



Your business
is our business.

REDACTED - FOR PUBLIC INSPECTION

7852 Walker Drive, Suite 200
Greenbelt, Maryland 20770
phone: 301-459-7590, fax: 301-577-5575
internet: www.jsitel.com, e-mail: jsi@jsitel.com

January 27, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

**Re: Amended Request for Review by Peerless Network, 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**

Dear Ms. Dortch:

On behalf of Peerless Network, Inc. ("Peerless" or the "Company"), John Staurulakis, Inc. respectfully submits the above-referenced Amended Request for Review and Waiver ("Amended Petition"). Peerless initially filed the petition on August 8, 2013. The attached Amended Petition makes revisions to the initial request to eliminate Peerless' request for relief from interest and penalties associated with the February 2013 Form 499-Q. Peerless' overpayment associated with the February 499-Q will be remedied via the true-up process in 2014 and there are no interest and/or penalties that need to be resolved. The Amended Petition only seeks relief for interest and penalties associated with the May 499-Q.

Please direct inquiries regarding Peerless' Amended Petition to the undersigned consultant for the Company.

Sincerely,

John Kuykendall
Vice President

cc: Carol Pomponio

Attachments

Echelon Building II, Suite 200
9430 Research Blvd., Austin, TX 78759
phone: 512-338-0473, fax: 512-346-0822

Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve, Eagan, MN 55121
phone: 651-452-2660, fax: 651-452-1909

6849 Peachtree Dunwoody Road
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January 27, 2014

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Attention: Chief, Wireline Competition Bureau

RE: WC Docket No. 06-122
Amended Emergency 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

Dear Ms. Dortch:

John Staurulakis, Inc. (“JSI”), on behalf of its client Peerless Networks, Inc., (“Peerless”) hereby requests, pursuant to Section 0.459 of the Commission’s rules,¹ withholding from public inspection financial information contained in the above-captioned Emergency Request, including the attached revised FCC Form 499-Q Telecommunications Reporting Worksheets. The Company provides the following in support of its request, numbered consistent with the subparagraphs of Section 0.459(b).²

1. The information for which Peerless is seeking confidential treatment is the Company’s revised May 1, 2013 Form 499-Q which is attached to the above-referenced Emergency Request, and all references in the Emergency Request to financial information contained in the Company’s Form 499-Q filings.
2. Sections 54.706, 54.111, and 54.713 of the Commission’s rules require all telecommunications carriers providing interstate telecommunications services, interconnected voice-over-Internet-protocol (VoIP) providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file a Telecommunications Reporting Worksheet (FCC Form 499-Q) on February 1, May 1, August 1, and November 1 each year with the Universal Service Administrative

¹ 47 C.F.R. § 0.459.

² 47 C.F.R. § 0.459(b)(1) through (9).

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Company (“USAC”). Carriers may file revisions to the FCC Form 499-Q within 45 days of the filing deadline. The information that carriers submit on the FCC Form 499-Q is only made available to the Commission and USAC. Accordingly, the February 2013 and May 2013 FCC Form 499-Q filings that are attached to the Emergency Request and the financial information referenced in the Emergency Request that pertains to these filings are privileged and confidential and public disclosure of such information would likely cause substantial harm to the competitive position of the company. Therefore, Peerless is requesting confidential treatment of all financial data contained in the Emergency Request that was reported previously on the FCC Form 499-Q, and confidential treatment of the attached revised forms.

