

**PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

Complaint of Peerless Network of New York LLC, against Verizon New York Inc., for Modification of Verizon New York tariff PSC NY No. 8 to Establish Just and Reasonable Terms for Transit Record Processing Charges, Breach of Interconnection Agreement, and for Refund of Charges Improperly Collected :
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: Case No. 14-C-_____ :
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COMPLAINT

Peerless Network of New York, LLC (“Peerless”) hereby submits this complaint against Verizon New York, Inc. (“Verizon”) relating to: (1) Verizon’s unjust and unreasonable application of its tariff PSC NY No. 8; and (2) Verizon’s breach of the interconnection agreement effective October 11, 2007 between Peerless and Verizon as amended (“Interconnection Agreement”). Peerless states as follows in support of its complaint:

INTRODUCTION

1. Verizon is the former monopoly provider of telecommunications for most of New York State, and as such has a nearly ubiquitous network for the exchange of traffic with every other carrier — including, *inter alia*, independent telephone companies (“ITCs”), competitive local exchange carriers (“CLECs”), and commercial mobile radio service (“CMRS”) carriers. To enable the efficient interconnection and exchange of traffic between and among these many carriers, Verizon is required to provide tandem transit service.

2. Peerless and Verizon entered into the Interconnection Agreement which governs the manner in which Verizon will provide tandem transit service for the exchange of traffic between and among Peerless and Verizon. The Interconnection Agreement contains, *inter alia*, provisions that define how the parties will interconnect, defines Tandem Transit Traffic and sets

rates for this service by referencing the “Pricing Attachment” to the parties’ Interconnection Agreement.

3. Under the Interconnection Agreement, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on Peerless’ network and is transported through a Verizon Tandem to an End Office of another carrier.

4. By definition, Tandem Transit Traffic does not include traffic that is routed by Peerless to Verizon where Peerless is acting as a transiting provider.

5. The Pricing Appendix provides that the rate for Transit Service is based on the rates set forth in Verizon’s PSC NY No. 8 (“Tariff No. 8”).

6. Sections 6.3.3 and 35.6.2 of Tariff No. 8 generally describe a purported Record Processing Charge (“RPC”) that can be assessed by Verizon to the originating carrier to produce call detail records. Tariff No. 8 states that Verizon can assess this Record Processing Charge for each call transited through Verizon for termination to a CLEC or ITC to enable the terminating carrier to bill the originating carrier in appropriate circumstances. Verizon charges \$0.0102 for each call record delivered to the terminating carrier, but assesses the charge on the originating carrier.

7. In violation of the specific terms of Tariff No. 8, Verizon has been assessing and continues to charge such record processing charges on (a) traffic that is outside the scope of Tariff No. 8 and (b) traffic not subject to such tariff-based charges.

8. In breach of the Interconnection Agreement, Verizon has charged Peerless a RPC for calls in which Peerless is not acting as the originating party and is instead acting as a transit provider.

9. Verizon has also assessed the RPC against Peerless in circumstances where Verizon either failed to provide the record to the terminating carrier, or provided a record to the terminating carrier that was inaccurate and/or defective.

10. Furthermore, Verizon has breached the Interconnection Agreement by refusing to allow Peerless to directly interconnect with Verizon's subsidiaries, even in those instances where traffic volumes exceed volume thresholds set forth in the Interconnection Agreement.

11. Verizon refusal to allow Peerless to directly connect with Verizon's affiliates is a sham that Verizon then uses to impose transit fees and Record Processing Charges that Verizon would not be permitted to impose if Peerless directly connected to Verizon's affiliates.

12. Verizon's imposition of the RPC to Peerless, while simultaneously refusing to permit Peerless to directly connect with Verizon's affiliates, which would eliminate the RPC and transit fees, is a classic unlawful price squeeze in which Verizon imposes interconnection terms and conditions that are intended to raise its rivals' costs.

13. Verizon's anticompetitive behavior and breaches have forced Peerless, when serving as a transit provider for originating carriers, to connect to Verizon, which then redundantly transits to a Verizon subsidiary. Peerless is being charged for records that are being sent to a Verizon subsidiary on over 55% of the charges Verizon claims it is owed.

