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June 1, 2021

By ETFS and USPS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Peerless Network, Inc. Tariff F.C.C. No. 4, Transmittal No. 21 (May 24, 2021 Revised Tariff Filing)

Dear Ms. Dortch:

AT&T Services, Inc., on behalf of itself and its affiliates (collectively, “AT&T”) hereby submits its Petition to Reject or to Suspend and Investigate the proposed tariff in Transmittal No. 21 filed on May 24, 2021 by Peerless Network, Inc. (“Peerless”). AT&T is filing four hard copies of this submission with the Secretary’s office, pursuant to 47 C.F.R. § 1.773(a)(4). Separate copies are also being served on the Chief, Wireline Competition Bureau and the Chief, Pricing Policy Division. In addition, copies are being served on Peerless, both electronically and by fax.

Please contact me if you have any questions regarding this matter.

Sincerely,

/s/ Spencer D. Driscoll

Enclosures

CC: Kris Monteith, FCC
Gil Strobel, FCC
Julie Oost, Peerless
Joe Solana, Peerless

In the Matter of)
)
Peerless Network, Inc.) Transmittal No. 21
Tariff F.C.C. No. 4)

Pursuant to 47 C.F.R. § 1.773, AT&T Services, Inc., on behalf of itself and its affiliates (collectively, “AT&T”), hereby requests that the Commission reject, or alternatively, suspend and investigate, the above-captioned tariff filing of Peerless Network, Inc. (“Peerless”).

¹ See Order ¶ 8, *In the Matter of Teliix Colorado, LLC Tariff* F.C.C. No. 1, WCB Pricing File No. 21-01 (May 7, 2021).

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highlighted,³ Peerless's proposed tariff revisions are unlawful and should be rejected or, in the alternative, suspended and investigated.

Peerless's tariff filing seeks to add an entirely new set of "dedicated access" charges that it has never tariffed before.⁴ As with Teliix, Peerless's new charges are not intended to implement a new service offering, because Peerless has not changed the functions it is performing. *See* CenturyLink Teliix Petition at 4-5. Instead, these new tariff charges are a wholly inappropriate attempt to replace revenues that Peerless is losing due to the transition to bill-and-keep and the Commission's closing of arbitrage opportunities. *Id.*

Transmittal No. 21 would permit Peerless to charge its IXC customers for certain dedicated access services, in any one of three scenarios. *See* Peerless Proposed Tariff § 6.2(D) (illustrative diagram).⁵

To begin with, it is far from clear how the services proposed in these three scenarios would be properly classified under the Commission's intercarrier compensation rules. For example, under the "Hub POI" scenario, which relates to interLATA services at a point of

³ *See* Petition of AT&T Services, Inc. to Reject or Suspend and Investigate, *Teliix, Inc. Tariff F.C.C. No. 1*, Transmittal No. 7 (filed Apr. 30, 2021) ("AT&T Teliix Petition"); Petition of CenturyLink Communications, LLC and Level 3 Communications, LLC to Reject or Suspend and Investigate, *Teliix Inc. Tariff F.C.C. No. 1*, Transmittal No. 7 (filed Apr. 30, 2021) ("CenturyLink Teliix Petition").

⁴ Specifically, the tariff would permit Peerless to bill other carriers entrance facilities ("EF"), direct trunk transport ("DTT"), dedicated multiplexing ("DMUX"), and dedicated tandem trunk port ("DTTP") charges. *See* Peerless Proposed Tariff § 6.2.

⁵ Peerless assesses all four dedicated access charges on a minute-of-use equivalent basis in three scenarios: (1) when the IXC connects to a "Company Tandem" directly via a "POI" (point of interconnection), which is defined as a physical location where the IXC connects with Peerless to exchange traffic in a single LATA; (2) when the IXC connects to a "Company Tandem" via a "Hub POI," defined as a point of interconnection with Peerless that serves more than one LATA; and (3) when the IXC connects to a "Company Access Tandem" indirectly via an "Alternate Access Tandem." *See* Peerless Proposed Tariff §§ 6.2(C), 6.2(D) (illustrative diagram); *see also id.* § 6.1.2(A).

interconnection where traffic is exchanged to/from “more than one LATA,” Peerless Proposed Tariff, § 2, 1st Rev. Page 7, the service at issue may not be considered access service at all; instead, this may be an interLATA, interexchange service, which has been detariffed for years. Further, to the extent that the services are properly categorized as exchange access, then those services are subject to the benchmarking requirement in Section 51.911(c) of the Commission’s rules. 47 C.F.R. § 51.911(c); *see* 47 C.F.R. § 61.26. Yet, although the tariff purports to mirror the applicable ILEC rates for the four dedicated services, Peerless Proposed Tariff, § 8.1.4, it applies those prices to ill-defined scenarios (*e.g.*, “Hub POI” and “Alternate Access Tandem”) that do not appear to be functionally equivalent to any ILEC access service. This is unlawful, because “the Commission’s rules require that tariffed CLEC charges for ‘interstate switched exchange access services’ be for services that are ‘the functional equivalent’ of ILEC interstate switched exchange access services.” *Qwest v. Northern Valley Commc’ns*, 26 FCC Rcd 8332, ¶ 8 (2011).⁶

