filed Nov. 20, 2017).

telecommunications carrier has the duty…to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[40] T-Mobile essentially argues that based on the "plain language" of Section 251(a), it has the right to exploit Section 251(a) and force carriers to only use inefficient indirect connections.[41] However, as the New York Public Service Commission held, while Section 251(a)(1) of the 1996 Act[42] "recognizes indirect interconnection," such recognition

> does not imply that the [1996] Act forecloses direct interconnection when the latter is more appropriate. The network configuration contemplated in the [1996] Act is one that provides the originating CLEC and its end users the opportunity to choose their preferred routing based on consideration of all relevant factors such as cost, reliability, and efficiency.[43]

Other states have reached similar conclusions, agreeing that the requesting carrier has a right to direct connects under the Act.[44] The Commission is urged to come to this conclusion as well.

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[40] 47 U.S.C. § 251(a)(1).

[41] *See* T-Mobile Comments at 15, 17, & 19; *see also* Inteliquent Comments at 7 (noting a "statutory right to interconnect indirectly.").

[42] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151 *et. seq.* ("1996 Act").

[43] *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 Interim Interconnection, 2007 WL 1802691 (N.Y. P.S.C. June 22, 2007).

[44] *See generally Petition of Neutral Tandem, Inc. for Interconnection with Level 3 Communications and Request for Emergency Relief*, Docket No. 24844-U, Order Mandating Direct Interconnection, 2007 WL 2480128 at *5 (Ga. P.S.C. Aug. 27, 2007) (rejecting Level 3's position that a carrier's Section 251(a)(1) obligation is satisfied if the carrier agrees to interconnect directly or indirectly because "the statute does not say that the party from whom interconnection is being requested is permitted to demand its preferred form of interconnection and limit the type of interconnection to which the requesting party is entitled."); *Neutral Tandem, Inc. et al. v. Level 3 Communications, LLC*, Docket No. 07-0277, Order, at 5 (Ill. C.C. July 10, 2007) (disagreeing with Level 3's position that "Section 251(a)(1) [of the 1996 Act] justif[ied] its termination of the existing direct interconnection" and holding that nothing in the 1996 Act allows the CLEC to impose a "doubly-indirect" connection on another carrier); *Neutral Tandem, Inc. v. Level 3 Communications, LLC*, Case No. U-15230, Order, 2007 WL 4165286 (Mich. P.S.C. Nov. 26, 2007) (concluding that "[n]owhere in federal or state law is there a right to demand what would effectively be a double

Tellingly, the denial of direct connects contravenes the objectives of the 1996 Act itself, which enacted provisions such as Section 251 to, among other objectives, "promot[e] increased competition in telecommunications markets that are already open to competition, including the long distance services market."[45] Because carriers, such as T-Mobile, are now abusing Section 251(a)(1) and refusing reasonable requests for direct connections, thereby harming competition, such carriers' practices clearly violate the intent and spirit of the 1996 Act.

In addition, contrary to T-Mobile's claims,[46] the Commission's authority under Section 251(b)(5) to establish rules addressing "reciprocal compensation rates for the transport and termination of traffic"[47] *fortifies* the Commission's discretion in implementing Section 251(a)(1). In particular, adopting CenturyLink's Proposed Direct Connect Rule would be done to "take[]

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indirect interconnection. To read that right into the federal Act would create an opportunity for [the CLEC] unilaterally to increase the costs of its competitors by economically mandating that they either move away from using Neutral Tandem for transiting their traffic or pay to transit traffic twice, once to Neutral Tandem and once to the ILEC. The Commission finds that result would be inconsistent with the federal Act, the desire for a competitive, efficient telecommunications market, as well as state law."). *See also Complaint and Request for Expedited Hearing of Neutral Tandem, Inc., Against Level 3 Communications, LLC, In the Matter of the Application of Level 3 Communications, LLC, to Terminate Services to Neutral Tandem, Inc*., Docket Nos. P-5733/C-07-296; P-5733, 6403/M-07-354, Order Reaffirming Jurisdiction, Denying Disconnection, and Establishing Terms for Continued Connection, 2008 WL 2491651 (Minn P.U.C. Mar. 24, 2008); John R. Harrington, Ronald W. Gavillet, Matt D. Basil, and Melissa L. Dickey, *An Evaluation of the Proposals in the FCC's Intercarrier Compensation Reform Docket Related to Tandem Transit Services*, 61 Fed. Comm. L.J. 325 at *334-344 (2009).

[45] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 3 (1996) ("*Local Competition Order*") (subsequent history omitted) (citing the 1996 Act). Contrary to T-Mobile's claims (*see* T-Mobile Comments at 19 & n.40), Congress never considered or rejected anything akin to CenturyLink's Proposed Direct Connect Rule.

