

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

In the Matter of)
Universal Service Contribution Methodology) WC Docket No. 06-122
Emergency Request for Review of Decision of the)
Universal Service Administrator and Request for)
Waiver of Deadline by Peerless Network, Inc.)

ORDER

Adopted: June 23, 2014

Released: June 23, 2014

By the Acting Chief, Telecommunications Access Policy Division:

1. Consistent with precedent,¹ we grant a request filed by Peerless Network, Inc. (Peerless) to reverse a decision by the Universal Service Administrative Company (USAC).² USAC rejected Peerless' revised May 2013 FCC Form 499-Q because it was filed outside the 45-day deadline for filing such revisions.³ Instead, USAC calculated Peerless' universal service contribution obligation based on incorrect revenues inadvertently reported by Peerless, resulting in a monthly contribution assessment that greatly exceeded the amount Peerless would have owed if USAC had accepted the revised form.⁴ Peerless requests that the Commission waive the 45-day deadline for revising its May 2013 FCC Form 499-Q, direct USAC to accept the revised form as if timely filed, and reverse any associated interest, fees, and penalties.⁵

1 Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc., WC Docket No. 06-122, Order, 28 FCC Rcd 6150 (Wireline Comp. Bur. 2013) (finding good cause for granting waiver of FCC Form 499-Q filing deadline where: 1) a reporting error resulted in invoices approximately ten times the company's average invoice; 2) a single monthly payment represented more than 75% of the company's total USF obligation for the year; and 3) the company paid the first monthly invoice in full before promptly filing an appeal with USAC) (Ascent Media Group); Universal Service Contribution 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, 28 FCC Rcd 10358 (Wireline Comp. Bur. 2013) (finding good cause for granting waiver of FCC Form 499-Q deadline where: 1) a reporting error resulted in invoices for the relevant quarter that were ten times what they should have been; 2) interest and penalties totaled approximately 60 percent of the company's annual contribution obligation after true-up; and 3) the company paid the amount it would have owed for the quarter based on the revised filing) (American Broadband).

2 Emergency Request for Review by Peerless Networks, Inc. of Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q, WC Docket 06-122 (filed Aug. 8, 2013) (Peerless Petition); see also Amended Request for Review by Peerless Network, Inc. of Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q, WC Docket No. 06-122 (filed Jan. 27, 2014) (Amendment).

3 Peerless Petition at 2.

4 Peerless Petition at 2-4; Amendment at 1.

5 Because we direct USAC to accept Peerless' revised May 2013 filing as if timely filed, Peerless' request to avoid having the true-up differential applied to revenues erroneously reported on its initial May 2013 filing is moot.

(continued . . .)

2. Our review of the record indicates that Peerless made an inadvertent clerical error on its May 2013 FCC Form 499-Q that significantly overstated its assessable telecommunications revenue, and the company did not discover the error until after the revision deadline had passed.⁶ Because of the error, USAC invoiced an amount that was more than a hundred times what Peerless' contribution obligation would have been if the revised FCC Form 499-Q had been accepted.⁷ Furthermore, because Peerless had made a similar error on its February 2013 FCC Form 499-Q, it had already been invoiced for – and paid in full and on time—an amount that greatly exceeded its contribution obligation for the entire year.⁸

3. We find that Peerless has demonstrated good cause for granting a waiver of the 45-day revision deadline for its May 2013 FCC Form 499-Q.⁹ We conclude that strict enforcement of the filing deadline and the imposition of the associated interest and penalties in this case would disproportionately penalize Peerless. We therefore direct USAC to accept Peerless' revised May 2013 FCC Form 499-Q as if timely filed and corrected, and to process it accordingly.

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154 and 254, and sections 0.91, 0.291, 1.3 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722, that the request for review and waiver filed by Peerless Networks, Inc. IS GRANTED IN PART and DISMISSED AS MOOT IN PART, to the extent described above.

5. IT IS FURTHER ORDERED that, pursuant to section 1.102 of the Commission's rules, 47 C.F.R. § 1.102, this Order SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Acting Chief
Telecommunications and Access Policy Division
Wireline Competition Bureau

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Peerless Petition at 3, 7; *see generally Ascent Media Group*, 28 FCC Rcd at 6152, para. 4 n. 14 (explaining true-up differential).

⁶ Peerless Petition at 2, 4; Amendment at 2, 4.

⁷ *Id.*

⁸ Peerless Petition at 2 & n.4; *see supra* note 4. Peerless has stated that it is revising its internal policies to ensure a filing error of this magnitude will not occur in the future.

⁹ *See generally Ascent Media Group*, 28 FCC Rcd at 6154-55, paras. 9-11; *American Broadband*, 28 FCC Rcd at 10362-64, paras. 9-15. The Commission may waive any provision of its rules for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 875 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.