

**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)	

PETITION TO DENY OF CARRIERX, LLC

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SUMMARY

CarrierX, LLC, d/b/a freeconferencecall.com (“Free Conferencing”) hereby respectfully requests that the Commission not approve the transfer of licenses and/or authorizations from Sprint Corporation (“Sprint”) to T-Mobile US, Inc. (“T-Mobile”) due to the significant consumer harm that could result from the expansion of T-Mobile’s and its partner’s call routing practices and deceptive pricing policies. Alternatively, CarrierX 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.

Free Conferencing objects to the T-Mobile/Sprint merger because there is a substantial threat of harmful unilateral effects and public interest harms resulting from the proposed combination. Starting in October 2016, T-Mobile began a deceptive pricing program to reduce its customers’ calls to Free Conferencing’s conference calls in both rural and metro areas in violation of the Communications Act. At that time, T-Mobile users that purchased the company’s unlimited voice plans attempting to reach Free Conferencing conferences at certain CLECs encountered a recorded message that stated – falsely – that they called a number not covered by their plan and that they could avoid a 1-cent per minute charge by hanging up (hereinafter, the “One-Cent Policy”).

That Policy has had its intended effect. According to data kept by Free Conferencing, callers, when faced with T-Mobile’s disrupting message encouraging its users to hang up to avoid an additional charge, for the most part, hang up. The One-

Cent Policy caused about a 70% reduction in calls to Free Conferencing conferences nationwide during its first month. Since that time, the number of calls made by T-Mobile users to Free Conferencing conferences has been half of what it was before the Policy. Also, T-Mobile designed the Policy to target certain competitive local exchange carriers or CLECs that connect Free Conferencing conference calls, most of which are located in rural areas. Conference calls connected by carriers not associated with Free Conferencing escape T-Mobile's policy while only those that do business with Free Conferencing are targeted.

Worse, if T-Mobile users accept the previously undisclosed charges and choose to complete the calls, T-Mobile employs reckless routing practices and downstream carriers who circumvent the best practices of the industry. Free Conferencing has identified T-Mobile as a significant source of traffic terminated through fraudulent routes through hacked private branch exchanges ("PBXs") and SIMs boxes, causing harm, and often call failures, to the same conference calls and CLECs that are targeted by the One-Cent Policy. Consequently, Free Conferencing and the CLECs that connect its conferences suffer harm by the interrupting messages and, on the other hand, if the call is transmitted. Either way a war has been waged on Free Conferencing and its partner CLECs. Most troubling however, is the harm to the consumers who have been deceived into purchasing unlimited voice and data plans subject to undisclosed charges. It should be of the utmost concern to the Commission that T-Mobile's deceptive pricing policy and failures to properly terminate calls could be spread to an additional 54 million customers of Sprint.

TABLE OF CONTENTS

	Page
I. INTRODUCTION.	1
II. OVERVIEW OF THE ONE-CENT POLICY.....	6
A. T-Mobile’s Deceptive Statements About The One-Cent Policy.	11
B. The One-Cent Policy Discriminates On Many Levels.	14
C. The Harm Of The One-Cent Policy.	16
III. THE COMMISSION SHOULD DENY THE MERGER APPLICATION.	18
A. T-Mobile - Inteliquent One-Cent Policy Violates Section 201 and 202 of the Act.	18
B. The One-Cent Plan Should Not Be Permitted To Expand.	21
C. T-Mobile’s Practice of Reducing Calls Through Fraudulent Routing Methods.	24
IV. CONCLUSION.....	28

I. INTRODUCTION.

CarrierX, LLC, d/b/a freeconferencecall.com (“Free Conferencing”) files this Petition to Deny the Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, filed with the Commission on June 18, 2018 in the above-referenced matter (“Application” or “Application”). Free Conferencing demonstrates in this Petition significant discriminatory conduct and consumer harm caused by T-Mobile US, Inc. and its partner’s call routing practices and policies. Those policies and practices constitute harm to the public interest under well settled analyses of the Commission for reviewing mergers of this type. The Application’s myopic focus on speculative benefits to the public from the proposed combination of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) ignores the harm to the public already arising from T-Mobile’s current unreasonable and discriminatory practices that are likely to spread to Sprint and its 54 million customers should T-Mobile gain control over the merged entity.

Free Conferencing is the largest provider of conferencing services delivered through the model that does not require users to pay organizer fees for its services. Free Conferencing provides high definition, reservation-less conferences that can handle as many as 10,000 callers on a conference. Its services are popular with prayer groups and other non-profit enterprises, small and large businesses, government agencies and their employees who have no or limited access to expensive fee based conferencing services, and users with unlimited calling plans. Free Conferencing’s

network is built on proprietary media servers using both PSTN and advanced VoIP-based technologies. The company handles more than 25 million connections per month.

Free Conferencing objects to the T-Mobile/Sprint merger, because there is a substantial threat of harmful unilateral effects and public interest harms resulting from the proposed combination. Because of the volume and diversity of its user base, Free Conferencing is in a unique position to recognize problems in call completion and carriers who circumvent the best practices of the industry. Deviations from these best practices can yield substantial public interest harms. Free Conferencing's business has been the target of a coordinated plan by T-Mobile and at least one of its vendors to reduce traffic from T-Mobile customers who are choosing to utilize Free Conferencing's services. Free Conferencing has also identified T-Mobile as a significant source of traffic terminated through fraudulent routes like hacked private branch exchanges ("PBXs") and SIMs boxes. That T-Mobile's failures to properly terminate calls could be spread to an additional 54 million customers of Sprint is especially troubling.

In October 2016, T-Mobile began a program to reduce and suppress its customers' traffic to Free Conferencing's conference calls in both rural and metro areas in violation of the Communications Act. Since then, T-Mobile customers calling Free Conferencing conferences at telephone numbers provided by multiple competitive local exchange carriers ("CLECs"), mostly but not exclusively in rural areas, have had their calls interrupted by a message stating they would be charged one-cent per minute unless they discontinued the call (the "One-Cent Policy"). T-Mobile's interrupting messages suggest that its users "hang up" to avoid additional charges. Although the T-

Mobile customers signed up for “unlimited” plans, T-Mobile has consistently provided false and misleading explanations to its customers and the rest of the public in an attempt to justify its One-Cent Policy.