3. The information contained in the Emergency Request for which Peerless seeks the withholding from public inspection is privileged financial data including the Company’s revenues and the amounts it was invoiced from USAC. Information of this nature is confidential financial information and routinely withheld from public inspection.
4. With respect to identifying the degree to which the Emergency Request and associated information concern a service that is subject to competition, the information is of a competitive nature regarding the provision of wholesale telecommunications access services.
5. With respect to identifying possible exposure to competitive harm, the information contained in the Emergency Request is not customarily released to the public. Because the wholesale telecommunications access service market is highly competitive, release of this information could substantially harm the Company’s business.
6. With respect to the steps Peerless has taken to ensure against unauthorized disclosure of the information contained in the Emergency Request, the Company is filing herewith the request for confidentiality upon submission to the Commission. The FCC Form 499-Q filings that Peerless has filed with USAC are confidential.
7. Any previous versions of this information are not publicly available.
8. Because the information is not routinely available, a need exists for maintaining the confidentiality of this information permanently.
9. No additional information exists that may be useful in assessing whether this request for confidential treatment should be granted.

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Based on the preceding information, JSI respectfully requests on behalf of Peerless that the Commission grant confidential treatment under Section 0.459 of the Emergency Request and revised FCC Form 499-Q filings enclosed.

Please contact the undersigned with any questions regarding this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Kuykendall".

John Kuykendall
Vice President
301-459-7590

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Emergency Request for Review by)
Peerless Network, Inc. of Decision of) WC Docket No. 06-122
Universal Service Administrator and)
Request for Waiver of Deadline for Filing)
Revisions to FCC Form 499-Q)

AMENDED EMERGENCY REQUEST FOR EXPEDITED TREATMENT

**REQUEST FOR REVIEW BY PEERLESS NETWORK, INC. OF DECISION OF
UNIVERSAL SERVICE ADMINISTRATOR AND REQUEST FOR WAIVER OF
DEADLINE FOR FILING REVISIONS TO FCC FORM 499-Q**

Peerless Network, Inc.¹ (“Peerless” or “the Company”) files this request pursuant to Section 54.719(c) and Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”) to seek review of the decision of the Universal Service Administrative Company (“USAC”) to not allow Peerless to revise one FCC Form 499-Q filed in May 2013 (“May 499-Q”) after the deadline had passed to revise the form² and to seek waiver of the FCC’s requirement that revisions to the FCC Form 499-Q must be filed within 45 days of the filing due date.³ Peerless requests that the FCC expeditiously grant this request and direct USAC

¹ Peerless Network, Inc. was founded in 2008 and is a provider of interconnection and data center services focused on simplifying how networks, devices and people connect. Peerless is a wholesale voice service provider, and the company’s services are used by wireless carriers, competitive local exchange carriers, cable telecommunications providers, and Voice-over-IP providers. As a wholesale provider of interstate telecommunications service, Peerless is required to file FCC Form 499-Q and 499-A with USAC and contribute to the Universal Service Fund.

² The revised 499-Q which Peerless seeks to be submitted in place of that submitted in May 2013 is attached to this petition.

³ *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, para. 36 (rel. Dec. 13, 2002) (“2002

to accept its revised May 499-Q and process it as if it had been timely and correctly filed which would reverse any penalties and interest associated with that filing and avoid the true-up differential.

Peerless made inadvertent clerical errors in its February 2013 and May 2013 FCC 499-Q filings that vastly overstated the Company’s assessable projected end user and interstate revenues. The Company subsequently missed the 45-day revision deadlines for both the February and May 499-Q filings. Peerless paid USAC the total amount invoiced from the miscalculations in the 499-Q due in February 2013 (“February 499-Q”) in order to be removed from red light status with the FCC. Peerless has now overpaid its second quarter 2013 Universal Service Fund (“USF”) contribution assessment by more than [REDACTED], which is more than 70 times what its projected quarterly assessment would be had it been reported correctly.⁴ Furthermore, Peerless now faces a comparably excessive invoice of [REDACTED] (of which [REDACTED] is attributed to the error on the May 499-Q)⁵ which is due August 15, and the Company will be billed a total contribution assessment for the third quarter based on the errors that is just shy of [REDACTED].

Contributions Methodology Order”); Telecommunications Reporting Worksheet, FCC Form 499-Q (2013) Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms at 9.

