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

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

PETITION OF CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3 COMMUNICATIONS, LLC TO REJECT OR SUSPEND AND INVESTIGATE

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EXECUTIVE SUMMARY

Pursuant to Section 1.773 of the Commission's rules, CenturyLink Communications, LLC and Level 3 Communications, LLC (collectively, "CenturyLink") respectfully request 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.

Peerless has added dedicated access to its tariff that seeks to permit Peerless to bill other carriers entrance facilities ("EF"), direct trunk transport ("DTT"), dedicated multiplexing ("DMUX"), and dedicated tandem trunk port ("DTTP"), all based on the number of minutes exchanged—among other things, adding a new term providing that 216,000 minutes of use constitutes the equivalent of one DS1. While Peerless's proposed tariff revision does not include the words "session initiation protocol" or "SIP," it is obvious that Peerless's proposed tariff proposes to assess these charges on an MOU basis irrespective of whether the calls are exchanged between Peerless and its carrier customer in TDM format or SIP format. In addition, Peerless proposes to assess DTT, DMUX, and DTTP charges to IXCs irrespective of whether the IXC has a direct connection to Peerless. *See* Diagram on Page 53.2. Peerless's proposed tariff revision is virtually identical to a tariff revision proposed by Teliax, Inc., which the Commission rejected as unlawful on May 7, 2021. *See In the Matter of Teliax Colorado, LLC Tariff F.C.C. No. 1*, DA 21-543, WCB Pricing File No. 21-01, Transmittal No. 7 (May 7, 2021). Just as with Teliax, Peerless's proposed tariff revision is unlawful for at least four independent reasons, each of which is sufficient on its own to merit rejecting the tariff.

First, Peerless is tariffing functions that are simply not regulated switched access under the FCC's rules. In the *Transformation Order*,[1] the FCC made clear that the intercarrier compensation regime the Commission adopted for a LEC's exchange of VoIP traffic is premised on the exchange of "VoIP-PSTN" traffic, focusing "specifically on whether the exchange of traffic between a LEC and another carrier occurs in Time-Division Multiplexing (TDM) format (and not in IP format)…." *Transformation Order* ¶ 940. Thus, the Commission allows traffic to be tariffed only if it occurs, at least in part, in TDM format; carriers that originate VoIP traffic and exchange that traffic with their carrier customers in VoIP format must arrange for compensation for that exchange through commercial agreements. *Id.* ¶ 1340. Thus, just as it did with Teliax, the Commission should reject Peerless's attempt to assess dedicated access for the exchange of traffic in SIP format.

Second, irrespective of whether Peerless exchanges the traffic in TDM or SIP format, the Commission should reject Peerless's proposed tariff revision. Peerless is not performing a function that it never before performed; it is attempting to add a new rate element on functions it is already performing to create a revenue stream to replace others the Commission has foreclosed. Thus, its proposal violates the Commission's prohibition on tariffing new rate elements to create new revenue opportunities. *Transformation Order* ¶ 801. When exchanging calls in SIP format—such as with Level 3—Peerless violates the rules for one additional reason: ILECs do not assess tariffed dedicated access on SIP connections because this service cannot be tariffed for the reasons set forth above. Thus, Peerless violates the benchmark because it is charging for a service that its competing ILECs never assess a tariffed charge for.

Third, Peerless proposes to assess DTT, DMUX, and DTTP charges to IXCs irrespective

[1] *Connect Am. Fund*, et al., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (subsequent history omitted) (*Transformation Order*).

of whether the IXC has a direct connection to Peerless. In these circumstances, calls will route to the IXC through an "Alternative Tandem Provider." If a dedicated port exists, it is the Alternative Tandem Provider, not the IXC, that will receive the calls, have the dedicated port and need multiplexing. Thus, if these charges are ever permissible, they will be permissible only as to the carrier that interconnects directly with Peerless. This shows yet another reason the DMUX and DTTP charges violate the benchmark rule. Competing ILECs assess DTTP charges only on TDM connections, and then only to the carrier that directly connects to their tandem switch. Thus, Peerless is not only trying to add a new charge, but a charge to which the competing ILECs do not even have a comparable.