T-Mobile has excused what is essentially a call-blocking scheme by telling its customers that “*These calls have always been considered out-of-plan.*”¹ It also explains the policy with the false and misleading statements like, “*These calls tend to cost more for T-Mobile to complete and this helps us to manage those costs.*”² In truth, the One-Cent Policy was developed by T-Mobile and its intermediate carrier because they decided they did not want to incur the expense of terminating longer duration calls. The information that Free Conferencing has permission to make available to the Commission shows that the policy was conceived and implemented for the sole purpose of reducing the volume of calls.

In addition, until the One-Cent Policy was implemented, the calls had never been considered “out of plan” in any promotional material, terms of service, or T-Mobile contract. The terms of service was revised to add in a warning simultaneous with the implementation of the One-Cent Policy, stating, “You may have to pay extra for calls to some numbers (e.g. conference & chat lines, broadcast, international, 900 or 976 calls, etc.).”³ That warning provides no information and is deceptive to its customers.

The One-Cent Plan is in practice a call-blocking scheme. It was designed to

¹ <https://web.archive.org/web/20161008002026/https://support.t-mobile.com/docs/DOC-33322>

² See <https://support.t-mobile.com/docs/DOC-33322>

³ See https://www.tmobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditionsSep2016&print=true

coerce customers to stop making calls to Free Conferencing conferences hosted at specified rural CLECs. T-Mobile under the guise of protecting “confidential” business records refused to publicly disclose internal documents and other information that show the true reasons it participated in the One-Cent Policy.⁴ However, documents available from other sources make clear that in developing and implementing the policy, the intention of T-Mobile, and its intermediate carrier was to reduce the traffic of T-Mobile customers.⁵

⁴ T-Mobile produced documents detailing its One-Cent Policy in connection with certain litigation entitled *Inteliquent, Inc. v. Free Conferencing Corporation et al.*, case number 1:16-cv-06976, however it did so with a confidential and “attorneys eyes only” designation prohibiting Free Conferencing from disclosing the documents to the Commission. Free Conferencing requested permission from T-Mobile and the Court to disclose information contained in these documents to the Commission so that the true intent of the One-Cent Policy could be revealed to the Commission. T-Mobile does not want the truth about its One-Cent Policy made public and refused to agree.

⁵ On August 15, 2018, the Commission served a General Information and Document Requests on T-Mobile. Request No. 33 contains this request:

33. Provide all documents discussing T-Mobile’s pricing decisions for any Relevant Product or Relevant Service in any Relevant Area and in the United States as a whole, including, but not limited to discussions of: (1) pricing plans, including unlimited; (2) pricing policies; (3) pricing forecasts; (4) pricing strategies; (5) pricing analysis; (6) introduction of new pricing plans or promotions, including local promotions and their determinants, and expected or actual impact; (7) tiered pricing, and expected or actual impact; (8) pricing decisions relating to each Relevant Service and Relevant Product; (9) which prices, if any, are set through individualized negotiations, and the criteria and process use to determine rates; and (10) any other factors considered in how the Company prices each Relevant Product or Relevant Service in each Relevant Area.

That request surely covers documents and other information, including testimony given by T-Mobile, related to the creation, development, and purpose of the One-Cent Policy.

The One-Cent Policy has had the effect T-Mobile intended. According to data kept by Free Conferencing, the One-Cent Policy caused about a 70% reduction in calls to Free Conferencing conferences nationwide in the first two weeks after the policy was put in place by T-Mobile. Worse, Free Conferencing's growth with new users is tied to the successful completion of a conference call with multiple participants. Free Conferencing obtains approximately 1-3 new users after the successful completion of each conference call. With a majority of calls failing to occur, Free Conferencing has seen not only a staggering drop in current users but a failure of any growth in new users as soon as the policy was adopted.

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. Boost Mobile made public the list of phone numbers that are targeted by its One-Cent Policy. That list contains almost 7,000 telephone numbers. A review of that list demonstrates that a majority are telephone numbers associated with Free Conferencing. A merger that will leave T-Mobile in control of the combined companies creates a threat that the remainder of Sprint's 54 million users will also likely become targets of the One-Cent Policy and coerced to stop using services for which they have paid.

The Commission has long made clear that no carrier may block, choke, reduce, or restrict traffic in any way. T-Mobile's traffic reduction/blocking scheme results in

substantial public interest harms and no action should be approved by the Commission that allows the expansion of that scheme to the customers of another carrier.

II. OVERVIEW OF THE ONE-CENT POLICY.

On August 17, 2015, an intermediate carrier called Inteliquent, Inc. (“Inteliquent”) announced that it had entered into a “groundbreaking” agreement with T-Mobile. Under their contract, T-Mobile agreed to generally use Inteliquent as its sole provider of voice interconnection services for all its calls exchanged between T-Mobile and nearly all other voice providers in the United States.⁶ In essence, Inteliquent contracted to be the intermediate carrier responsible for the termination of T-Mobile’s traffic. T-Mobile has essentially contracted out its long distance call termination obligations, which made it highly dependent on Inteliquent’s performance. At the time, T-Mobile was actively promoting itself as the “un-carrier” with unlimited calling and data plans half the price of the other large wireless carrier, and T-Mobile was thus especially attractive to cost conscious retail and business customers who utilize “free” conferencing services like Free Conferencing.

Unfortunately for Inteliquent, the “groundbreaking” agreement with T-Mobile quickly became an albatross around its neck. On September 25, 2015, Inteliquent’s Chief Executive Officer sent an email to his senior managers asking, “*Are the [T-Mobile] economics coming in as forecast?*”⁷ There then followed an email exchange, which

⁶ Inteliquent SEC Form 8-K, sec.gov/Archives/edgar/data/1292653/000119312515293613/d54428d8k.htm

⁷ Upon the Commission’s request Free Conferencing can supply all materials cited and relied upon herein.

identified the inaccurate traffic profile that had been provided by T-Mobile as the cause of the poor financial return for Inteliquent under its contract with T-Mobile.