⁴ As listed in Statement of Account (SOA), Statement Date 6/21/2013 due to USAC 7/15/2013 in the amount of [REDACTED]. SOA covers April, May and June 2013. Peerless Network wired [REDACTED] to and funds were received by USAC on 7/12/2013. **There were no interest and/or penalties associated with the SOA.**

Accordingly, no relief is sought for the February 499Q filing.

Estimated Overpayment Calculation (rounded to nearest dollar):

[REDACTED] SOA dated 6/21/2013 (April, May, June 2013)

[REDACTED] Revised Feb 1st 499-Q at Appendix: 1/4 * [REDACTED]

[REDACTED] **Estimated overpayment**

⁵ Estimated Overpayment Calculation (rounded to nearest dollar):

[REDACTED] SOA dated 7/22/2013 (July 2013 balance without 2013 499A true-up & I&P)

[REDACTED] Revised May 1st 499-Q at Appendix: 1/12 * [REDACTED]

[REDACTED] **Estimated overpayment**

While the overpayment that Peerless has already made will be refunded in the 2014 true-up process, grant of this waiver is necessary to reverse any penalties and interest associated with the second filing and avoid the true-up differential. As the FCC explained in granting a similar request, “[b]y processing the revised form as if timely filed, USAC would substitute the projected revenue on the revised [FCC Form 499-Q] for the projected revenue originally reported in error, which will have the effect of reversing the penalties and interest associated with the erroneously reported revenue.”⁶ Additionally, grant of this waiver is necessary to avoid the “true-up differential.” In granting another similar request, the FCC explained that the true-up differential occurs because “USAC refunds overpayment to contributors at the average of the two lowest contribution factors for the year” and that this is avoided when the FCC waives the 45-day revision window and directs USAC to process the revision as if timely filed.⁷ As demonstrated herein, the circumstances surrounding Peerless’ inadvertent clerical errors are similar to those found in both of these requests which were granted. Accordingly, Peerless requests the FCC likewise direct USAC to accept the Company’s revised May 499-Q and process the form as if it had been timely and correctly filed.

I. BACKGROUND

Peerless was founded in 2008 and provides wholesale voice services as well as a variety of transit, IP, SIP trunking, and data center services. The Company is rapidly expanding and has built one of the largest interconnection networks in the country, enabling wireless carriers,

⁶ *Universal Service Contributions Methodology, Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, DA 13-1608 (rel. July 22, 2013) (“*American Broadband Order*”) at para. 14.

⁷ *Universal Service Contributions Methodology, Petition for Reconsideration by Ascent Media Group, Inc.* WC Docket No. 06-122, Order on Reconsideration, DA 13-966 (rel. May 3, 2013) (“*Ascent Media Order*”) at n. 42 citing *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002).

competitive and incumbent local exchange carriers, cable companies, enhanced service providers and enterprises to connect with each other regardless of how (SIP or TDM), where (centralized or decentralized) and with whom they need to interconnect. Peerless has been submitting Forms 499-Q and 499-A, and contributing to the USF since 2009.

Peerless submitted its 499-Q on February 1, 2013 as required and revised the form on February 12 as allowed by USAC policies. In the revised form, the Company inadvertently reported the Company's assessable revenues to be *eighty-three times* higher than the actual amount that should have been reported.⁸ The individual responsible for the 499-Q does not recall receiving the routine notification from USAC about the discrepancy in reported revenues, and therefore a further correction was not made within the 45-day revision timeframe.

Peerless did not realize the magnitude of the error until it received an invoice for [REDACTED] shortly after the 45-day revision filing deadline for the May 499-Q.⁹ Within days of receiving the invoice the Company's officers initiated an internal investigation into the problems and sought assistance from regulatory consultants. Peerless has also been working with USAC to rectify the problem, and the Company was informed by USAC that a waiver should be filed with the FCC. Peerless has acted quickly in working with USAC and outside consultants to remedy the situation. Peerless is working diligently to review and modify its internal policies and procedures for completing, reviewing and certifying the Form 499 to ensure that oversights of this nature do not happen again.