Fourth and finally, Peerless's proposal is flawed because its insertion of the 216,000 MOUs per DS1 language also violates the Commission's benchmark and transformation rules. When exchanging calls in TDM format—such as with CenturyLink—Peerless has placed far more than 216,000 minutes on DS1s; thus, insertion of the 216,000 MOUs as a placeholder for a DS1 violates the benchmark because Peerless charges more for a DS1 than its competing ILECs. There is no authority for such a proposition. For SIP connections, given that packets can proceed along many routes, SIP connections routinely exchange far more minutes than a traditional TDM connection. However, even for a traditional TDM connection, 216,000 MOUs is far too few for a DS1 comparative. The fact that Peerless and CenturyLink exchanged more than 216,000 MOUs per DS1 illustrates the point. AT&T and Verizon recently made the same point in a complaint against Wide Voice, LLC. The Commission should reject the attempt to make 216,000 an industry standard.

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

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PETITION OF CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3 COMMUNICATIONS, LLC TO REJECT OR SUSPEND AND INVESTIGATE

Pursuant to 47 C.F.R. § 1.773, CenturyLink Communications, LLC ("CenturyLink") and Level 3 Communications, LLC ("Level 3") respectfully request that the Commission reject, or alternatively, suspend and investigate, the above-captioned tariff filing of Peerless Network, Inc. ("Peerless").

I. INTRODUCTION

As the Commission continues moving the intercarrier compensation system toward bill-and-keep, it has issued multiple decisions attempting to eliminate inefficiencies and opportunities for arbitrage. *See*, *e.g.*, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage,* WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, 34 FCC Rcd 9035 (2019) (*Access Arbitrage Order*); *8YY Access Charge Reforms*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594 ¶ 64 (2020) (*8YY Access Charge Reform Order*); *Connect Am. Fund, Developing A Unified Intercarrier Comp. Regime*, WC Docket No. 10-90, CC Docket No. 01-92, Oder on Remand and Declaratory Ruling, 34 Rcd 12692 ¶ 4 (2019) (*OTT Order*). The intention of these decisions is a significant reduction of tariffed switched access charges that carriers assess to one another.

As this happens, carriers like Peerless are making desperate attempts to replace revenue streams the Commission is actively paring back. For example, in its proposed tariff, Peerless adds for the first time an entire new category of charges for switched access services for dedicated access service. *See* Peerless Tariff § 3.3. Among other things, the tariff provisions purport to add charges and rates for services such as "Entrance Facility ("EF")," "Direct-Trunked Transport ("DTT")," "Dedicated Multiplexing ("DMUX")," and "Dedicated Tandem Trunk Port ("DTTP")"—none of which were potential revenue sources under Peerless's previous tariff. *Id.* This is not an implementation of a new service offering; Peerless is performing the same functions it was performing before. Rather, it is an obvious attempt to find new revenue streams and undermine the Commission's efforts to reduce carriers' reliance on inter-carrier compensation.

The absence of these charges until recently is not a result of some oversight by Peerless; it could not assess the charges before, and cannot assess the charges now, because they are unlawful. Because Peerless's tariff purports to permit these unlawful charges the tariff should be rejected, or, alternatively, suspended and/or rejected while the Commission investigates.

II. ARGUMENT

A. The Functions Peerless Attempts to Include in its Tariff are Not Regulated Switched Access Services.

To begin with, Peerless's dedicated access services simply are not regulated switched access services that can be subject to tariffed charges under FCC rules.

Among other things, Peerless exchanges traffic with many providers via IP-based facilities. For example, it interconnects directly with Level 3 via SIP connections. That means traffic exchanged between Peerless and these carriers is one hundred percent IP-to-IP. The Commission has made clear that such traffic is wholly distinct from the intercarrier compensation regime to which traditional TDM-based traffic is subject. Indeed, the intercarrier compensation regime the FCC adopted "for a LEC's exchange of VoIP traffic with another carrier focuses on what [it] refer[s] to as 'VoIP-PSTN' traffic." *Transformation Order* ¶ 940. "In this regard," the Commission explained, "we focus specifically on whether the exchange of traffic between a LEC and another carrier occurs in Time-Division Multiplexing (TDM) format (and not in IP format)…." *Id.*