Inteliquent's Chief Marketing Officer concluded the exchange as follows: *"[T]he ongoing drag is that the profile of the [long distance] traffic weighs more heavily towards high cost codes such as Free Conferencing's entities than the traffic profile [T-Mobile] provided."*

T-Mobile and Inteliquent have not publicly disclosed the rate structure of their contractual arrangements, but it is widely known in the industry that Inteliquent provided T-Mobile with a flat rate structure regardless of the destination of the call being connected. The statement by Inteliquent's Chief Marketing Officer that the "ongoing drag" on profitability is due to heavier traffic from "high cost codes such as Free Conferencing's," makes clear that Inteliquent concluded within months of announcing its T-Mobile contract that the rates it negotiated for that contract were not going to generate the financial performance it expected. The statement also highlights that very quickly Free Conferencing became the target of T-Mobile and its intermediate provider.

Inteliquent's Board of Directors became so concerned about the "traffic profile" and profitability of the T-Mobile contract that it included in the "2016 CEO Performance Objectives" a requirement that the CEO and his senior management team find a way to reduce the traffic to Free Conferencing conferences. The "Financial" section of "CEO Performance Objectives" contained this directive:

- **FINANCIAL**
 - Achieve 2016 base budget plan approved by Board...

- Implement robust data analytic tools to improve pricing and margin optimization.
- i. **Reduce impact of Free Conference Call high destination costs from 14.5% of total TMO traffic to exit rate for the year of 6.5%....**

(emphasis added). The Board of Directors of Inteliquent thus established a goal of reducing the number of calls made by T-Mobile customers – customers who signed up for “unlimited” service and should have been free to call any number or service they chose – to Free Conferencing conferences by more than 50%.

Reducing the volume of calls of T- Mobile users to Free Conferencing conferences became a key component of renegotiating the contract between T-Mobile and Inteliquent. Inteliquent’s CEO circulated to his staff an email he would be sending to Inteliquent’s Board of Directors concerning the options under discussion with T-Mobile. Those options included a plan to stop T-Mobile customers from using Free Conferencing’s services. It was essentially a call blocking scheme. This is the email that would be sent to the Board:

[T]his is a quick update on our ongoing negotiations with TMO and other related EBITDA impacting activities.

Last week the team met with TMO to discuss options to improve the current high costs destination codes and understanding their timeline on peering. The options that are under consideration are:

- *Implement a cost+ model whereas we charge above the costs to protect ourselves from unprofitable traffic.*
- ***Limit the number of high destination codes by 50 % by TMO cutting off the first minute of this traffic. The goal would be to eventually eliminate as much as 80% by forcing those calls to listen to a recording asking for a credit card to continue the call.***
- *Give us their 800 traffic with no spiff. This is an option from their perspective to help make up some of the unprofitable traffic....*

(emphasis added).

Following that email, a Senior Vice President at Inteliquent reported that he informed T-Mobile by email that Inteliquent was making progress in developing “strategies/initiatives” to reduce traffic to Free Conferencing conferences and prevent T-Mobile customers from using the voice services of their choice.

[A]s I discussed with [of T-Mobile] on Friday, we are currently developing a series of strategies/initiatives to more aggressively work with you all to contain the volume of traffic to high costs codes, we plan to have a document finalized that we can share with you both early next week. I am confident that we will bring much more focus to this issue going forward and I am sure that our collaborative efforts will yield a reduction in volume to these codes....

T-Mobile and Inteliquent were busy developing these strategies. Inteliquent sent recommendations to T-Mobile in a PowerPoint presentation entitled “T-Mobile High Cost Destination Analysis.” That presentation concluded with this:

On all traffic to high cost codes, T-Mobile inserts a whisper message that the number is not in the callers calling plan, advising that a transactional per min rate will apply, redirecting the call so that the callers credit card details can be entered before the call is completed.

(emphasis added).

Throughout 2016, Inteliquent and T-Mobile developed ways to increase profitability by reducing volume. For example, Inteliquent prepared a PowerPoint presentation for a meeting that included a page on how Inteliquent would make the T-Mobile deal profitable by making 80% of the volume of T-Mobile calls to Free Conferencing “**disappear.**” (emphasis added). The goal was to reduce traffic from T-Mobile customers to Free Conferencing. This is that page:

Positive Future with minimal FCC traffic?

- ▶ T-Mobile is going to meter the traffic
 - ▶ Similar to checking the “I’m not a robot” button
- ▶ 80 % of our volume to FCC destinations is expected to disappear
- ▶ T-Mobile Deal will become profitable

The most noteworthy aspect of these communications is that none of them discuss raising additional revenue from the One-Cent Policy, as that clearly was not the intention. The internal documents from Inteliquent reflect that it and T-Mobile only wanted to reduce traffic and create, as Inteliquent’s PowerPoint slide above states, a “Positive Future With Minimal (Free Conferencing Corporation) Traffic.”⁸

On or about October 1, 2016, T-Mobile implemented the One-Cent Policy. T-Mobile’s One-Cent Policy did what T-Mobile set out to do. T-Mobile customers attempting to reach Free Conferencing conferences at certain rural CLECs encountered

⁸ The internal documents from Inteliquent were produced by Inteliquent in litigation among it, Free Conferencing, and others. Those documents were originally designated “confidential” under a confidentiality order, but the confidentiality designation was lifted by the Court when Free Conferencing sought to use them in another Commission proceeding and Inteliquent did not object.

In that litigation, T-Mobile also produced documents and a T-Mobile employee named Michael Taylor gave a deposition concerning the One-Cent Plan, among other things. Free Conferencing asked the Court to modify the confidentiality order to the use of certain information in this proceeding. Free Conferencing stated that any T-Mobile documents filed with the Commission would be filed as “confidential” pursuant to the confidentiality order entered by the Commission in this proceeding. T-Mobile opposed the request, as it does not want the Commission to understand the facts behind the One-Cent Policy. Free Conferencing thus requests that the Commission take appropriate action to ensure that T-Mobile produce all documents, as well as the transcript of Mr. Taylor’s deposition, in response to the General Information and Document Request served on August 15, 2018.

a recorded message that stated – falsely – that they called a number not covered by their plan and that they could avoid a 1-cent per minute charge by hanging up.