⁸ Revised February 1, 2013 499-Q filed February 12, 2013: Line 120(b) [REDACTED]. The amount should have been [REDACTED].

⁹ The Company received three invoices associated with the February 499-Q filing. It was not until the final invoice was received at the end of June which contained the total amount due for that quarter of [REDACTED] that the Company realized the magnitude of the mistake. At that time, the 45-day deadline to revise the form had passed.

II. THE FCC HAS GOOD CAUSE TO GRANT PEERLESS’ WAIVER

The FCC may waive its rules for good cause shown.¹⁰ The FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis,¹¹ and a waiver is appropriate when special circumstances warrant a deviation from general rules and such deviation will serve the public interest.¹² Peerless’ situation constitutes a special circumstance and warrants a deviation from general rules. Furthermore, granting the waiver will not negatively impact the USF fiscally or administratively to any significant extent.

Granting this waiver is consistent with a May 3, 2013 FCC Order on Reconsideration (“*Ascent Recon Order*”)¹³ granting a petition filed by Ascent Media Group, Inc. (“Ascent Media”) and a July 22, 2013 Order granting a petition filed by American Broadband & Telecommunications (“*American Broadband Order*”).¹⁴ The circumstances of Peerless’ situation are very similar. 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 that good cause exists to waive the filing deadline... We direct USAC to accept the revised filing as if timely filed and process it accordingly.”¹⁵ Likewise, in the *Ascent Recon Order*, the FCC concluded on reconsideration that Ascent Media “met the high burden of justifying that a waiver is warranted here;”¹⁶ and even with the annual true-up process, “strict

¹⁰ 47 C.F.R. § 1.3; *see also* 47 C.F.R. § 1.925(b)(3).

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also* 47 C.F.R. § 1.925(b)(3)(i).

¹³ *Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, DA 13-966 (rel. May 3, 2013) (“*Ascent Recon Order*”).

¹⁴ *American Broadband Order*.

¹⁵ *American Broadband Order* at para. 15.

¹⁶ *Ascent Media Order* at para. 10.

enforcement of the filing deadline and the imposition of the associated interest and penalties in this case would disproportionately penalize Ascent Media.”¹⁷ The special circumstances in Peerless’ situation are very similar: a) the errors on the May 499-Q were of a clerical nature and not intentional or deliberate; and b) the magnitude of the fees assessed will disproportionately penalize Peerless.

Further, grant of this request would be in the public interest. Peerless is a rapidly growing company, utilizes state-of-the-art technology, and focuses heavily on customer relations and building an innovative nationwide interconnection network. The Company is diversified in different IP and telecommunications services, and is embracing the transition to the IP-world. The Company is only a few years old and still developing its internal procedures and staff expertise on FCC and USAC regulatory compliance. Peerless is also steadily adding new jobs and contributing to economic growth and IP industry development. Additionally, Peerless provides a great deal of value, ultimately to consumers, through its offerings to other telecommunications customers across the United States. Approximately 5 billion minutes per month traverse across the network Peerless has built servicing over 3,000 local end-office equivalent switches in over 40 markets. Peerless also originates traffic for over 5.5 million telephone numbers across the United States.

Now faced with over [REDACTED] in USF overpayments for 2013 (in total, if Peerless pays current invoices determined from the May 499-Q in addition to the [REDACTED] it has already paid),¹⁸ the Company would have to delay hiring new employees until the overpayment is returned in the true-up next year. The magnitude of this expense would also cause Peerless to

¹⁷ *Ascent Media Order* at para. 11.

¹⁸ February 1, 2013 Second Quarter overpayment of [REDACTED] and May 1, 2013 Third Quarter overpayment of [REDACTED] X 3 months) = Total Estimated over payment of [REDACTED]. *See supra notes 4, 5.*

delay other critical investments in its network and technology. As a fairly new company with limited cash reserves, the egregious amount that must be paid to USAC constitutes a significant financial hardship and disproportionately penalizes Peerless for unintentional clerical errors and administrative oversight.