In accommodating for the increasing role that VoIP facilities play in the transmission of PSTN traffic, the Commission has declined to envelop IP-to-IP traffic within its tariffing regime. In fact, the Commission has described the industry transition to "all IP networks" as corresponding to the "intercarrier compensation phase down," and while IP-to-IP interconnection and the inter-carrier compensation regime may coexist for a short time, the latter will ultimately displace the former. *Transformation Order* ¶ 1010. During this transitional phase, for tariff charges to apply, it is not only necessary that the ultimate carrier-to-carrier exchange of traffic occur in TDM; in addition, IP traffic must connect to the TDM-based PSTN at one end of the call or the other. That is, the traffic must be PSTN-PSTN or at least PSTN-IP, but not IP-to-IP. Otherwise, tariff charges are inappropriate; the Commission has instructed carriers "to negotiate appropriate compensation as part of an arrangement for IP-to-IP interconnection under our transitional framework." *Transformation Order* ¶ 1340.

Because traffic exchanged between Peerless and many carriers including Level 3 is either IP-to-IP or is exchanged in IP or both, the only lawful means under which Peerless may recover compensation for exchanging such traffic is pursuant to commercial agreements. It cannot assess such charges on the basis of a unilateral tariff filing.

This poses still other problems for Peerless's proposed tariff. In a TDM world, DTTP pays for a port on the tandem switch that is dedicated to the IXC. By contrast, when packets are transmitted via IP between two points, the network does not establish a "dedicated" or exclusive path between the points. Instead, routers read packet addresses individually, segment the data into packets which are individually addressed, and then transmit the packets over a series of physical networks which may be comprised of copper, fiber, coaxial cable, or wireless facilities. A "dedicated" port for a SIP connection is thus a technological fiction; there is no such thing as a dedicated physical port on a switch for a SIP connection. Much for that reason, the Commission excluded "flat rated charges" "over dedicated transport facilities" from its functional equivalent regulation—recognizing that in the IP analog there is no "functional equivalent" to dedicated access services. *See* 47 C.F.R. § 903(i)(2). Peerless thus simply is not providing, and cannot provide, dedicated access services on IP-to-IP connections.

Peerless will likely argue that its proposed Tariff revisions do not mention SIP, VoIP, or IP. This is of no moment, as it is clear that Peerless intends to assess these charges on SIP connections. Section 6.2(A) states that Peerless will assess these charges "when exchanging traffic" on a per MOU basis. In other words, if a minute of traffic passes—irrespective of whether the call is exchanged via TDM or SIP—Peerless plans to assess the charges. Peerless also has a history of attempting to do this. Section 6.1.2(A)(5) of Peerless's current tariff creates a per MOU formula specifically for SIP connections, and even uses the same denominator of 216,000 MOUs. The Commission rejected a virtually identical tariff revision by Teliax, "Because the proposed tariff revisions include charges for "Dedicated Access Services" that may apply to all IP traffic, without explicitly limiting such charges to traffic meeting the VoIP-PSTN definition, the proposed revisions are unlawful." *See In the Matter of Teliax Colorado, LLC Tariff F.C.C. No. 1*, DA 21-543, WCB Pricing File No. 21-01, Transmittal No. 7 (May 7, 2021) ¶ 9. Peerless's proposed tariff suffers from the exact same flaw, and should be rejected for the exact same reason.

B. Peerless's Proposed Tariff Revisions Violate the Benchmark Rules and the Transformation Order's Transition Caps.

Under Peerless's tariff, the dedicated access services purport to be interstate switched access services associated with transport. They are not, for all the reasons detailed above.

But the proposed dedicated access service charges suffer from yet another fatal flaw. These charges are also unjust and unreasonable because, as the Commission recognized in its *8YY Access Charge Reform Order*, "those charges were capped by the *USF/ICC Transformation Order* at their 2011 levels…." *8YY Access Charge Reform Order*, ¶ 64 (citing *Transformation Order*, ¶ 801); *see also id.* ¶ 65 n.228 (defining the "dedicated tandem charges" capped by the 2011 order as including "dedicated tandem trunk port, dedicated multiplexing (muxing), dedicated tandem transport, and entrance facilities"—the very charges Peerless seeks to add to its tariff now).

