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REDACTED FOR PUBLIC INSPECTION

By Hand Delivery

November 8, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Request for Confidentiality – Peerless Networks, Inc. *Ex Parte* Presentation
WC Docket No. 06-122**

Dear Ms. Dortch:

This request for confidentiality is made on behalf of Peerless Networks, Inc. (“Peerless”). Peerless seeks confidential treatment of financial data contained in the attachment to the above-referenced Notice of Ex Parte Presentation under the Section 0.459(b) request as submitted with the Peerless Request for Waiver filed August 8, 2013.¹ The confidential notice of *ex parte* presentation is provided and the redacted version has been filed on the Electronic Comment Filing System.

Please contact the undersigned with any questions.

Respectfully submitted,

John Kuykendall
Vice President

Attachments

¹ Request for Review by Peerless Networks, Inc. of Decision of Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q, WC Docket No. 06-122 (filed August 8, 2013) (“Request for Waiver”).



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**Re: Notice of *Ex Parte* Presentation
WC Docket No. 06-122**

Dear Ms. Dortch:

On November 7, 2013, John Barnicle and Richard Metzger of Peerless Networks, Inc. (“Peerless”), and John Kuykendall and Christine Duncan of John Staurulakis, Inc. met with Erica Myers, Chin Yoo, Charles Eberle, Claudia Fox (via telephone conference), and Carol Pomponio of the Wireline Competition Bureau. The meeting topic was the pending Peerless Request for Waiver filed August 8, 2013.¹ The discussion points are summarized in the attached agenda provided to meeting participants.

Please contact the undersigned with any questions.

Respectfully submitted,

John Kuykendall
Vice President

cc: Erica Myers
Chin Yoo
Charles Eberle
Claudia Fox
Carol Pomponio

Attachment

¹ Request for Review by Peerless Networks, Inc. of Decision of Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q, WC Docket No. 06-122 (filed August 8, 2013) (“Request for Waiver”).



Peerless Network, Inc.

Ex Parte Meeting
Before the
Federal Communications Commission

November 7, 2013

INTRODUCTION

- Peerless Network, Inc. (“Peerless”) is a wholesale voice service provider and also provides a variety of transit, IP, SIP trunking, and data center services. Peerless was founded in 2008 and is rapidly expanding.
- On August 8, 2013 Peerless filed an emergency request for review of a decision of USAC and a request for waiver of the deadline for filing revisions to FCC Form 499-Q.
- Peerless requests that the FCC direct USAC to accept its revised February 2013 and May 2013 499-Qs and process them as though they had been timely filed.
- Peerless furthermore requests the reversal of any penalties and interest associated with the two filings and to avoid the true-up differential.

BACKGROUND

- Peerless made inadvertent clerical errors in its February 2013 and May 2013 FCC Form 499-Q filings that vastly overstated the company’s assessable projected end user and interstate revenues.
- Peerless did not realize the magnitude of its errors until it received an invoice for [REDACTED] from inadvertently reporting its assessable revenues to be *eighty-three times* higher than the actual amount on the February 2013 499-Q.
 - By the time Peerless realized its mistakes, the 45-day revision window for the May 2013 499-Q had already closed, and an error of similar magnitude had also been made on the May 2013 499-Q.
 - The total contribution assessment for the third quarter based on the errors in the May 2013 499-Q amounts to just shy of [REDACTED].

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- Upon realizing the errors, Peerless immediately initiated an internal investigation, contacted USAC, and sought assistance from regulatory consultants to rectify the situation and ensure that future 499-Q filings would be correct and timely filed.
 - Peerless is also reviewing and modifying its internal policies and procedures for completing, reviewing, and certifying the Form 499

GOOD CAUSE FOR GRANTING PEERLESS' WAIVER

- Granting this waiver is consistent with two recent FCC decisions of a very similar nature as Peerless' situation:
 - The May 3, 2013 *Ascent Media Group Order on Reconsideration*
 - The July 22, 2013 *American Broadband Order*
- In the *American Broadband Order*, the FCC concluded, "strict enforcement of the revision filing deadline and the resulting interest and penalties would disproportionately penalize American Broadband. Given the clerical nature and the magnitude of the error, we find good cause exists to waive the filing deadline... We direct USAC to accept the revised filing as if timely filed and process it accordingly."
- Peerless' errors were also of a clerical nature and not deliberate, and the magnitude of the errors will disproportionately penalize Peerless.
 - Peerless is a growing company that is adding jobs and contributing to economic growth and IP industry development.
 - The total assessment of over [REDACTED] will force the company to delay hiring new employees and making necessary investments in the network.

REQUESTED RELIEF

- Waive the 45-day revision deadlines and direct USAC to accept the revised February and May 2013 499-Q forms as if timely filed, and process accordingly;
- Reverse any interest, fees, and penalties as Peerless has already made on quarter's substantial over-payment based on its February 499-Q;
- Avoid the true-up differential.