



3. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] because certain of the acts and transactions described herein took place in the Northern District of Texas.

### **Defendants**

4. TierOne Converged Networks, Inc., a Nevada corporation headquartered in Dallas, Texas, is a wireless internet service provider (“WISP”) that supplies wireless broadband service to rural parts of the Dallas/Fort Worth area that otherwise do not have broadband service.

5. Kevin Mark Weaver, of Dallas, Texas, is TierOne’s president and CEO and a member of its board. One of Weaver’s primary roles was to oversee the company’s securities offering activities. He drafted TierOne’s initial PPMs, a job in which Celmer later assisted.

6. Ronald Celmer, of Dallas, Texas, has been TierOne’s CFO since March 2007 and is a member of its board. During his employment, and until recently, Celmer has had primary responsibility for TierOne’s accounting and financial reporting.

### **Statement of Facts**

#### **TierOne’s Unregistered Offerings**

7. From July 2006 through April 2009, TierOne raised almost \$9.5 million from approximately 200 investors in 34 states through a continuous unregistered offering of its securities. Defendants disseminated seven private placement memoranda (“PPM”) in connection with this offering, dated July 1, 2006, February 12, 2007, November 21, 2007, June 7, 2008, October 27, 2008, March 23, 2009, and April 6, 2009. All PPMs stated that the offerings were conducted in compliance with Rule 506 of Regulation D.

8. Weaver approved the preparation and public dissemination of all TierOne PPMs. Celmer approved the preparation and public dissemination of all TierOne PPMs created after he joined the company in March 2007.

### **Method of Offering**

9. TierOne used an in-house sales force to solicit potential investors from lead lists the company had purchased. Although the sales force purportedly attempted to qualify potential investors as accredited investors, they did not do so in some instances. At least 46 unaccredited investors purchased securities in TierOne.

10. TierOne sent PPMs and other informational materials to prospective investors who expressed interest in investing. The PPMs and other materials sent to investors (including unaccredited investors) did not contain audited financial statements.

### **TierOne Omitted and Misstated Material Facts from July 2006 to April 2009**

#### **Weaver's FINRA Disciplinary History**

11. The PPMs issued before May 2008 described Weaver as a successful professional with many years of experience in the financial industry as a stock broker. These PPMs did not disclose, however, Weaver's disciplinary history with the Financial Industry Regulatory Authority ("FINRA"), the self-regulatory organization that supervises, among other things, stock brokers. FINRA had sanctioned Weaver on more than one occasion for various violations, and ultimately barred him from the securities industry and imposed other significant sanctions on him. Disclosure of this disciplinary history was necessary in the PPMs to make the positive statements about Weaver's professional background not misleading.

12. On May 19, 2008, the Texas State Securities Board issued an Emergency Cease and Desist Order against Weaver and TierOne for failing to disclose Weaver's disciplinary history. TierOne's June 7, 2008 PPM, and subsequent PPMs, disclosed Weaver's FINRA disciplinary history.

**Exaggerated Business Relationships: Red Oak, Texas, and Zyterra Merger**

13. TierOne's first two PPMs, issued in July 2006 and February 2007, represented that the city and school district of Red Oak, Texas had contracted with TierOne and another company, Zyterra Solutions, to provide wireless communications systems for certain municipal and school district activities. TierOne claimed that these agreements gave it "marketing access to nearly 7,500 students and 700 faculty & employees." In fact, the city and school district had only contracted with Zyterra to provide these services. Although TierOne and Zyterra had a business relationship at the time, TierOne did not have any contracts with Red Oak and would have had difficulty enforcing them on its own behalf. Accordingly, TierOne's exaggeration of its relationship with Red Oak was misleading.

14. TierOne's February 2007 PPM also represented that TierOne had "agreed to merge with" Zyterra and that Zyterra's president, an experienced WISP equipment provider, had agreed to serve as the combined company's CEO. TierOne followed publication of this PPM with a March 14, 2007 press release announcing a merger agreement with Zyterra. Weaver drafted and approved the PPM and press release.

15. These representations were misleading because TierOne and Zyterra did not have a signed agreement to merge, and Zyterra's president had not taken a position with TierOne or agreed to do so.