[46] T-Mobile Comments at 16-17.

[47] 47 U.S.C. § 251(b)(5); s*ee also* CenturyLink Comments at 15; CenturyLink's May 21, 2018 Letter at 5.

further, modest steps to implement…bill-and-keep" for such traffic.[48] Thus, if the terminating carrier receiving a request for direct connect prefers to receive such traffic indirectly, requiring the terminating carrier to bear financial responsibility for this decision helps to ensure such terminating carriers do not profit by evading the Section 251(b)(5) bill-and-keep requirement.

Alternatively, if the Commission is concerned that the language in Section 251(a) serves as an obstacle in adopting CenturyLink's Proposed Direct Connect Rule,[49] the Commission may—out of an abundance of caution—grant limited forbearance from the application of the language "or indirectly" in Section 251(a)(1) of the Act while currently adopting CenturyLink's Proposed Direct Connect Rule. This forbearance will help ensure that all carriers must comply with CenturyLink's Proposed Direct Connect Rule. The statutory forbearance criteria Congress enshrined under Section 160(a) of the Act would easily be satisfied in this circumstance because forbearance is necessary to (a) ensure practices and charges are just and reasonable, (b) protect the public interest and (c) promote competition.[50]

B. The Commission can adopt CenturyLink's Proposed Direct Connect Rule pursuant to Section 201(a) and (b)

Along with the Commission's authority under Sections 251(a) and 251(b)(5) of the Act to adopt CenturyLink's Proposed Direct Connect Rule, the Commission has long-standing authority under Section 201 of the Act to adopt the rule, as Section 251(i) makes clear that "nothing" Section 251 "limit[s] or otherwise affect[s] the Commission's authority under Section 201" of the Act.[51] T-Mobile overlooks this key point in arguing that no violation to Section 201 could be found due

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[48] CenturyLink Comments at 14-16.

[49] *See* T-Mobile Comments at 15-17.

[50] 47 U.S.C. § 160(a).

[51] 47 U.S.C. § 251(i).

to Section 251(a).[52] More specifically, Section 201(a) of the Act imposes a duty on carriers to "upon reasonable request…establish physical connections with other carriers."[53] Seeking a direct connect to efficiently terminate all types of traffic (retail and wholesale) is abundantly reasonable. It is the denial of such a request that violates 201(a) and is unjust and unreasonable practice and results in unjust and unreasonable charges in violation of Section 201(b).

Indeed, a carrier's refusal to offer direct connects is in itself an *unjust and unreasonable practice* in violation to Section 201(b). For instance, when a carrier stops allowing certain carriers to terminate long distance or wholesale traffic over direct connections and forces carriers to send such traffic indirectly via its intermediate carrier partner, this harm consumers by imposing a dangerous, non-redundant bottleneck and increasing the instances of post-dial delays, non-completions, and dropped calls. This increase in such problematic call handling happens because the routes available for indirectly transmitting traffic may not have sufficient capacity to handle the additional traffic that was previously transmitted via direct connections. For example, as stated in public filings, O1's California customers experienced high rates of post-dial delays and non-completions after T-Mobile disconnected direct connections. O1 was told that increasing capacity to address these issues would take months. As a result, many calls from O1's California customers to T-Mobile end-users were dropped, were not completed, and service quality was seriously affected.[54] Such service problems also inherently create significant public safety risks.

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[52] *See* T-Mobile Comments at 17.

[53] 47 U.S.C. § 201(a).

[54] *See O1 Communications, Inc. v. T Mobile USA, Inc.*, Verified Complaint, California Public Utilities Commission Case No. 15-11-018, Attach. B, at 6 (November 30, 2015).

Moreover, when carriers like T-Mobile deny direct connects, their intermediate carrier partners impose *unjust and unreasonable charges* in violation to Section 201(b) by forcing interconnecting carriers to incur per MOU charges that are wholly unnecessary. As noted above, even if the intermediate carrier partner assesses benchmarked rates, such rates are significantly higher than what a carrier would pay if it had direct connects.[55]

C. The Commission can adopt CenturyLink's Proposed Direct Connect Rule pursuant to Section 202(a)

Refusing reasonable requests for direct connects, which CenturyLink's Proposed Direct Connect Rule would address, also violates the prohibition against unjust and unreasonable discrimination under Section 202(a) of the Act. For example, T-Mobile only allows carriers to use direct connects to terminate "retail" traffic, but forces carriers to route their wholesale terminating traffic through Inteliquent. Because there is no technical reason to justify such different treatment of retail and wholesale traffic, the refusal by carriers like T-Mobile to offer direct connects only for certain types of traffic is clearly unjustly and unreasonably discriminatory in violation of Section 202(a).

