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September 8, 2008

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

**Re: In the Matter of IP-Enabled Services, WC Docket No. 04-36;
Developing a Unified Intercarrier Compensation Regime, CC Docket
No. 01-92; Universal Service Contribution Methodology, WC Docket
No. 06-122.**

Dear Ms. Dortsch:

Peerless Network LLC files this letter supporting the Commission's goal of addressing intercarrier compensation and IP-enabled services issues pending in the above proceedings.

These proceedings have a material effect on the manner in which carriers exchange traffic, the development of new technologies for the exchange of traffic among carriers, and the improved efficiency of existing technologies. The issues pending before the Commission are comprehensive and intertwined, with proposed solutions that are diverse and often in conflict. Peerless Network appreciates the challenges facing the Commission as it works its way through these issues.

Peerless Network urges the Commission to adopt rules governing the exchange of call detail information to promote the exchange of traffic between and among carriers. Specifically, the Commission should require that originating carriers that rely on other tandem providers to exchange traffic, are required to pass call detail information to the tandem provider, which must also deliver call detail information to the terminating carrier.

In an *ex parte* presentation, US Telecom addresses these "phantom traffic" issues by offering a series of new rules:

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1. "Every originating provider must transmit in its signaling where feasible with its [current] network technology...the telephone number received from or assigned to the calling party."
2. "Every provider must transmit without alteration...the telephone number information that it receives from another provider in signaling."
3. "It should be deemed an unreasonable practice for a provider to route traffic for the purpose of disguising the identity of the financially responsible provider or the traffic's originating jurisdiction."¹

Peerless generally agrees with these proposals, but notes that these proposals are merely extensions of the Commission's existing orders that require tandem signaling to be exchanged among carriers, and require originating and intermediate carriers to provide Calling Party Numbers (CPN) to terminating carriers without alteration.

However, Peerless opposes the position taken by US Telecom that would permit ILECs the ability to request and arbitrate interconnection agreements with other carriers. Not only is this proposal unlawful, but it attempts to address the phantom traffic issues in a way that is not necessary.

Peerless is a telecommunications carrier that provides a suite of retail services to business and residential customers, as well as a wholesale services to other carriers. Included among its retail services are local and interexchange services. Peerless also provides tandem switched access services to other carriers, and local and access tandem services. Thus, Peerless facilitates the exchange of interLATA and intraLATA traffic between two carriers whose networks may otherwise not be directly connected to each other. Peerless provides its services using soft switches based upon Internet Protocol ("IP") technology to provide signaling and call setup support for all calls originating, terminating or traversing its network. Centralized, redundant call routing databases perform these functions on a national level. Peerless began providing services in June 2008, and currently operates in Chicago, Philadelphia and New York, and it is currently expanding into St. Louis, Atlanta, and Miami.

Since at least the Commission's *Expanded Interconnection* proceedings, the Commission has taken steps to promote competition in the tandem switching and transit markets.² In its

¹ See, e.g. *Ex Parte* Presentation filed by Glenn Reynolds, Vice President, Policy, US Telecom, to Marlene H. Dortch, Secretary, CC Dkt. No. 01-92 (dated August 22, 2008.)

² *In re Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, CC Dkt. No. 91-141, 7 FCC Rcd 7369 (1992.) ("*Tandem Access Interconnection Order*").

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Tandem Access Interconnection Order, the Commission required incumbent Local Exchange Carriers to allow competitors to collocate network equipment at ILEC end offices. In its September 1993 order, the Commission directed the Tier 1 incumbent LECs to offer interstate switched transport expanded interconnection service to Competitive Access Providers, Interexchange Carriers, and end users, to allow them to exchange traffic at LEC central offices, wire centers, tandem switches, and remote nodes.³ Shortly thereafter, the Commission required Tier 1 ILECs (except members of the National Exchange Carrier Association) to provide call signaling information that was necessary to provide tandem switching services in competition with the ILECs.⁴ Through these efforts, competitors were able to exchange traffic among “multiple IXCs⁵ from LEC end offices to their own tandems, switch traffic at that point, and deliver the traffic to the appropriate IXC.” *Id.* The Commission specifically ordered four types of signaling information: (1) the Carrier Identification Code (CIC), which identifies the carrier; (2) the OZZ, which indicates the specific trunk group that is to carry the call; (3) the originating telephone number; and (4) the terminating telephone number.