14. As a result of these violations of Tariff No. 8 and breaches of the Interconnection Agreement, Verizon has improperly charged Peerless in excess of four hundred thousand dollars of transit fees, and one million dollars for records that Verizon did not provide to a terminating carrier, were defective or erroneous, were provided to terminating carriers in circumstances where the originating and terminating carriers are in a bill-and-keep arrangement and thus have

no use for such records¹, and for records that need not be sent because the traffic is being exchanged with Verizon subsidiaries.

15. Peerless has properly disputed the charges assessed by Verizon pursuant to the terms of the parties' Interconnection Agreement.

16. Notwithstanding that Peerless has disputed the charges, Verizon has now threatened to discontinue provisioning services to Peerless for failing to pay disputed charges. Verizon's threats were made in breach of the dispute resolution procedures of the Interconnection Agreement.

17. Moreover, the RPC being assessed against Peerless pursuant to the Interconnection Agreement is not a rate set at cost, calculated in accordance with the total element long run incremental cost ("TELRIC") pricing standards required by 47 U.S.C. Sec. 252(d).

18. Given Verizon's refusal to correct these deficiencies, in both the rate and its application, its refusal to allow Peerless to directly connect with Verizon's subsidiaries, and its threat to discontinue provisioning of services under the Interconnection Agreement, Peerless is forced to bring this action. Peerless seeks, *inter alia*, a determination that: (1) Verizon's Record Processing Charge, and Verizon's practices in the assessment of such fees, are unjust, unreasonable, in violation of applicable law, and in breach of the Interconnection Agreement; and (2) Verizon's refusal to allow Peerless to directly connect with Verizon's subsidiaries is an anticompetitive breach of the Interconnection Agreement; and (3) Verizon breached the Interconnection Agreement by threatening to discontinue services to Peerless without pursuing its remedies to resolve these disputes.

¹ Under such bill-and-keep arrangements, carriers do not charge one another for the termination of each other's non-access calls.

THE PARTIES

19. Peerless is a Limited Liability Company organized under the laws of the State of Delaware having its principle place of business at 222 S. Riverside Plaza, Suite 2730, Chicago, Illinois 60606. Peerless is a wholly owned subsidiary of Peerless Network, Inc. Peerless is a competitive local exchange carrier (“CLEC”), authorized by the state public service commissions of New York to provide telephone communications services. Peerless provides, *inter alia*, interstate exchange access service, intrastate exchange access services, as well as long distance, signaling, transit, and enhanced services on a wholesale and retail basis.

20. In its dealings with Verizon under the Interconnection Agreement, Peerless acts either as an originating carrier or a transit provider.

21. Verizon is a “telecommunications carrier” under the Act, and an incumbent local exchange carrier (“ILEC”) in New York. Verizon was formed through the NYNEX/Bell Atlantic merger and the Bell Atlantic/GTE merger.

22. Verizon maintains a principal place of business at 140 West Street, New York, New York, 10007.

JURISDICTION

23. The Commission has jurisdiction over this complaint pursuant to Public Service Law Sections 91, 92, 96 and 97, requiring telephone companies under its jurisdiction to set just and reasonable rates for intrastate services such as the tandem transit services set forth in Verizon’s intrastate tariff.

24. The Commission has specific jurisdiction over the matters raised in this complaint pursuant to New York Public Service Law Section 97(2) to ensure that Verizon, as a telephone corporation, is duly and lawfully implementing its Commission-approved intrastate tariff and to

ensure that Verizon's regulations and practices are not unjust or unreasonable and do not cause inequity or discrimination in the telecommunications market.

25. Section 14.2 of the Interconnection Agreement provides that if the parties have failed to resolve their disputes as set forth therein "either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction."

FACTUAL ALLEGATIONS

I. GENERAL REGULATORY BACKGROUND

26. The Federal Communications Commission ("FCC") has expressly recognized the importance of transit service to the development of competition and the efficient exchange of traffic:

The record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection --- a form of interconnection explicitly recognized and supported by the Act. It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.

Moreover, it appears that indirect interconnection via a transit service is an efficient way to interconnect when carriers do not exchange significant amounts of traffic.²

27. Under New York Public Service Law Section 91(1), the Commission must set rates that are "just and reasonable." Indeed, the statute provides that "[e]very unjust or

² Further Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4685 (released March 3, 2005), at 11 125-126 ("Intercarrier Compensation FNPRM").

unreasonable charge made or demanded for any such service . . . is prohibited and declared to be unlawful.”