### **Exaggeration of Software Application**

16. The February 2007 PPM also represented that TierOne had a “proprietary software application to identify the ‘by address’ signal strength” of potential customers, which gave TierOne a “competitive advantage.” In fact, one of TierOne’s technicians had merely combined various commercially-available software products and internet applications, including some that were available through the Internet. This combination of products was not “proprietary” in that it was not copyrighted, patented, or otherwise protected. These representations were therefore misleading.

### **Failure to Disclose Loans to Weaver and Celmer**

17. Upon his arrival at TierOne, Celmer, along with Weaver, implemented a loan program for senior management, under which TierOne advanced funds to Weaver and Celmer. At December 31, 2008, the outstanding balance on Weaver’s loans under this program totaled approximately \$370,000, while Celmer’s balance was approximately \$248,000. TierOne monitored the balance of these loans (including Weaver’s and Celmer’s periodic repayments) in its general ledger, but the loans were not formally documented with promissory notes until April 2009.

18. The loans to Weaver and Celmer were not disclosed to investors until the April 2009 PPM. Instead, the PPMs before April 2009 only disclosed that Weaver and Celmer would each receive yearly base salaries of \$90,000.

19. The failure to disclose these loans was misleading, particularly in light of the representations about Weaver and Celmer’s base salaries because investors interested in

TierOne's executive compensation could not have determined from the PPMs that Weaver and Celmer were receiving cash loans well in excess of their stated salaries.

### **Improper Accounting for Offering Expenses**

20. The four PPMs TierOne issued from June 2008 through April 2009 presented balance sheets that materially overstated assets. These balance sheets included as "Other Assets" approximately \$2.4 million in expenses incurred in connection with the company's securities offerings. These costs included commissions, printing, postage, telephone charges and office rent. TierOne's inclusion of these costs as assets was misleading since TierOne should not have capitalized these costs, but should have deferred and charged these expenses against the amounts raised in the respective offerings, thereby reducing equity. As a result of TierOne's improper capitalization of these costs, its assets as of December 31, 2008, were overstated by 37%.

## **CLAIMS**

### **FIRST CLAIM**

#### **Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) & 77q(a)(3)]**

21. Plaintiff repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth verbatim.

22. Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of any securities, by use of the means and instrumentalities of interstate commerce and by use of the mails, obtained money or property by means of a material misrepresentation or omission, and engaged in a transaction, practice, or course of business that operated as a fraud or deceit on the purchaser.

23. As a part of and in furtherance of their conduct, Defendants, directly or indirectly, prepared, filed, executed, signed, disseminated, used and issued public statements which contained untrue statements of material facts and misrepresentations of material facts and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth above.

24. Defendants made these misrepresentations and omissions negligently.

25. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) & 77q(a)(3)].

**SECOND CLAIM**  
**Violations of Sections 5(a) and 5(c)**  
**of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]**

26. Plaintiff repeats and incorporates paragraphs 1 through 20 of this Complaint by reference as if set forth verbatim.

27. Defendants, directly or indirectly, singly and in concert with others, have been offering to sell, selling, and delivering after sale, certain securities, and have been, directly or indirectly: making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; and making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

28. No registration statements were filed with the Commission or were otherwise in effect with respect to these securities.

29. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77e(c)].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

(a) permanently enjoin Defendants from violating, directly or indirectly, Sections 5(a) and 5(c), and 17(a)(2) and 17(a)(3) of the Securities Act;

(b) order Weaver and Celmer to pay a civil penalty, plus post-judgment interest, under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)];

(c) appoint a monitor to supervise and report to the Court and Plaintiff on certain business and fund-raising activities of TierOne;

(d) order Weaver and Celmer to disgorge any ill-gotten gains;

(e) permanently enjoin Defendants from employing any person who acts as a broker, as that term is defined in Section 3(a)(4) of the Exchange Act, to offer or sell securities issued by TierOne or any company affiliated with TierOne, unless that person is registered, or exempt from registration as a broker, is an associated person of a registered broker, satisfies the requirements of Rule 3a4-1 under the Exchange Act, or is not subject to the broker or dealer registration requirements of the Exchange Act

(f) grant such other relief as this Court may deem just or appropriate.

DATED: April 27, 2010

Respectfully submitted,

/s/Timothy S. McCole  
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