A. T-Mobile’s Deceptive Statements About The One-Cent Policy.

T-Mobile posted a Q&A on its website to explain the new policy. It included this disclosure:

Out-of-plan phone numbers FAQs

Find answers to commonly asked questions about phone numbers that don't fall within your plan.

Why am I charged \$.01 per minute for calls to conferencing, chat, broadcast, radio, and other similar numbers?

T-Mobile has implemented a \$.01 charge per minute for calls to out-of-plan numbers. This charge affects calls to limited number of services like chat lines, conference calls, and radio broadcast lines. This is not a change to our existing calling plans. These calls have always been considered out-of-plan. These calls tend to cost more for T-Mobile to complete and this helps us to manage those costs.

Another T-Mobile statement about the “out-of-plan numbers” said this:

Out-of-plan numbers

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. Out-of-plan calls tend to cost more for T-Mobile to complete, and this small fee helps us to manage those costs.⁹

In fact, T-Mobile had then and has now no “out-of-plan numbers,” and even the limited available documents make clear that T-Mobile and Inteliquent implemented the Policy to reduce the number of calls T-Mobile’s Terms of Service in effect as of October 1, 2016 stated this about conference calling:

You agree to pay all Charges we assess and bill you or that were accepted or processed through all Devices on your account. **You may have to pay**

⁹ See: <https://support.t-mobile.com/docs/DOC-33322>

extra for calls to some numbers (e.g. conference & chat lines, broadcast, international, 900 or 976 calls, etc.). You agree to provide us with accurate and complete billing and tax related information and to report all changes within 30 days of the change. You will receive an electronic (paperless) bill unless you tell us you want a paper bill. You have the option of switching to a paper bill at no cost to you by changing your billing preferences at My T-Mobile, using the T-Mobile My Account app, or by contacting Customer Care. For more information about paperless billing, please visit www.t-mobile.com/billterms.¹⁰

(emphasis added). T-Mobile has never had a plan or Terms of Service that described, or even mentioned, “out-of-plan numbers.” Even today, T-Mobile’s current Terms of Service have the same vague reference that customers “may” have to pay extra for some calls, but makes no reference to “out-of-plan numbers.” As for conferencing, the current Terms of Service say this:

You may have to pay extra for calls to some numbers (e.g., conference & chat lines, broadcast, calling card, international, 900 or 976 calls, etc.).¹¹

T-Mobile customer service personnel informs its users who call and inquire about the One-Cent Policy that there is no predictability with the policy and no way to know in advance what numbers will incur the charge. T-Mobile customer service representative informed one of its users the following:

The list of out of plan numbers can change on a daily basis as getting updated. The numbers are loaded into our system, and will be maintained weekly (added/removed as necessary). The only way to know with 100% certainty

¹⁰ See https://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditionsSep2016&print=true. The same version of the Terms of Service provides, “We may exclude certain types of calls, messages or sessions (e.g. conference and chat lines, broadcast, international, 900 or 976 calls, etc.), in our sole discretion, without further notice.”

¹¹ See https://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true

whether a number will be billed is to dial - if a whisper is present, that means it is loaded in our system and will be assessed the fee. If no whisper, no \$.01/min charge.

There is no full list of out-of-plan numbers because of the large amount in existence, that's why it is being updated weekly, these are for the numbers that falls into the category of out-of-the-plan such chat lines, prayer lines, conference calls, etc. These numbers can change daily, so yesterday they may not have been on the list, but today they are.

Thus, there is no real notice to T-Mobile users prior to signing up for a so-called “unlimited plan” whether calls to certain telephone numbers are subject to additional charges. Moreover, as the “list” of telephone numbers subject to the additional charge changes daily, there is no way of knowing. Remarkably, this in essence means that T-Mobile changes its pricing policies daily. Thus, almost all of T-Mobile’s customers, upon hearing the interrupting message that her call to a Free Conferencing conference call will cost more, does what T-Mobile suggests -- hangs up. Worse, T-Mobile customers are told to hang up and not complete the call even though the call is not actually a “violation” of any plan, terms of service, or other contract between T-Mobile and the customer. The only thing the T-Mobile consumer has done to have her call disrupted is to try to reach a conference call or prayer service on a Free Conferencing application with her “unlimited” T-Mobile plan.¹²

¹² Conferencing and prayer services tend to have longer call durations because there are multiple parties on a call. Conferencing is a more efficient use of the participants’ time and telecommunications resources than separate calls between the same participants, so one longer duration conference call generally would be shorter than the total time taken by participants making separate calls to each other. However, as explained further below, T-Mobile does not target all longer duration conference calls.

B. The One-Cent Policy Discriminates On Many Levels.

Moreover, T-Mobile's public position intentionally misleads consumers and the Commission about the company's real purpose and intent, which is solely to reduce traffic to Free Conferencing conference calls, prayer lines, and other services that tend to have longer duration calls terminating at certain rural CLECs. Free Conferencing's internal investigation has established that the One-Cent Plan is designed to reduce the volume of traffic going to certain rural CLECs. Not only does T-Mobile – a company that has built its brand on unlimited calling plans – not want to incur the expense of completing calls with a longer duration, but it also developed a policy that targets particular CLECs to remedy the profitability problems of its intermediate carrier. In other words, after contracting out its call-termination obligations with a contract that created enormous financial problems for its contracting partner, T-Mobile targeted calls to rural CLECs, and a few others, for the additional charges to address the financial problems its own contract created.