28. The Verizon Record Processing Charge and transit charges are subject to Section 97(1) of the New York Public Service Law, which provides in relevant part that: “[w]henever the commission shall be of opinion, after a hearing, had upon its own motion or upon a complaint that the rates . . . charged . . . by any . . . telephone corporation subject to its jurisdiction . . . are unjust, unreasonable or unjustly discriminatory or unduly preferential or in any way in violation of law, . . . the commission shall . . . determine the just and reasonable rates . . . to be thereafter observed[.]”

29. In addition, pursuant to Section 251(c)(2) of the Telecommunications Act, interconnection obligations are required to be provided through the rates, terms and conditions that are just, reasonable and nondiscriminatory. Section 251(d) further provides that “the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section (A) shall be (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network elements (whichever is applicable). . . .” 46 U.S.C. §252(d)(1)(i).

II. THE INTERCONNECTION AGREEMENT BETWEEN PEERLESS AND VERIZON

A. The Original Interconnection Agreement

30. Peerless and Verizon are parties to the Interconnection Agreement effective October 11, 2007. Section 12.1 of the Interconnection Agreement defines “Tandem Transit Traffic” as follows:

As used in this Section, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on PN’s network, and is transported through Verizon’s Tandem to the subtending End Office or its equivalent of another carrier (CLEC, ILEC other than

Verizon, Commercial Mobile Radio Service (CMRS) carrier, or other LEC (“Other Carrier”). Neither the originating nor terminating customer is a Customer of Verizon. Subtending End Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide (LERG). For the avoidance of any doubt, under no circumstances shall Verizon be required to transit traffic through a Verizon Tandem to a Central Office that the LERG does not identify as subtending that particular Verizon Tandem. Switched Exchange Access Service traffic is not Tandem Transit Traffic.

31. Section 12.5 of the Interconnection Agreement specifies that Peerless shall pay Verizon for Tandem Transit Traffic Service according to the following terms:

PN shall pay Verizon for Tandem Transit Traffic Service at the rates specified in the Pricing Attachment. . . .

32. The Tandem Transit Service section of the Interconnection Agreement also contains two provisions that address direct connection. Section 12.6 requires Peerless to use good faith efforts to establish direct connection when certain traffic volume thresholds are met:

If PN uses Tandem Transit Traffic Service for traffic volumes that exceed the Centum Call Seconds (Hundred Call Seconds) busy hour equivalent of 200,000 combined minutes of use per month (a DS1 equivalent) to the subtending End Office of a particular Other Carrier for any month (the “Threshold Level”). PN shall use good faith efforts to establish direct interconnection with such Other Carrier and reduce such traffic volumes below the Threshold Level. If Verizon believes that PN has not exercised good faith efforts promptly to obtain such direct interconnection, either Party may use the Dispute Resolution processes of this Agreement.

33. Direct connections are also addressed in Section 12.9 which provides that “[n]either Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange arrangement with any carrier to which it originates, or from which it terminates, traffic.”

B. Amendment No. 1 to the Interconnection Agreement

34. Section 12 of the Interconnection Agreement was amended by Amendment No. 1 (the “First Amendment”) effective as of August 27, 2013.

35. The amended Section 12.3 makes clear the telecommunications service provider that originates traffic that is transited by Peerless is responsible for paying any fees imposed by Verizon: “[t]he Originating Party shall pay the Transiting Party for Tandem Transit Traffic Service at the applicable rates for Tandem Transit specified in the Pricing Attachment of the Agreement.”

36. Moreover, Section 12.8 as amended by the First Amendment states: “Neither Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange arrangement with any carrier to which it originates, or from which it terminates, traffic.”

C. Amendment No. 2 to the Interconnection Agreement

37. Section 12 of the Interconnection Agreement was amended by Amendment No. 2 (the “Second Amendment”) between Peerless and Verizon effective as of November 22, 2013.

38. The Second Amendment added section 12.7 regarding traffic volumes. Section 12.7 requires good faith efforts to establish direct interconnection when certain traffic thresholds are met:

39. Section 12.9 of the Second Amendment states: “Neither Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange arrangement with any carrier to which it originates, or from which it terminates, traffic.”