Until it proposed the tariff revisions at issue here, Peerless's tariff did not allow tariff charges for "dedicated access services"; thus, the effective rate for such "services" was $0. By including charges for these "services" where its tariff did not allow them before, Peerless is not only transparently attempting to replace revenue it is losing as the Commission weans the industry off the inter-carrier compensation regime—it is also violating the rate cap rules the Commission put in place for the express purpose of preventing this kind of opportunistic conduct, and to facilitate the transition away from inter-carrier compensation and toward bill-and-keep. *See 8YY Access Charge Reform Order*, ¶ 65 (rejecting request for higher unified tandem rate that "would offer a windfall to the competitive carriers that do not typically charge for those services and increase, rather than decrease, the cost of 8YY services").

Peerless's dedicated access service charges also violate the Commission's benchmark rules. Under the benchmark rules, "a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above . . . the rate charged for such services by the competing ILEC." 47 C.F.R. § 61.26(b). Indeed, in 2013 the Commission added additional language to make plain that the benchmark rules unambiguously cover all of the switched access rate elements at issue:

> Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules, all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26 of this chapter.

47 C.F.R. § 51.911(c). There can be no question that the dedicated access services Peerless attempts to add to its tariff are subject to the Commission's benchmark rules.[2]

When exchanging calls in SIP format—such as with Level 3—Peerless violates the rules for an additional reason: ILECs do not assess tariffed dedicated access on SIP connections. Indeed, CenturyLink and Level 3 are not aware of any ILEC that assesses tariffed dedicated access charges on IP traffic—likely for the simple reason that tariffs do not apply to such traffic for all the reasons detailed above. Thus, even when the traffic is SIP rather than TDM, Peerless violates the benchmark because it is charging for a service for which its competing ILECs never assess tariffed charges. Where the competing ILEC does not include these rates in its tariff, under the benchmark rules, neither can Peerless.

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[2] The FCC's *8YY Access Charge Reform Order* spells this out. *See, e.g.*, *8YY Access Charge Reform Order* ¶ 27 n.77 ("Most originating end office charges are already capped. In the *USF/ICC Transformation Order,* the Commission capped all interstate originating access charges and intrastate originating access charges for price cap carriers. *USF/ICC Transformation Order,* 26 FCC Rcd at 17942, para. 818. . . . Competitive local exchange carriers' rates are subject to the Commission's benchmark rule, which caps the tariffed rates for their services at the level of the competing incumbent local exchange carrier for similar service. *See id.* at 17937, para. 807; 47 CFR §§ 51.911(c), 61.26.").

C. Peerless Indirect DTTP, DTT and DMUX Charges Violate the Benchmark Rule.

Section 6.2(D) of Peerless's proposed tariff contains a diagram regarding when it will assess each rate element to Customers—meaning the IXCs. This is the exact same diagram proposed by Teliax in its tariff revision that the Commission rejected (see proposed Section 3.3.2). The top two lines on the diagram show calls flowing to IXCs through a Point of Interconnection ("POI"), and a Hub POI. The bottom line, however, shows Peerless with a direct connection to an "Alternate Access Tandem", which then routes calls to the IXC. Section 6.2(D) of Peerless's proposed tariff suggests that even when it routes calls through an alternative tandem, it can assess DTTP, DTT, and DMUX charges to the IXC. However, the alternative tandem provider will already be assessing tandem switching, and depending on the type of connection, DTTP, DTT, and potentially DMUX to the IXC because the IXC will have a direct connection with them.

These same facts also show yet another way the tariff violates the benchmark rules. Though Peerless's tariff labels these charges as "dedicated" port and "dedicated" multiplexing charges, it shows that in reality they are routed through other providers, and so are actually "indirect" tandem port and "indirect" multiplexing charges. No ILEC assesses such charges to IXCs, for the simple reason that they instead assess these charges (when applicable on TDM circuits) to the alternative tandem provider with which they have established a direct connection. Benchmark 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 Commc'ns Co., LLC v. Northern Valley Communications, LLC*, 26 FCC Rcd. 8332, 8336 (2011). Furthermore, a CLEC may tariff interstate access charges only "if its rates are no higher than the rates charged for such services by the competing ILEC."