The following example demonstrates how certain, mostly rural, CLECs are targeted by the T-Mobile One-Cent Policy as discovered by Free Conferencing through its own investigation. T-Mobile long distance calls are generally transmitted by T-Mobile to Inteliquent and eventually onto a CLEC for termination. One way a CLEC wins new business from its competitors, is when its customer “ports,” or moves the phone number from their current LEC to that CLEC for connection. Even though the carrier connecting calls to that number changes, the telephone number stays the same. Since the telephone number stays the same, it is associated with the same terminating

location (aka rate center, which determines the cost per the federal tariff). Thus, the cost to T-Mobile also remains the same. Thus, when a phone number is ported, the phone number is the same, the service is the same, and the cost is the same, but the terminating carrier changes.

For phone numbers targeted by T-Mobile's One-Cent Plan, Free Conferencing has reviewed call data on calls subject to the One-Cent Plan. That review shows that, when calls to numbers previously terminated at Inteliquent and certain other, non-rural CLECs are "ported" to another CLEC partner of Free Conferencing, T-Mobile begins applying the additional one-cent charge on calls to that phone number. Free Conferencing has knowledge of this occurring to telephone numbers associated with CLECs Wide Voice in Colorado and Northern Valley in South Dakota. In both cases, when conference calls made to a telephone number owned by Inteliquent, there is no additional charge to T-Mobile users. However, when a black-listed CLEC connects conference calls to the same telephone number, the T-Mobile user must incur an additional charge to complete the call. Nothing changes about the conference calling service other than the CLEC connecting it – the cost is the same, the average length of the call is the same, the telephone number is the same, the conferencing application is the same.¹³

¹³ Wide Voice, a CLEC certified in almost all 50 states has suffered greatly at the hands of the One-Cent Policy because of its close affiliation with Free Conferencing. It has lost millions of dollars in potential new business because conference companies will not bring their traffic to Wide Voice knowing that as soon as the numbers are ported, they will be subject to the One-Cent Policy. Wide Voice has become known in the industry

Furthermore, through industry word of mouth, it is known that CLECs or conferencing/streaming applications targeted by T-Mobile have been able to get off the “black list” of entities targeted by the One-Cent Policy by making deals with T-Mobile for below-market connection costs. Thus, T-Mobile uses the One-Cent Policy as leverage to coerce carriers and providers to agree to provide T-Mobile with below cost rates to connect calls. Carriers and providers would rather lose money connecting calls than have T-Mobile customers using their services be subject to the One-Cent Policy because of the degradation the policy has on businesses and their services.

C. The Harm Of The 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. As T-Mobile customer service representatives warned two years ago, the list of telephone numbers impacted by the policy has grown since the policy was first implemented. In the course of the two years since the policy has been in place, close to 17,000 unique telephone numbers associated with Free Conferencing’s application services have been impacted. Currently, 62% of all calls to Free Conferencing conferences are transmitted to a telephone number that is subject to the additional charge by T-Mobile. That number has been steadily increasing over the past two years. More staggering is the reduction in volume. Today, the

for being a CLEC on T-Mobile’s blacklist. It previously submitted a complaint to the FTC on this issue.

number of calls (and minutes of use) to Free Conferencing conferences by T-Mobile users is about 50% less than prior to the One-Cent Policy.

Although the percentage of calls to Free Conferencing conferences eliminated by the One-Cent Policy has changed over the past two years since the policy has been in place, today, Free Conferencing has approximately 36% less T-Mobile users that call its services as compared to 2016 before the One-Cent Policy. Moreover, Free Conferencing and its subsidiaries has suffered a 32% reduction in users across all carriers. This can be tied to the One-Cent Policy because of the manner in which the One-Cent Policy frustrates an entire conferencing of, on average, 4-5 people who use various carriers. This loss is substantial considering every year since inception the Company has seen rapid growth in users and in minutes of use. 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.

Moreover, Free Conferencing has received over 15,000 customer complaints from T-Mobile subscribers affected by the One-Cent Policy. Free Conferencing's services are utilized by various prayer groups across the country and world, particularly because there are no organizer fees to coordinate group calls. Free Conferencing services permit nonprofit groups and groups with limited resources, such as prayer groups, to provide access to daily prayer to followers all over the world. Because of the One-Cent Policy, people of all faiths who participate in daily prayer calls organized by various groups and organizations, some of which operate 24/7, have stopped calling into prayer lines. Divine Word International Ministry and Ministries of Fire, two non-profit organizations

that rely upon the Free Conferencing application to reach thousands of followers worldwide have seen a marked decrease in the number of callers. See Appendices A and B. In some instances up to 90% of callers stopped using certain prayer lines.

III. THE COMMISSION SHOULD DENY THE MERGER APPLICATION.

A. T-Mobile - Inteliquent One-Cent Policy Violates Section 201 and 202 of the Act.

The Commission's settled nondiscrimination policy prefers carriers to settle intercarrier compensation disputes separate and apart from blocking consumer conversations and punishing callers. Here the apparent motivation by T-Mobile and Inteliquent is to treat calls terminating to numbers hosted by certain CLECs differently than others and to single out long-duration calls for discriminatory treatment.

This problem is not new and the Commission is well aware of T-Mobile and Inteliquent's mixed incentives with regard to call routing. Due to the relatively higher rates that long-distance providers incur to terminate long-distance calls to rural rate-of-return carriers, long-distance providers have an incentive to reduce the per-minute cost of calls to rural areas by handing them off to less expensive intermediate providers. In addition, both long-distance and intermediate providers may have poor incentives to ensure that calls to rural areas are actually completed properly.¹⁴ Combine this statement of nondiscrimination policy with the Commission's no-blocking policy as described in the *USF/ICC Transformation Order*, where the Commission also reaffirmed the Commission's call blocking policy; made clear that carriers' blocking of VoIP-PSTN

¹⁴ See *RCC 2nd FNPRM*, 32 FCC Rcd at 6048, para. 2; *RCC Order*, 28 FCC Rcd at 16163, para. 17.

traffic is prohibited; and clarified that interconnected and one-way VoIP providers are prohibited from blocking voice traffic to or from the PSTN;¹⁵ and you have a rule that carrier compensation disputes should not be addressed through discriminatory call blocking schemes like the One-Cent Policy. If T-Mobile/Inteliquent's scheme results in upwards of 70 percent of calls failing to complete to FCC codes, the Commission is justified in treating this as a call-blocking scheme precluded under the Commission's existing precedent.