III. TARIFF NO. 8

40. Tariff No. 8 was issued December 20, 2000 and became effective January 19, 2001.

41. Tariff No. 8, subsections 6.3.2 and 6.3.3 state that said provisions were issued November 1, 2010 and became effective January 3, 2011 pursuant to Commission Order Case No. 98-C-1357.

42. Tariff No. 8, subsection 35.6.2 states that said provisions were issued February 19, 2002 and became effective March 1, 2002 pursuant to Commission Order Case No. 98-C-1357.

43. Tariff No. 8, subsection 6.3.3 (C) states: "Except as otherwise specified in Section 6.3.3 D, payment of terminating access charges and associated record processing charges for TTS [Tandem Transit Service] calls will *be the responsibility of the originating CLEC*. The Telephone Company [Verizon] and the terminating CLEC or ITC or wireless will each bill their appropriate charges to the originating CLEC." (*Emphasis added*).³ Prior to the current version of 6.3.3 (C), the term "or wireless" was not included in this section.

44. Tariff No. 8, subsection 35.6.2 provides that the rate for "Tandem Transit Service (TTS) — Record processing — per record processed" is \$0.0102.

45. Tariff No. 8, subsection 35.6.2 provides that the rate for "Tandem Transit Service (TTS) – usage sensitive ports – All hours of the day – Per minute of use" is \$0.001621.

³ Subsection 6.3.3(D) states: "The Telephone Company will carry intraLATA local traffic between the Telephone Company's meet point with an ITC and the Telephone Company's point of interconnection with a CLEC (Shared Transport --- Independent/CLEC (STIC)). These calls will be carried, using shared transport, only when the total monthly call volume does not exceed one DS1 level of capacity on that trunk group or 180,000 minutes of use per month. The CLEC will be charged for completing these calls (refer to PSC No. 918, Section 30.6.1 (B)(1), (2) and (3))."

46. While Tariff No. 8 cites as its authority the Commission's Order in Case No. 98-C-1357 (the "Order"), the Order provides no support for Verizon's imposition of a per-record recordation charge of \$0.0102. The Order likewise fails to support Verizon's billing to the originating CLEC for records provided to the terminating CLEC or ITC, and also fails to provide justification for Verizon's policy of unilaterally providing (and automatically billing for) such records rather than upon request of the terminating carrier.

IV. VERIZON'S APPLICATION OF THE RECORD PROCESSING CHARGE IS UNJUST AND UNREASONABLE AND IS IN BREACH OF THE INTERCONNECTION AGREEMENT

A. Section 6.3.3 of Tariff No. 8 Should Be Modified to Eliminate the RPC.

47. The Commission should order that the RPC is unjust and unreasonable, retroactively and prospectively because the RPC is unnecessary, inefficient, and improperly applied. The Commission should also order Verizon to refund and credit the amounts previously paid by Peerless for the RPC.

48. Other call detail records that are exchanged among carriers and delivered to terminating carriers contain sufficient information for the terminating carrier to bill the originating carrier for the appropriate compensation. Additional records from Verizon are not required.

49. Given the fact that the terminating carrier receives such call records and benefits from their use by billing the originating carrier, the terminating carrier is the only party that should logically be charged for the cost to produce such records. Thus, to place the proper costs and economic incentives where they belong, Verizon should provide such billing records only to terminating carriers who request them, and should recover the cost of doing so from those carriers, not from originating carriers who have no use whatsoever for the billing records.

50. The imposition of a charge is not necessary. When local exchange carriers and interexchange carriers exchange interLATA traffic (rather than the local calls that are the subject of the RPC), the carriers routinely exchange call records with each other without the imposition of a RPC. In these circumstances, both local exchange and interexchange carriers receive call records from Verizon with no record processing charges.

51. In the case of Peerless, the records are even more useless because in many instances Peerless is serving as the transit provider and the terminating carrier is a Verizon subsidiary. Therefore, the entity that may need the records being billed by Verizon is a subsidiary of Verizon. Peerless is being charged a Record Processing Charge for Verizon's intra-company records.

52. The Commission should require Verizon to revise Section 6.3.3 to eliminate the RPC. Under the current, highly inefficient regime, Verizon purports to automatically deliver call records to each terminating carrier, regardless of whether that carrier has any need for those records, such as when it has a bill-and-keep arrangement with the originating carrier. In such circumstances, the terminating carrier receives records it does not need, while the originating carrier is billed for the worthless records.