III. REQUESTED RELIEF

Peerless respectfully requests that the FCC consider the following relief:

1. Waive the 45-day revision deadline and direct USAC to accept the revised May 499-Q as if timely filed, and process accordingly;
2. Reverse any interest, fees, and penalties¹⁹ as Peerless already made one quarter's substantial over-payment to USAC based on its incorrect February 499-Q, and the Company cannot feasibly afford the forthcoming payments that will be assessed based on the incorrect May 499-Q;
3. Avoid the true-up differential.

Peerless emphasizes the urgency in granting this waiver expeditiously. The Company is in a precarious position where it has already paid hundreds of thousands of dollars above its usual contributions assessment, and will continue to pay correctly-calculated assessments as required. Peerless is also committed to ensuring that the proper internal controls are in place so that errors of this magnitude do not occur in the future. Peerless' situation and the Company's requested relief is very consistent with two recent FCC Orders. Peerless respectfully asks the

¹⁹ 47 C.F.R. Section § 54.713 of the FCC's rules states, "contributors must pay the amount billed by the due date provided in invoices to avoid the assessment of interest and penalties provided under the Debt Collection Improvement Act of 1996 ("DCIA")." By filing this waiver before the invoice of [REDACTED] (of which [REDACTED] is based on the incorrect May 499-Q) is due on August 15, 2013, Peerless requests that any interest, fees, and late penalties that would be assessed based on this amount not be applied.

FCC to apply the same reasoning as it did in the American Broadband and Ascent Media Orders and grant the requested relief. The clerical nature and magnitude of the errors, and the undue financial harm that the clerical errors are causing the Company, constitute a good cause and special circumstance to justify the requested relief.

Respectfully submitted,

/s/ Douglass Lee

Douglass Lee
Chief Financial Officer
Peerless Network, Inc.
222 South Riverside Plaza, Suite 2730
Chicago, IL 60606

Attachment

Attachment

The following document is attached:

- A. May 1, 2013 Revised 499-Q

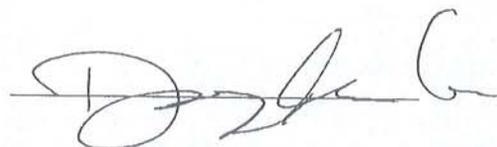
ATTACHMENT REDACTED IN ENTIRETY

DECLARATION OF DOUGLASS LEE

I, Douglass Lee, am Chief Financial Officer of Peerless Networks, Inc. ("Peerless"). I have personal knowledge of the representations made by Peerless in its "Amended Emergency Request by Peerless Networks, Inc. of Decision of Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q." Based upon my personal knowledge, I verify the truth and accuracy of the information contained in Peerless' request and petition for waiver.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2014

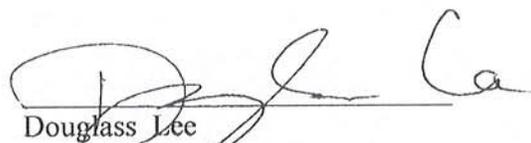
A handwritten signature in black ink, appearing to read 'Douglass Lee', written over a horizontal line.

Douglass Lee, Chief Financial Officer
Peerless Networks, Inc.

CERTIFICATE OF SERVICE

I, Douglass Lee, hereby certify that on this 27th day of January, 2014, a copy of the foregoing "Amended Emergency Request by Peerless Networks, Inc. of Decision of Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q" filed electronically with the Federal Communications Commission in WC Docket No. 06-122, was served via hand delivery to the following:

Universal Service Administrative Company
Billing, Collections and Disbursements
2000 L Street NW, Suite 200
Washington, DC 20036

A handwritten signature in black ink, appearing to read "Douglass Lee", is written over a horizontal line. The signature is stylized and cursive.

Douglass Lee
Chief Financial Officer
Peerless Networks, Inc.
222 South Riverside Plaza, Suite 2730
Chicago, IL 60606
312-506-0920