Moreover, conference calling services rely upon a range of numbers that consumers use to initiate a conference calling session. A consumer has no way to identify whether once initiated, T-Mobile/Inteliquent will impose a surcharge or block on a given call because the consumer is not notified of which call-in number may be used until the session is requested. The list of numbers changes weekly, if not daily, depending on how many Free Conferencing conferencing numbers T-Mobile has caught and which CLEC connects the call. Consumers therefore have little chance to route around T-Mobile's discriminatory behavior.

T-Mobile/Inteliquent appear to believe that if the underlying discrimination is disclosed to consumers, that cures otherwise discriminatory conduct under Section 201/202. As pointed out above, consumers have no opportunity to route around T-Mobile/Inteliquent's discriminatory behavior. The Commission has also never held

¹⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17903, 18028-29, paras. 734, 973-974.

that otherwise unreasonable behavior under Section 201/202 is cured by disclosing it. If that were true, then the entire history of Section 201/202 decisions by this agency could be mooted by slipping in a clause in a tariff or inserting a term buried in a term of service agreement.

It is important for the Commission to understand that T-Mobile and Inteliquent's discriminatory behavior affects consumers in the way described above; but to accomplish the company's call reduction aims, they must also discriminate at the access layer. T-Mobile and Inteliquent's call routing - call reducing - One-Cent Policy only affects numbering codes hosted by CarrierX. Only calls destined for CLECs that serve Free Conferencing and other similar applications have the One-Cent Policy applied to it. If you are the lucky consumer of a competing conference calling platform not hosted by Free Conferencing (but who presumably host equally long calls) then you escape the discrimination imposed by T-Mobile/Inteliquent. In this way, T-Mobile and Inteliquent have devised the Section 201/202 equivalent of a 'bill of attainder' – illegally targeting one company's traffic in the face of a Congressional nondiscrimination policy that declares such company-specific discrimination flatly inconsistent with national policy. Moreover, it is as if T-Mobile and Inteliquent have devised a garbage-can routing pipe that targets only Free Conferencing with fraudulent call patterns while avoiding disturbing the conference calling traffic of other CLECs and retail conferencing providers. Because those other CLECs and retail conferencing providers provide a service that is 'substantially similar' to Free Conferencing's service, the Commission must declare that this kind of discriminatory call routing - call reducing scheme creates

a significant public interest harm which augurs against the unconditioned approval of the instant transaction.

The Commission will recall that this is not the first time T-Mobile has played fast and loose with the notion of its “unlimited plans.” In October 2016, the same month that T-Mobile and Inteliquent began to implement the One-Cent Policy, the Commission announced a \$48 million settlement with T-Mobile. At that time, the Commission’s Enforcement Bureau announced that T-Mobile was to pay a fine and provide benefits to consumers totaling at least \$48 million as part of a settlement resolving an investigation into whether the company adequately disclosed speed and data restrictions for its “unlimited” plan subscribers. The Commission’s investigation was prompted after it had received complaints from T-Mobile and MetroPCS customers who were misled when they discovered their “unlimited” plans included “de-prioritized” data speeds after using a fixed amount of data each month. Again, this settlement came at a time when T-Mobile was aggressively marketing itself as the “un-carrier,” inducing consumers to switch to T-Mobile for unlimited voice and data at half the price of Verizon and AT&T. Thus, T-Mobile has a history of misleading consumers and the One-Cent Policy is no different.

B. The One-Cent Plan Should Not Be Permitted To Expand.

The Commission has long held that no carrier may block, choke, reduce or restrict traffic in any way. Call Blocking by Carriers, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11629-31, paras. 5, 6 (WCB 2007) (2007 Declaratory Ruling). Equally clear is that carriers may not reduce, restrict, or

block traffic as a means of self-help because they are dissatisfied with inter-carrier compensation. *Id.*, para. 1. The Commission has also made clear that “the practice of call blocking, coupled with a failure to provide adequate consumer information, is unjust and unreasonable in violation of Section 201(b) of the Act.” *Id.*, Note 19, quoting *Telecommunications Research and Action Center and Consumer Action v. Central Corporation et al.*, File Nos. E-88-104-108, Memorandum Opinion and Order, 4 FCC Rcd 2157 (1989); *id.* at 2159, para. 12. Practices by common carriers that deceive or mislead customers are also unjust and unreasonable practices under section 201(b) of the Communication Act. See *In the Matter of Developing an Unified Intercarrier Compensation Regime*, WC Docket No. 07-135, 27 FCC Rcd 1351, 1357 (2012).

Here, T-Mobile understood that the One-Cent Policy constituted call blocking. The internal Inteliquent documents make clear that the policy is designed and intended to reduce traffic, which the Commission has said for over a decade is an unjust and unreasonable practice under section 201(b) of the Act. *Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11629-31, paras. 5, 6. Also, when the Plan was implemented, Inteliquent was in the midst of negotiations that would lead to its merger with Onvoy, LLC and the purchase at a premium of the publicly owned shares of Inteliquent. The improvement of the “T-Mobile margin” through the reducing/blocking of traffic was a material issue in that transaction. In an email on October 17, 2016, the investment banker on the transaction reported this:

In a recent conversation, [former CEO of Onvoy and current CEO of Inteliquent] was told that there will be a material improvement in the T-Mobile margin in 4th

quarter because T-Mobile has agreed to block the calls to the conference bridges. (emphasis added).