53. In addition, Peerless requests an order prohibiting the application of the Record Processing Charge to transit providers that are not the originating or terminating carrier. Because the originating CLEC and a transit provider do not receive and have no use for these call records, neither should bear the cost. The terminating carrier is the only party who may potentially benefit from the receipt of such records (such as where it is able to bill reciprocal compensation or access to the originating CLEC, as appropriate).

54. The Commission should correct these inefficiencies and Verizon's improper application of the Record Processing Charge by modifying Section 6.3.3 pursuant to Public Service Law Section 97(2), which states in relevant part that: "[w]henver the commission shall be of the opinion . . . upon a complaint that the rules, regulations or practices of any . . . telephone corporation are unjust or unreasonable or that the equipment or service of any . . . telephone corporation is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service thereafter to be installed, to be observed and used, and to fix and prescribe the same by order"

B. Verizon Improperly Charged the Record Processing Charge for Calls in Which Peerless Was Not the Originating Carrier

55. In the alternative, Peerless is entitled to a finding that Verizon breached the Interconnection Agreement by charging Peerless the RPC for calls in which Peerless served as a transit provider and a refund of the improper charges on these calls.

56. Under Section 12.1 of the Interconnection Agreement as originally drafted, which was in effect from October 11, 2007 until August 27, 2013, Tandem Transit Traffic was defined as traffic which originates on Peerless' network.

57. The Record Processing Charge under Tariff No. 8 does not state that the charge may be assessed to carriers like Peerless that are transiting traffic.

58. Verizon may not impose the Record Processing Charge under Tariff No. 8 when Peerless is providing transit service to an originating carrier.

59. During the period from October 11, 2007 until August 27, 2013, Verizon charged Peerless the Record Processing Charge for calls in which Peerless was not the originating carrier but instead was a transit provider.

60. Under the terms of the Interconnection Agreement and Tariff No. 8, these charges are improper.

61. Following the First and Second Amendments which amended the Interconnection Agreement to clearly state that “the Originating Party shall pay the Transiting Party for Tandem Transit Traffic Service at the applicable rates”, Verizon continues to charge Peerless the Record Processing Charge for calls in which Peerless was not the originating carrier but instead was a transit provider. *See* Section 12.3 of First and Second Amendments. Under the terms of the Interconnection Agreement as amended, these charges are improper.

62. Peerless has not breached the Interconnection Agreement by failing to pay Record Processing Charges for calls where it served as a transit provider and not a originating party, and should not be forced to pay such charges because they are not required under the Interconnection Agreement.

C. Verizon Has Expanded the Application of Section 6.3.3 of Tariff No. 8 to Calls That Terminate to CMRS Providers.

63. Because Verizon has also unlawfully applied its Record Processing Charge to CMRS traffic that originates with a CLEC and terminates to a CMRS provider, the Commission should also declare that the RPC cannot be assessed on calls to CMRS providers.

64. Verizon’s actions exceed both the scope and the specific terms of its tariff. Prior to January 2011, Section 6.3.3(B) of Tariff No. 8 provided that “[w]here such calls are terminated to the NXX of another CLEC or an ITC, the Telephone Company will record and transmit call details to the terminating CLEC or ITC and will provide tandem switching and transport of these calls.” (*Emphasis added*).

65. After January 2011, Section 6.3.3(B) of Tariff No. 8, Section 6.3.3(B) provided that “[w]here such calls are terminated to the NXX of another CLEC, or an ITC or *wireless*

provider, the Telephone Company will record and transmit call details to the terminating CLEC or ITC and will provide tandem switching and transport of these calls.” (*Emphasis added*).

66. Prior to January 2011, Verizon’s tariff did not permit Verizon to impose the RPC charge for calls that were delivered to wireless provider.

67. It is also unreasonable for Verizon to impose the RPC on calls to a wireless provider even after January 2011 because a wireless provider may not impose reciprocal compensation charges to an originating CLEC.

68. It is also unreasonable for Verizon to impose the RPC on calls that are terminated to Verizon’s affiliates Verizon Wireless and Verizon Communications, formerly MCI. For example, Verizon Wireless does not rely on these records to bill carriers.