Further, in scenario (3), Peerless will assess dedicated access charges for services that it *does not provide*, when the customer connects to Peerless “via [an] Alternate Access Tandem.” The tariff does not define “Alternate Access Tandem,” but the term appears to refer to a tandem owned and operated by a provider other than Peerless. *See* Peerless Proposed Tariff § 6.2(D)

⁶ The “Hub POI” scenario is also problematic because it purports to be available only where Peerless agrees to the arrangement in advance. *See* Peerless Proposed Tariff § 6.2(A) (“Hub POIs are offered at the Company’s discretion. The Company must agree in advance to a particular Hub POI arrangement and the LATAs with which traffic can be exchanged via such Hub POI arrangement.”). As CenturyLink has pointed out, there is really no “choice” here. *See* CenturyLink Teliix Petition, at 8-9. Although Peerless has removed the “Customer elects” language, *see id.*, the reality is that IXC’s connect to Peerless to service multiple LATAs and, in the absence of direct connections in every LATA (which is not economically feasible or legally required), the tariff effectively offers IXC’s a single practical “choice” that Peerless can purportedly decline to implement.

(illustrative diagram). In this call flow, the IXC customer interconnects with the Alternate Access Tandem, and the alternate access tandem provider in turn interconnects with, and establishes a “POI” with, Peerless. *Id.* Under Peerless’s tariff, Peerless would then assess usage-sensitive dedicated access charges on the IXC customer, including direct-trunked transport mileage “calculated using actual miles between (1) . . . the Alternate Access Tandem and (2) the Company [*i.e.*, Peerless] Access Tandem, not to exceed 10 miles.”⁷ Peerless would also levy facility charges on IXCs multiple times: an entrance facility charge at “each point of termination,” and a direct trunked transport termination charge “at each end” of its connection with the Alternate Access Tandem.⁸

These tariffed charges are unlawful on their face. Peerless has no basis to impose dedicated access charges on IXCs like AT&T, where the IXC interconnects with Peerless *indirectly* through a third-party tandem provider. The IXC in that scenario has no privity with Peerless and is not ordering or purchasing tandem trunk ports, multiplexing, direct-trunked transport, or entrance facilities associated with *Peerless’s* tandem. Peerless cannot use a federal tariff to unilaterally impose charges on entities in situations where it has no direct connection with that entity.

Finally, Peerless’s use of 216,000 minutes as the equivalent of a DS1 further inflates these improper access charges. Under the proposed tariff changes, the dedicated access charges in scenarios (2) and (3) are to be assessed “on a minute-of-use equivalent (MOU-E) basis . . . with a monthly usage factor [of] 216,000 MOU per DS1-equivalent circuit per month.” Peerless Proposed Tariff § 6.2(A). As CenturyLink correctly explained in its challenge to Teliix’s tariff,

⁷ *Id.* § 6.2(A); *see also id.* § 6.2(C).

⁸ *Id.* § 6.1.2(A)(1), (A)(2).

DSIs typically carry far more than 216,000 minutes of use. CenturyLink Teliax Petition at 7-8. Accordingly, “assessing dedicated access charges at the listed rates for every 216,000 [minutes of use] substantially increases what [Peerless’s] tariff would permit it to charge, and thereby raise [Peerless’s] tariffed rates beyond the rate of the competing ILEC,” which violates the CLEC benchmark rule. *Id.* at 7. To the extent Peerless is permitted to charge these access charges at all, it *may not* charge more than the competing ILEC for the same service. *See* 47 C.F.R. §§ 51.911(c); 61.26(c), (f).

CONCLUSION

The Commission should reject the tariff. There is a high probability that the tariff revision is unlawful, and the competitive harm from permitting the tariff to go into effect outweighs any potential injury if the tariff is not allowed to take effect. 47 C.F.R. § 1.773(a). In the alternative, the Commission should suspend the tariff and investigate the lawfulness of the revised provisions.

Respectfully submitted,

/s/ James P. Young

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June 1, 2021

CERTIFICATE OF SERVICE

I, Spencer D. Driscoll, do hereby certify that, on this 1st day of June 2021, the foregoing Petition of AT&T to Reject or Suspend and Investigate was served on the following via the methods indicated below:

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/s/ Spencer D. Driscoll
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