That T-Mobile has been providing false and misleading information to its customers is equally clear. It continues to tell customers there are “out-of-plan numbers” to justify its One-Cent Policy even though no contract or terms of service define, or even mention, any “out-of-plan numbers.”¹⁶ Even T-Mobile’s marketing is deceptive and misleading. It still markets its service as “**Unlimited talk, text, and data. All on America’s best unlimited network.**”¹⁷ Although the website has additional information in small-print at the bottom of the web page that describes T-Mobile plans, the brief reference to “conference lines” is similar to T-Mobile’s terms of service and says nothing about “out-of-plan numbers,” what the charge might be, or what numbers might be subject to additional charges.¹⁸

¹⁶ Compare reference to “out-of-plan number” (<https://support.t-mobile.com/docs/DOC-33322>) with current Terms of Service (https://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true)

¹⁷ See site: https://www.t-mobile.com/cell-phone-plans?icid=WMM_TM_Q117TMO1PL_H85BRNKTD037510

¹⁸ There is a fine print at the bottom of a T-Mobile web page on its plans that says this:

C. T-Mobile's Practice of Reducing Calls Through Fraudulent Routing Methods.

It should not be lost on the Commission that the One-Cent Policy is not the only mechanism by which T-Mobile reduces calls made by consumers using Free Conferencing's services. If a T-Mobile user agrees to incur the additional charge to place a call, that call will likely be routed recklessly and even fraudulently by T-

Deposit and \$25 SIM starter kit may be required. Sales tax & regulatory fees included. Capable device required for some features. U.S. roaming and on-network data allotments differ: includes 200MB roaming. Unlimited talk & text features for direct communications between 2 people; others (e.g., conference & chat lines, etc.) may cost extra. T-Mobile ONE not available for hotspots and some other data-first devices. Video typically streams on smartphone/tablet at DVD quality (480p). Otherwise, and in Mexico/Canada, **video typically streams** at DVD quality (up to 1.5Mbps) which may affect speed of video downloads. **Tethering:** Tethering at max 3G speeds. Service may be terminated or restricted for excessive roaming. For the small fraction of customers using more than 50GB per month, primary data usage must be on smartphone or tablet. Smartphone and tablet usage is prioritized over Mobile Hotspot Service (tethering) usage, which may result in higher speeds for data used on smartphones and tablets. **AutoPay Pricing:** For lines 1-8 only. Without AutoPay, \$5 more per line. May not be reflected on 1st bill. Simple Global: Usage may be taxed in some countries. Calls from **Simple Global** countries over Wi-Fi are \$.25/min. (no charge for Wi-Fi calls to US, Mexico and Canada). Standard speeds approx. 128Kbps. **Plus:** Postpaid only. Daily activation is not required. Video streams in native resolution which may not be HD. **Gogo:** Available on Gogo-equipped flights to, from, or within the U.S.; Wi-Fi Calling functionality, valid e911 address, & 1 prior Wi-Fi call w/ current SIM card req'd for messaging. **Stateside Int'l Talk:** Calls must originate on T-Mobile's U.S. network or in Canada/Mexico. Rates and included countries vary and may change. **Coverage** not available in some areas; we are not responsible for our partners' networks. **Network Management:** Service may be slowed, suspended, terminated, or restricted for misuse, abnormal use, interference with our network or ability to provide quality service to other users, or significant roaming. See T-Mobile.com/OpenInternet for data management details. **Not for extended international use;** you must reside in the U.S. and primary usage must occur on our network. Device must register on our network before international use. (Emphasis in original.)

https://www.t-mobile.com/cell-phone-plans?icid=WMM_TM_Q117TMO1PL_H85BRNKTD037510

Mobile's downstream carriers in an effort to cause the call to fail. Thus, not only are thousands of Free Conferencing's telephone numbers subject to the One-Cent Policy, T-Mobile customers are also being victimized by T-Mobile's reckless routing. T-Mobile's primary goal is for the calls to fail to complete, either by virtue of the caller hanging up or reckless routing practices that leads to the use SIMs cards, hacked phone systems, and other call completion problems.

T-Mobile (and its primary vendor for terminating long distance traffic, Inteliquent) take great liberties to complete calls to Free Conferencing as cheaply as possible, which often means employing fraudulent call routing methods or at the very least sending calls to intermediate providers that do the dirty work for them. Such practices have not gone unnoticed by the Commission, as earlier this year, the Enforcement Bureau entered into a Consent Decree with T-Mobile concerning T-Mobile's admitted violation of the Commission's prohibition against the insertion of false ringtones and failure to correct problems with the delivery of calls to certain areas. The Commission ordered T-Mobile to implement a compliance plan to ensure the proper delivery of calls to rural areas and to pay a \$40 million civil penalty.

It is well-known in the telecommunications industry that T-Mobile's network is rife with the fraudulent use of T-Mobile SIMs cards. The use of SIMs cards is a cost-shifting technique which re-originate volumes of calls originating by one carrier onto T-Mobile's network. Free Conferencing believes that certain "airtime" cost structures put in place by T-Mobile's contracts with its MVNOs, relative to the call termination pricing structure in their agreement with Inteliquent, financially incentivizes T-Mobile

to turn a blind eye in the use of its MVNO partner SIMs cards for wholesale re-origination scheme (e.g. SIMs bypass or SIMS card fraud). Not surprisingly, T-Mobile's One-Cent Policy does not apply to its MVNO partners. Free Conferencing has spent the last few years working on ways to combat SIMs card fraud impacting its application network. It has done this in collaboration with its affiliate, HD Tandem, which is actively working with the Commission on this issue.

Another type of fraudulent call routing called "PBX hacking" has emerged over the past couple of years as a new fraud used by intermediate carriers to connect T-Mobile's calls. This type of call routing is particularly concerning because of the direct harm to the public. In mid-2017, Free Conferencing was contacted by a call data center in New Jersey that realized that its PBX had been hacked. That New Jersey call center realized that thousands of T-Mobile customers' calls destined to Free Conferencing conferences were being routed through its PBX. A division of Inteliquent (T-Mobile's intermediate provider) called Vitelity hosts the hacked PBX. What was particularly alarming about this hacking is that when the T-Mobile calls were transmitted through the PBX, the calls were recorded without the callers' knowledge. This occurred because the New Jersey call center's PBX was configured to record calls for training purposes and ordinary calls to that data center played a recording notifying callers of this practice. However, when a call to a Free Conferencing conference was routed improperly through the hacked PBX, callers did not receive notice of the recording. The New Jersey call center also incurred damage for this hacking, including congested lines and severe business disruption. Worse still, the New Jersey call center was charged for

the connection of these hacked calls to Free Conferencing conferences, and Inteliquent's Vitelity division refused even to refund the call center in full for the calls that were made by the hacker.