D. The Commission's 1995 warnings support the adoption of CenturyLink's Proposed Direct Connect Rule

In addition to having the statutory authority to adopt CenturyLink's Proposed Direct Connect Rule, the Commission expressly warned CMRS providers that it would "intercede" if they were "deny[ing] interconnection in order to gain an unfair competitive advantage" or were otherwise engaging in a "form of anticompetitive conduct intended to raise rivals' costs of doing business and hence hinder competition."[56] T-Mobile attempts to marginalize these Commission

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[55] *See, e.g.,* Peerless's Mar. 15, 2018 Letter, at 3 & n.11.

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

warnings and their applicability, arguing that these statements were made in the context of a 1995 notice of proposed rulemaking, not an order, and, as such, the Commission's warnings have no force or effect.[57] It appears that T-Mobile overlooked the ordering clauses of this item,[58] and believes that any statement or warning the Commission makes in a notice of proposed rulemaking cannot be reasonably relied upon or is otherwise meaningless, which is flatly wrong. As explained herein, because the denial of direct connects creates an unfair competitive advantage and increases rivals costs of doing business, the Commission must "intercede" as it proclaimed it would and adopt CenturyLink's Proposed Direct Connect Rule.

E. The Commission's adoption of CenturyLink's Proposed Direct Connect Rules serves the public interest

Peerless and ANI disagree with T-Mobile's contentions that a direct connect requirement would "forc[e] traffic to flow through ILECs,"[59] or would force carriers to "replicate the existing network topography and its inefficiencies."[60] Instead, CenturyLink's Proposed Direct Connect Rule would serve the public interest in ensuring that traffic is routed efficiently by encouraging carriers to accept efficient direct connect requests (by placing financial responsibility on carriers that reject direct connect requests in favor of indirect interconnection via a preferred intermediate

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Order") ("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."). In its comments, T-Mobile asserts that because of the example provided by the Commission after making these statements, Commission statements were expressly and only directed at LEC-owned or affiliated CMRS providers; however, if that were the case, the Commission would have not have made such broad warnings in the first two sentences of Paragraph 43 of the *CMRS Interconnection Order*. *See id*.

[57] *See* T-Mobile Comments at 17-18.

[58] *CMRS Interconnection Order*, ¶¶ 104-107.

[59] T-Mobile Comments at 19.

[60] *Id.* at 20.

carrier). Finally, T-Mobile's claim that the Commission's adoption of CenturyLink's Proposed Direct Connect Rule would lead to new forms of arbitrage among corporate affiliates is easily overcome by ensuring that the rule would apply to all carriers, including their affiliates.[61]

IV. The Commission Should Address "Crank-Back Arbitrage"

Finally, ANI supports Inteliquent's request that the Commission take notice of and monitor "new and evolving forms of access arbitrage schemes—in particular, those in which high-volume calling platforms block stimulated traffic on the regulated route to induce the re-routing of traffic to affiliated carriers."[62] ANI has experienced similar issues, which ANI characterizes as "crank-back arbitrage,"[63] and supports Inteliquent's request that the Commission "address this issue by finding that covered providers are not responsible for route advancing traffic that is illegally blocked by another party on the regulated path."[64]

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[61] Peerless and ANI agree with CenturyLink that "it is important that the FCC establish a timeline within which a terminating carrier must respond to an IXC request for direct connection to ensure the necessary tandem arrangements can be established so neither the IXC nor tandem provider are harmed." CenturyLink Comments at 13. As CenturyLink explains, "the ideal timeline would be the 5-day response time typically given on an access service request (ASR) as this will also facilitate the typical timeline for a turn-up of service (45 days). Within the 5-day response time, the terminating carrier would simply need to indicate whether it intended, in a given case, to accept the direct connection request or exercise its option to designate a tandem location for interconnection and thereby assume financial responsibility." *Id*.

[62] Inteliquent Comments at 1-2.

[63] *See* Comments of Affinity Network, Inc. d/b/a ANI Networks, WC Docket No. 13-39, at 5-6 (filed June 4, 2018).

[64] Inteliquent Comments at 1.

Conclusion

For the foregoing reasons, the Commission should adopt CenturyLink's Proposed Direct Connect Rule and address any concerns it has in adopting CenturyLink's proposal as explained in Peerless and ANI's initial comments.[65] ANI also urges the Commission to adopt reasonable measures to address "crank-back arbitrage," as requested herein.

Respectfully submitted,

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[65] Peerless and ANI Comments at 9-10.