In 1995, the Commission reaffirmed the obligations of carriers to exchange call signaling and information by requiring that carriers, including CMRS providers, deliver the Calling Party Number (“CPN”) to carriers with whom they interconnect.⁶ In the *Caller ID Reconsideration Order*, the Commission adopted Section 64.1601 of its rules, which provides in part that carriers using SS7 “are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers.” 47 C.F.R. § 64.1601(a).

The Commission has also recognized that carriers interconnecting under Section 251(c)

³ *In re Expanded Interconnection with Local Telephone Company Facilities*, CC Dkt No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374. (“*Switched Transport Expanded Interconnection Order*”).

⁴ *In re Expanded Interconnection with Local Telephone Company Facilities*, CC Dkt No. 91-141, Transport Phase II, Third Report and Order, ¶ 1, 9 FCC Rcd 2718 (1994). (“*Tandem Signaling Order*”).

⁵ The FCC’s order would have certainly required call signaling to be delivered to “CLECs,” and would have specifically addressed the exchange of local traffic among carriers, now generally referred to as transit traffic, but because the Telecommunications Act of 1996 had not yet been adopted, the term “CLEC” was not yet coined.

⁶ *In re Rules and Policies Regarding Calling Number Identification Service--Caller ID*, CC Dkt. No. 95-187, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, 10 FCC Rcd. 11,700 (1995.) (“*Caller ID Reconsideration Order.*”)

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for the purposes of exchanging transit traffic are required to exchange sufficient call detail information to permit originating and terminating carriers to bill each other for intercarrier compensation.⁷ The Commission concluded that a carrier that does not pass call detail information to interconnecting carriers “impedes” the terminating carriers’ right to share terminating access revenues for calls, and “can skew Cavalier’s traffic factor ratios, which can impact other charges Cavalier pays to Verizon.” *Cavalier Arbitration Order*, ¶ 39. The Commission further determined that the transit provider “has control over how it passes calls” from the originating carrier, whether it be an IXC, CMRS provider, or LEC, to the terminating carrier, and is required to exchange traffic in a way that “does not eliminate critical information from calls, and does not add information that misidentifies the calling party or the jurisdictional nature of the call.” *Id.*, ¶ 40. Even in 2003, Cavalier had plans to provide tandem transit services in competition with Verizon. The Commission therefore adopted language that imposed reciprocal obligations on Cavalier, in instances where it was the transiting carrier, to provide call detail information to Verizon to permit Verizon to bill originating carriers for intercarrier compensation. The Commission’s arbitrated language required each Party to “pass sufficient information to allow proper billing, in the form of Calling Party Number (“CPN”), CIC [carrier identification code of the originating carrier], LRN, and/or OCN information on each call, carried over the Interconnection Trunks.” *Cavalier Arbitration Order*, ¶ 42.

Peerless agrees that the Commission could complement its current rules and these previous orders, by requiring providers to generate and deliver some form of calling party signaling information with each call; requiring that in general the CPN and called party number should be used to determine, for intercarrier compensation purposes, the jurisdictional nature of the call. Indeed, in any order that the Commission adopts through these proceedings, the Commission should specifically recognize that it has already adopted rules and orders that date back to at least 1994 that demonstrate the Commission’s commitment to making tandem services, including transit, competitively available.

However, the Commission is not required to go the additional step of permitting ILECs the ability to invoke the 251/252 negotiations/arbitration process with other carriers with which they exchange traffic. Moreover, this additional requirement is not permitted under Section 252. Section 252(a) makes clear that the ability to request interconnection under Section 252, with the corresponding obligation to arbitrate interconnection agreements under Section 252, is a one-way street, and only competitive carriers may “request” interconnection terms and conditions under Section 252. Incumbent LECs do not have the legal right to request the negotiation, and

⁷ *In the matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia and for Arbitration*, WC Dkt. No. 02-359, Memorandum Opinion and Order, 18 FCC Rcd. 25,887 (2003) (“*Cavalier Arbitration Order*.”)

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subsequent arbitration, of an interconnection agreement under Section 252. The Commission can encourage carriers to reach agreement voluntarily, but not pursuant to Section 252.

Peerless Network continues to support the Commission's current rules promoting competition in the tandem switching and transit markets, and urges the Commission to adopt rules governing the exchange of call detail information.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry T. Kelly". The signature is written in a cursive style with a large, sweeping initial "H".

Henry T. Kelly
Counsel for Peerless Network, LLC