Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Peerless Network, Inc.
Tariff F.C.C. No. 4

Transmittal No. 21

PETITION OF BANDWIDTH INC. AND BANDWIDTH.COM CLEC, LLC TO REJECT OR SUSPEND AND INVESTIGATE

Pursuant to Section 1.773 of the Commission's rules, Bandwidth Inc. and Bandwidth.com CLEC, LLC (collectively, "Bandwidth") respectfully requests that the Commission reject the May 24, 2021 tariff filing of Peerless Network, Inc. ("Peerless"), or in the alternative, that the Commission suspend and investigate the tariff and reject it upon confirming its unlawfulness. As shown herein, the proposed tariff charges violate the Commission's rules. Thus, there is a high probability that the tariff would be found unlawful if investigated.

First, Peerless is not performing a new function that it never performed. Rather, it is attempting to add new rate elements to create a revenue stream to replace others the Commission has foreclosed. Peerless's tariff therefore violates the Commission's prohibition on tariffing new rate elements to create new revenue opportunities. *See Transformation Order*[1] ¶ 801, *see also 8YY*

[1] *Connect America Fund,* et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (subsequent history omitted) *("Transformation Order").*

Order[2] ¶ 64 (refusing to include dedicated transport in per minute of use rate because it could "offer a windfall to the competitive carriers that do not typically charge for those services and increase, rather than decrease, the cost of 8YY service"). The Commission adopted a single nationwide tandem switching rate to prevent carriers from shifting "the focus of their 8YY arbitrage schemes to tandem switching and transport charges."[3] The windfall that Peerless seeks to gain by tariffing new *"dedicated"* transport charges imposed on a per minute of use ("MOU") basis is precisely the shift in arbitrage that the Commission's *8YY Order* was designed to prevent. By imposing new tandem rate elements on interexchange carriers, the Peerless tariff changes would move the industry away from the Commission's long-term goal of bill and keep and have an adverse impact on competition.

It also would be contrary to the public interest because it would increase, rather than decrease, the cost of 8YY service that is routed through Peerless tandems. The Commission found that a "cap of $0.001 per minute will allow carriers, including intermediate tandem providers, a reasonable level of compensation for providing 8YY tandem switching and transport services as we transition all 8YY access rates ultimately to bill-and-keep."[4] The Peerless proposed tariff revisions evade that cap by adopting a new charge that would apply to tandem-switched 8YY traffic.

Second, Peerless cannot impose charges for a service it does not provide. Commission rules define Dedicated Transport Access Service as

[2] *8YY Access Charge Reform*, Report and Order, 35 FCC Rcd 11594 (2020) (*"8YY Order"*).
[3] *8YY Order,* para. 55.
[4] *Id.,* para. 62.

> originating and terminating transport on *circuits dedicated to the use of a single carrier* or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier.[5]

The 8YY Order sought to avoid a "windfall to the competitive carriers that do not typically charge for [dedicated transport] services" that would "increase, rather than decrease, the cost of 8YY services."[6] Permitting Section 6.2.A to go into effect would result in the cost increase that the 8YY Order was explicit about avoiding. Although the Peerless tariff defines Direct-Trunked Transport and Entrance Facility to be "dedicated transport", Section 6.2.A would impose on entities that connect *indirectly* to Peerless through an Alternative (or Alternate) Access Tandem a minute of use equivalent (MOU-E) rate for *dedicated* services (Entrance Facility, Direct Trunked Transport, Dedicated Multiplexing, and Dedicated Tandem Trunk Port) that the entity *does not purchase* from Peerless. Peerless Proposed Tariff § 6.2.A. Peerless does not define Alternative (or Alternate) Access Tandem. Even assuming Peerless could correct this defect, incumbent local exchange carrier ("ILECs") do not assess tariffed dedicated access charges on an entity not directly connected to the ILEC tandem. As AT&T noted in its Teliax tariff protest, Peerless "cannot use a federal tariff to unilaterally impose these 'dedicated access' charges on entities in situations where it has no direct connection with (and provides no dedicated access to) that entity."[7] And, as CenturyLink argued, indirect dedicated charges are not the functional equivalent of ILEC services because the ILEC imposes these charges on the alternate tandem provider, not the entity that

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[5] 47 C.F.R. § 51.903(c) (emphasis added).
[6] *8YY Order,* para. 65.
[7] Petition of AT&T to Reject or Suspend and Investigate, at 2-3 (filed April 30, 2021).

connects indirectly through the alternate tandem provider.[8] When an entity chooses not to connect directly to its tandem, Peerless is not providing a dedicated transport service to that entity and cannot impose MOU-E charges for a service it does not provide.

Third, when a customer connects at a Hub POI, the tariff is ambiguous because it is not clear how a minute of use charge could satisfy the definition of a Dedicated Transport Access Service, or the services defined in its tariff, where Peerless does not provide the functional equivalent of a "dedicated circuit" to a carrier or other customer. Like Teliax, Peerless proposes to assess dedicated access charges "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 explained, 216,000 minutes of use "dramatically understates the capacity dedicated connections routinely manage." CenturyLink Teliax Petition at 8. This inflates Peerless's tariff rates above the equivalent rate of the competing ILEC. But it also raises a question about whether the MOU-E charge is an attempted end run around the Commission's benchmark rule that applies to tandem switched access. Tandem switched access, not tandem dedicated access, is typically provided on a per MOU basis. The benchmark rule provides that a competitive local exchange carrier ("CLEC") cannot file a tariff for interstate access charges that exceed the rate charged by the competing ILEC. 47 C.F.R. §61.26(b) & (f). By tariffing a MOU-E rate for "dedicated" access, Peerless is not only exceeding the 8YY tandem cap but also increasing its *terminating* tandem switched access charges above the benchmark rate. The service

[8] Petition of CenturyLink Communications, LLC and Level 3 Communications, LLC to Reject or Suspend and Investigate, at 7 (filed April 30, 2021) ("CenturyLink Teliax Petition").

Peerless provides after the Hub POI should be a single tandem switched transport charge subject to the 8YY cap or terminating tandem rule. Commission rules do not contemplate one carrier imposing two tandem charges for a single call.

For all these reasons, Peerless's proposed tariff should be summarily rejected. In the alternative, the Commission should investigate the tariff, while either rejecting or suspending the tariff while the investigation is pending.

Respectfully submitted,

By: */s/ Greg Rogers*

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CERTIFICATE OF SERVICE

I, Greg Rogers, certify that on the 1st day of June, I caused a copy of the foregoing Petition of Bandwidth Inc. and Bandwidth.com CLEC, LLC to Reject or Suspend and Investigate to be served on the following parties as noted below:

Kris Monteith, Chief Wireline Competition Bureau Federal Communications Commission 45 L Street NE Washington, DC 20554 Kris.monteith@fcc.gov ***(Via Electronic and U.S. First Class Mail)***	Marlene H. Dortch, Secretary Federal Communications Commission Office of the Secretary 45 L Street NE Washington, DC 20554 ***(Via U.S. First Class Mail)***
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/s/ Greg Rogers

Greg Rogers