CallerID4u, Inc. v. MCI Commc'ns Servs. Inc., 880 F.3d 1048, 1059 (9th Cir. 2018) (quoting *AT&T Servs. Inc. v. Great Lakes Comnet. Inc.*, 30 FCC Rcd. 2586, 2588 (2015)). These indirect DTT, DTTP, and DMUX are not the functional equivalent of ILEC services; indeed, ILECs charge zero charges for this functionality. Thus, these indirect tandem port and indirect multiplexing charges are illegal for the additional reason that they violate the benchmark rules.

D. Peerless's Proposed Tariff Revisions Unlawfully Increases its Rates.

Finally, there is simply no authority for the proposition that 216,000 minutes of use somehow equates to a DS1. Peerless's proposed tariff purports to insert language calling for these charges 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(C). It is clear these MOU-E rates, moreover, are to apply irrespective of whether the dedicated services are supported by time division multiplexing (TDM) or session internet protocol (SIP) technology. *Id*. This is problematic for both TDM and SIP traffic. But, when exchanging calls in TDM format—such as with CenturyLink—Peerless is able to place, and has placed, far more than 216,000 minutes on DS1s. Thus, inserting 216,000 MOUs as a placeholder for a DS1 would permit Peerless to charge carriers like CenturyLink substantially more for a DS1 than its competing ILECs, thereby violating the benchmark rule.

Peerless tries to justify this by stating that Peerless proposes a per-MOU rate, to prevent "jurisdictional arbitrage." See Peerless May 24, 2021 Cover Letter. Respectfully, this validates all of CTL's points. If a call is delivered directly to Peerless via a TDM circuit, the rate that applies is the rate in the state where the physical connection takes place. On the other hand, if a call is being delivered via the SIP connection or via an alternative tandem provider, it will not be clear where the connection exists. Thus, the very justification Peerless provides validates the illegality of Peerless's proposal.

Peerless is not the first carrier to attempt to place the 216,000-MOU figure as a stand-in for DS1. AT&T and Verizon recently filed a complaint against Wide Voice after Wide Voice attempted to insert a similar 216,000-MOU stand-in for DS1 charges—the exact same thing Peerless is doing now. Teliax did the same in the proposed tariff the Commission rejected on May 7. There is apparently a concerted effort among carriers hoping to generate additional revenue sources in the waning stages of the intercarrier compensation regime to make 216,000 MOUs some kind of industry standard.

These concerted efforts should be rejected. Even for a traditional TDM connection, 216,000 MOUs dramatically understates the capacity dedicated connections routinely manage. This very case makes that point plain: Peerless and CenturyLink exchange traffic at rates far in excess of 216,000 MOUs per month.. The problem is even worse for SIP connections. As noted above, SIP connections allow data packets to proceed along many routes, which allows SIP connections to exchange far more minutes than a traditional TDM connection. Where assuming 216,000 MOUs understate the volume capacity of a TDM connection, it is all the worse for SIP connections, which are capable of handling even more traffic than TDM connections.

Because CenturyLink sent Peerless more than 216,000 minutes per month per DS1 trunk port, assessing dedicated access charges at the listed rates for every 216,000 MOUs 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. This constitutes yet another violation of the benchmark rule, and yet another reason for which its proposed tariff is unlawful.

III. CONCLUSION

Give the high probability that the Commission will find Peerless's tariff filing unlawful upon investigation, the Commission should summarily reject the tariff revisions. All factors listed in Rule 1.773(a) are present here: there is a high probability the tariff revision is unlawful.

Allowing the tariff to go into effect (that is, to the extent it is not already void *ab initio* for its various violations of Commission rules and regulations) would cause harm to competition more substantial than any potential injury if the tariff is not allowed to take effect, and the Commission's action would therefore serve the public interest.

For these reasons, and given the overwhelming weight of the record showing the proposed tariff's illegality, the Commission should summarily reject Peerless's proposed tariff revisions and require Peerless to file a new tariff that complies with the rules and regulations described herein. In the alternative, the Commission should initiate investigation into the proposed tariff filing and either reject or suspend Peerless's tariff filing while the investigation is pending.

Respectfully submitted,

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Dated: June 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2021, I caused to be served a true and correct copy of the foregoing Petition on the following parties in the following manner:

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