D. In the Event the Commission does not Eliminate the RPC Entirely, Several Modifications are Necessary.

69. Should the Commission decline to eliminate the RPC in its entirety, the Commission should take steps to ensure that its application is fair and consistent with the Interconnection Agreement.

70. In order for the Commission to determine Verizon’s just and reasonable rates for the Record Processing Charge, Verizon should be required to submit a total element long run incremental costs study to justify the Record Processing Charge.

71. The Commission should also order Verizon to assess a rate no greater than the TELRIC.

72. Under New York Public Service Law Section 91(1), the Commission must set rates that are “just and reasonable.” Indeed, the statute provides that “[e]very unjust or unreasonable charge made or demanded for any such service . . . is prohibited and declared to be unlawful.”

73. While Section 35.6.2 of Verizon's tariff, which sets forth the rate for the Record Processing Charge, asserts that the rate and charge were issued in compliance with the Order, there is no analysis in the Order justifying the excessively high rate of \$0.0102 for creating and delivering a record for tandem transit service.

74. The Verizon Record Processing Charge is subject to Section 97(1) of the New York Public Service Law, which provides in relevant part that: “[w]henver the commission shall be of opinion, after a hearing, had upon its own motion or *upon a complaint* that the rates . . . charged . . . by any . . . telephone corporation subject to its jurisdiction . . . are unjust, unreasonable or unjustly discriminatory or unduly preferential or in anyway in violation of law, . . . the commission shall . . . determine the just and reasonable rates . . . to be thereafter observed[.]” (*Emphasis added*)

75. Pursuant to Section 251(c)(2) of the Telecommunications Act, interconnection obligations are required to be provided through the rates, terms and conditions that are just, reasonable and nondiscriminatory. Section 252(d) provides the methodology that the ILEC must use in developing costs for transporting or terminating calls. The methodology prescribed is TELRIC.

76. Section 252(d)(1) establishes the “Pricing Standards” that apply to interconnection services provided pursuant to section 251(c)(2). The price for such services “shall be . . . (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection . . . , and (ii) nondiscriminatory, and . . . may include a reasonable profit.” The FCC has determined that TELRIC is the proper pricing

standard for ILECs' section 251(c)(2) interconnection services,⁴ and the United States Supreme Court has upheld that determination.⁵

77. Finally, should the Commission not eliminate the RPC in its entirety, Peerless requests that Section 6.3.3 be modified to state: "Except as otherwise specified in Section 6.3.3D, payment of appropriate terminating charges (access or reciprocal compensation) will be the responsibility of the originating carrier. Any associated record processing charges for TTS calls will be billed to and be the responsibility of the terminating carrier, upon the terminating carrier's written request for such records."

V. VERIZON HAS ENGAGED IN ANTICOMPETITIVE CONDUCT BY REFUSING TO ALLOW PEERLESS TO ESTABLISH DIRECT INTERCONNECTION WITH ITS AFFILIATES

78. Prior to 2014, Verizon refused to allow Peerless to directly connect with Verizon affiliates Verizon Wireless and Verizon Communications, formerly known as MCI. Had Peerless been permitted to directly connect with Verizon's affiliates Verizon Wireless and Verizon Communications, no RPC charge would apply.

79. Verizon's refusal to allow Peerless to directly connect to its subsidiaries is a breach of Section 12.9 of the Interconnection Agreement as Amended and Section 12.8 of the original Interconnection Agreement, which directly state that "[n]either Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange arrangement with any carrier to which it originates, or from which it terminates, traffic."

⁴ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996), *rev'd* in pertinent part on jurisdictional grounds sub nom. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd* in pertinent part on remand, 219 F.3d 774 (8th Cir. 2000), *rev'd* sub nom. *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002).

⁵ *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 523 (2002).

80. In addition, Verizon's actions violate Section 12.7 of the Interconnection Agreement as amended by the Second Amendment and Section 12.6 of the original Interconnection Agreement, which provide that "PN [the originating Party] shall use good faith efforts to establish direct interconnection with such Other Carrier [Receiving Service Provider] and reduce such traffic volumes below the Threshold Level."

81. Verizon has unlawfully breached the Interconnection Agreement by refusing to allow Peerless to directly connect with Verizon Wireless and Verizon Communications so that Verizon can unlawfully assess the Record Processing Charge of \$0.0012 per record on traffic destined to Verizon Wireless and Verizon Communications.