Free Conferencing reported to Inteliquent that over 600 T-Mobile callers had their conference calls recorded because of their routing through a hacked system, however no response to such report was ever made. In this example – Free Conferencing has been contacted by dozens of other entities who have been hacked – the T-Mobile user was unwittingly stripped of his or her privacy.¹⁹

Another stunning example of the public harm caused by T-Mobile's reckless call routing practices is when Free Conferencing was contacted by a company called Peake, LLC in early October 2017. Peake provides tactical voice service for first responders and did so at the time for first responders coordinating Hurricane Maria relief. Peake, LLC's PBX was hacked and T-Mobile users' calls to Free Conferencing were routed through Peake's PBX, completely disabling Peake's phone system. Peake was unable to make or receive any calls during the hacking episode, which crippled first responder hurricane relief efforts.

These are just two of countless examples as to how T-Mobile or its downstream carriers connect calls to save costs to rural areas. There is a clear danger of greater public harm should T-Mobile be permitted to merge with Sprint and broaden the scope

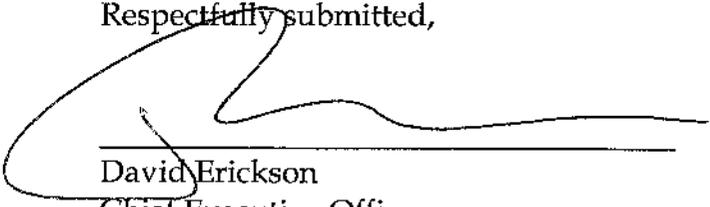
¹⁹ Free Conferencing is used widely by government officials and thus it is conceivable that calls of government officials were recorded. Moreover, this is only one example of a hacking where the calls were recorded. There have been others to Free Conferencing's knowledge and could be countless others as Free Conferencing can only identify the hacking if it is notified by the entity with the hacked PBX.

of these call routing practices. Public interest harms include exposing Sprint users to compromised privacy and the illegal hacking of business phone systems all in the name of saving costs.

IV. CONCLUSION.

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

Respectfully submitted,



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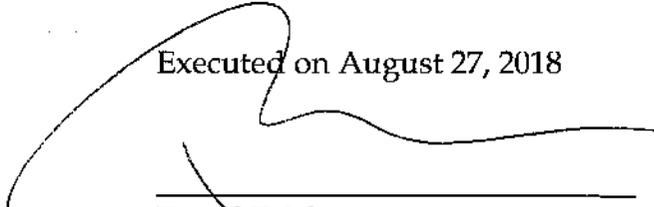
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August 27, 2018

DECLARATION

I declare under penalty of perjury that the facts contained within the foregoing Petition to Deny and its appended material, 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 August 27, 2018



David Erickson
Chief Executive Officer
CarrierX, LLC

CERTIFICATE OF SERVICE

I, Lauren J. Coppola, hereby certify that on August 27, 2018, I caused a true and correct copy of the foregoing Petition to Deny to be served by electronic mail and/or first class mail upon the following:

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/s/ Lauren J. Coppola
Lauren J. Coppola

**APPENDIX A: DECLARATION OF JOHN ADONTENG BOATENG
BISHOP, DIVINE PRAYER LINE**

DECLARATION OF JOHN ADONTENG BOATENG
Bishop, Divine Word International Ministry

1. My name is John Adonteng Boateng. I am a Bishop that provides prayer services on Divine Word International Ministry, also known as the Divine Prayer Line. Followers can reach the Divine Prayer Line by dialing a telephone number on their mobile device. Divine Prayer Line has followers from all over the world, including all over the United States.

2. T-Mobile's policy of charging its customers who purchased unlimited plans an additional 1 cent per minute for calls to freeconferencecall.com has caused significant harm to Divine Prayer Line services.

3. Divine Prayer Line uses freeconferencecall.com to host large prayer calls with thousands of its nationwide and worldwide followers.

4. Since T-Mobile put its policy in place in October 2016, Divine Prayer Line has been unable to host large prayer conferences as it did it in the past. Divine Prayer Line followers have fallen 90% in the past two years as a direct result of T-Mobile's policy.

5. Divine Prayer Line followers have been unfairly targeted by this policy. Many are people who purchased T-Mobile's unlimited plans but later learned that the plans are not unlimited and are being charged when they wish to pray.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2018.

/s/ John Adonteng Boateng
John Adonteng Boateng
Bishop, Divine Word International Ministry

**APPENDIX B: DECLARATION OF MARUFU LAMIDI
PRINCIPAL, MOUNTAIN OF MIRACLE MINISTRIES PRAYER RADIO**

DECLARATION OF MARUFU LAMIDI
Principal, Mountain of Miracle Ministries Prayer Radio

1. My name is Marufu Lamidi. I am a principal and preacher of Mountain of Miracle Ministries Prayer Radio (“Mountain of Ministries”). Mountain of Ministries is a gospel ministry devoted to the Revival of Apostolic Signs. Mountain of Ministries broadcasts prayer 24 hours a day, 7 days a week, non-stop. Mountain of Ministries has followers from all over the world, including all over the United States. It has offices in 26 states.

2. Mountain of Ministries uses freeconferencecall.com to host large prayer calls with thousands of its nationwide and worldwide followers.

3. T-Mobile’s policy of charging its customers who purchased unlimited plans an additional 1 cent per minute for calls to freeconferencecall.com has caused significant harm to Mountain of Ministries.

4. Since T-Mobile’s policy has been in place, Mountain of Ministries has been unable to host large prayer conferences as it did in the past. Mountain of Ministries has lost thousands of followers — up to 80% of its followers no longer call in to pray.

5. Mountain of Ministries’ followers have been unfairly targeted by this policy. Many are people who purchased T-Mobile’s unlimited plans but later learned that the plans are not unlimited and are being charged when they wish to pray. 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.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2018.

/s/ Marufu Lamidi
Marufu Lamidi
Principal, Mountain of Miracle
Ministries Prayer Radio