82. Verizon has unlawfully breached the Interconnection Agreement by refusing to allow Peerless to directly connect with Verizon Wireless and Verizon Communications so that Verizon can unlawfully assess the transit fee of \$0.001621 per minute of use on traffic destined to Verizon Wireless and Verizon Communications.

VI. VERIZON HAS THREATENED TO DISCONTINUE SERVICES TO PEERLESS INSTEAD OF SEEKING TO RESOLVE THE DISPUTE.

83. Peerless has properly disputed the application of the Record Processing Charges since they were imposed by Verizon.

84. Section 14.1 of the Interconnection Agreement provides that any dispute between the Parties regarding the interpretation or enforcement of the Interconnection Agreement "shall be addressed in good faith negotiations between the Parties."

85. Peerless and Verizon have been engaged in good faith negotiations in an attempt to resolve the dispute since at least February 2013.

86. Section 14.2 of the Interconnection Agreement also provides that if the Parties are unable to resolve the dispute "either Party may pursue remedies available to it under this

Agreement, at law, in equity, or otherwise, including . . . instituting an appropriate proceeding before the Commission, the FCC or a court of competent jurisdiction.”

87. Section 12 of the Interconnection Agreement provides that if a Party fails to make a payment of *undisputed* amounts, the other Party may “by written notice to the Defaulting Party (a) suspend the provision of any or all Services hereunder. . . .” (emphasis added).

88. Under these default provisions of the Interconnection Agreement, Verizon does not have the right to suspend the provision of services for failure to pay a disputed charge; Verizon must instead, bring an action to resolve the dispute.

89. Rather than institute a proceeding to determine the validity of the Record Processing Charges and its application to Peerless’ traffic, on March 14, 2014, Verizon threatened to “begin the default process to all Peerless accounts.”

90. Due to Verizon’s improper billing, breach of the Interconnection Agreement, and unlawful and anticompetitive conduct, Peerless has been forced to file this complaint.

Count I — Finding Regarding Sections 6.3.3 and 35.6.2

91. Peerless repeats the statements made in paragraphs 1 through 90 as if they were fully set forth herein.

92. Pursuant to New York Public Service Law Sections 91(1), 97(1) and 97(2), Peerless requests that the Commission find that the Verizon Record Processing Charge is unjust and unreasonable, and should be either eliminated or reduced to a forward looking economic cost-based rate.

93. Tariff No. 8 does not permit Verizon to impose the RPC on transit providers.

94. The Commission should find that Verizon is prohibited from imposing the Record Processing Charge on calls where Peerless is acting as a transit service provider, or on traffic terminated to Verizon affiliates.

95. If the Commission does not eliminate the RPC in its entirety, the language of Section 6.3.3 should be modified to state: “Except as otherwise specified in Section 6.3.3D, payment of appropriate terminating charges (access or reciprocal compensation) will be the responsibility of the originating carrier. Any associated record processing charges for TTS calls will be billed to and be the responsibility of the terminating carrier upon the terminating carrier’s written request for such records.”

Count II — Breach of the Interconnection Agreement

96. Peerless repeats the statements made in paragraphs 1 through 95 as if they were fully set forth herein.

97. By charging Peerless the Record Processing Charge for calls in which Peerless was not the originating carrier but instead was a transit provider, Verizon has misapplied Tariff No. 8 and therefore breached the Interconnection Agreement.

98. By charging Peerless the Record Processing Charge for calls which were terminated to a wireless carrier, Verizon has misapplied Tariff No. 8 and therefore breached the Interconnection Agreement.

99. Due to Verizon's refusal allow Peerless to directly connect with Verizon's subsidiaries, including in high volume situations, Verizon has breached the Interconnection Agreement.

100. This breach of the Interconnection Agreement has caused Peerless to be subject to improper billing of Transit fees and Record Processing Charges on calls destined to Verizon Wireless and Verizon Communications.

101. Verizon has imposed the Record Processing Charge in circumstances where Verizon has either failed to provide the applicable records to the terminating carrier, as required by the Interconnection Agreement and Tariff No. 8, or provided defective or incomplete records.

102. Verizon's threat to suspend the provision of services to Peerless without making an attempt to resolve the dispute is a further breach of the Interconnection Agreement.

103. Peerless requests that the Commission order that: (i) Verizon has violated Tariff No. 8 and therefore breached the Interconnection Agreement by charging Peerless the Record Processing Charge for calls in which Peerless was not the originating carrier but instead was a transit provider (ii) Verizon has violated Tariff No. 8 and therefore breached the Interconnection Agreement by charging the Record Processing Charge for calls that were delivered to a wireless carrier; (iii) Verizon has breached the Interconnection Agreement by refusing to allow Peerless to directly connect with Verizon's affiliates; (iv) Verizon has engaged in unjust and unreasonable practices by imposing Transit fees and the Record Processing Charge on Peerless during a time when Verizon refused to permit Peerless to directly connect with Verizon's affiliates; (v)

Verizon has breached the Interconnection Agreement by charging the Record Processing Charge in circumstances where Verizon either failed to provide the records to the terminating carrier, and/or provide incomplete or inaccurate records; (vi) Verizon has breached the Interconnection Agreement by threatening to suspend services for Peerless' refusal to pay disputed charges; and (vii) Verizon refund and credit the amounts billed for the Record Processing Charge and for the Transit fees on calls destined to Verizon Wireless and Verizon Communications.

Count III — Accounting

104. Peerless repeats the statements made in paragraphs 1 through 103 as if they were fully set forth herein.

105. In the alternative to the claims set forth above, Peerless requests that the Commission conduct an accounting of the Record Processing Charges imposed by Verizon and require Verizon to prove that for each Record Processing Charge assessed, Verizon (i) Verizon provided the call detail record to the terminating carrier; (ii) that the terminating carrier was neither a Verizon affiliate nor a wireless carrier; and (iii) that the record properly identified the originating carrier.

PRAYER FOR RELIEF

WHEREFORE, Peerless respectfully requests that the Commission provide the following relief:

- (1) Find that the Record Processing Charge is unjust and unreasonable, prohibit Verizon from assessing the charge, and order Verizon to refund past Record Processing Charges paid by Peerless to Verizon;
- (2) In the alternative, find that Verizon has breached the Interconnection Agreement by charging Peerless the Record Processing Charge for calls in which Peerless

was a transit provider and order Verizon to refund Record Processing Charges for these calls;

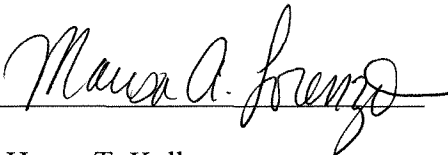
- (3) Find that Verizon is prohibited from applying Section 6.3.3 and 35.6.2 to CMRS traffic;
- (4) Find that Verizon has breached the Interconnection Agreement by refusing to allow Peerless to directly connect with Verizon's affiliates;
- (5) Order Verizon to refund to Peerless the amounts Peerless paid to Verizon for the Transit fees and Record Processing Charges on traffic that was routed to Verizon because of its refusal to permit Peerless to directly connect with Verizon's affiliates;
- (6) Conduct an Accounting of the Record Processing Charges imposed by Verizon to find that Verizon in fact timely provided accurate and valid records to terminating carriers;
- (7) Order Verizon to refund any additional charges improperly assessed against Peerless;
- (8) In the event that the Commission does not prohibit the Record Processing Charge entirely, the Commission should in the alternative, (a) order Verizon to submit a total element long run incremental costs study to justify the Record Processing Charge, (b) Order Verizon to assess a rate no rate than the TELRIC, and (c) modify the language of Section 6.3.3 state: "Except as otherwise specified in Section 6.3.3D, payment of appropriate terminating charges (access or reciprocal compensation) will be the responsibility of the originating carrier. Any associated record processing charges for TTS calls will be billed to and be the responsibility

of the terminating carrier upon the terminating carrier's written request for such records";

- (9) Require Verizon to pay Peerless' reasonable costs and attorney's fees incurred in bringing this action; and,
- (10) Order such additional relief as the Commission deems reasonable and just.

Dated: June 4, 2014

Respectfully submitted,

By: 

Henry T. Kelly
Michael R. Dover
KELLEY DRYE & WARREN LLP
333 West Wacker Drive,
Suite 2600
Chicago, Illinois 60606
Tel. No.: (312) 857-7070

Marisa A. Lorenzo
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178
Tel. No.: (212) 808-7697

Attorneys for Peerless Network of New York, LLC