

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU
MARKET DISPUTES RESOLUTION DIVISION
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July 13, 2022

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Counsel for Peerless Network, Inc.

Counsel for CenturyLink Communications, LLC

**Re: *CenturyLink Communications, LLC, et al. v. Peerless Network, Inc.*,
Bureau ID No. EB-22-MD-002, Proceeding No. 22-172**

Dear Counsel:

On July 8, 2022, CenturyLink Communications, LLC, as the successor to Qwest Communications Corporation; Level 3 Communications, LLC; WilTel Communications, LLC; and Global Crossing Telecommunications, Inc. (collectively, CenturyLink) filed with this Commission a formal complaint against Peerless Network, Inc. (Peerless) under section 208 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 208.¹ Peerless should have a copy of the Complaint as served via email and overnight delivery by CenturyLink.² If that is not the case, Peerless immediately should contact Commission counsel.

Lisa Griffin, Anthony J. DeLaurentis, Sonja Rifken, and I are Commission counsel for this proceeding. My phone number is (202) 418-7336, and my e-mail address is rosemary.mcenery@fcc.gov. Lisa Griffin's phone number is (202) 418-7273, and her email address is lisa.griffin@fcc.gov. Sonja Rifken's phone number

¹ Formal Complaint of CenturyLink Communications, LLC, as the successor to Qwest Communications Corporation, Level 3 Communications, LLC, WilTel Communications, LLC, and Global Crossing Telecommunications, Inc. v. Peerless Network, Inc., Proceeding No. 22-172, Bureau ID EB-22-MD-002 (filed July 8, 2022) (Complaint).

² Although the Commission's rules require CenturyLink to serve the Complaint to Peerless via hand delivery, 47 CFR § 1.734(c), Peerless has agreed to accept service of the Complaint via email and overnight delivery. Complaint at Tab E.

is (202) 418-1730, and her e-mail address is sonja.rifken@fcc.gov. Anthony DeLaurentis's phone number is (202) 418-0198, and his e-mail address is anthony.delaurentis@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing section 208 formal complaint proceedings, which are found at 47 CFR §§ 1.720-1.740.³

Schedule for this Proceeding

The schedule for this proceeding is set forth below. All filings must comply with the Commission's formal complaint rules and with this Notice.⁴

- 1) By **August 8, 2022**, Peerless must file and serve an answer to the Complaint that complies with 47 CFR § 1.726.
- 2) By **August 18, 2022**, CenturyLink must file and serve a reply to the answer that complies with 47 CFR § 1.728.
- 3) Based upon the parties' representations, staff understands that there is no need for discovery in this case. We therefore find good cause to waive rules 1.722(i), 1.726(f), 1.728(d), and 1.730, 47 CFR §§ 1.722(i), 1.726(f), 1.728(d), 1.730. If a party believes that discovery is warranted during the course of this proceeding, it shall file a motion requesting such discovery. After reviewing the initial pleadings, staff will contact the parties to discuss future steps in the proceeding.
- 4) We expect final action on the Complaint within 270 days of its filing.⁵ See 47 CFR § 1.740(a). The Enforcement Bureau has discretion to pause the 270-day review period where actions outside

³ See also *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. See *Formal Complaints Order*, 12 FCC Rcd at 54, para. 120; 47 CFR §§ 1.721(b)-(d), (r), 1.726(b), 1.728(a). Further, section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

⁴ Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. See 47 CFR §§ 1.21(g), (k).

⁵ The five-month statutory deadline of section 208(b)(1) does not apply to this proceeding. See Complaint at 83-84, paras. 238-40. The five-month statutory deadline in "Section 208(b)(1) only applies to formal complaints which involve 'investigation[s] into the lawfulness of a charge, classification, regulation or practice' contained in tariffs filed with the Commission" with respect to "which the Commission could exercise its prescription power under Section 205." See *Formal Complaint Order*, 12 FCC Rcd at 22512-14, paras. 35, 37. CenturyLink does not allege that Peerless's tariffed rates or tariffed practices are unlawful. Rather, CenturyLink "assert[s] section 201(b) violations against Peerless for assessing charges in violation of its Tariff and Commission Orders and Regulations." Complaint at 84, para. 239; see also *id.* at 84, para. 240 ("[B]ecause this Complaint challenges the lawfulness of Peerless's charges and billing practices in

the Commission's control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery, briefing or the submission of information requested by the Bureau. *See* 47 CFR § 1.740(b); *Rule Consolidation Order*, 33 FCC Rcd at 7186, para. 23. The Division intends to meet the 270-day deadline for final action and will be disinclined to grant requests for deadline extensions, absent a showing of good cause. The parties and their counsel should plan their schedules accordingly. Any request for extension of the scheduled filing dates must be for good cause shown, and the parties should understand that the grant of such request will result in an adjustment to the deadline for final action based on the length of the extension.

A party requesting confidential treatment of any material in a filing must comply with the requirements of 47 CFR §§ 0.457, 0.459 and 1.731. Confidential designations in pleadings must be clearly identified and marked accordingly, e.g., [Begin Confidential]/[End Confidential]. Confidential filings also must clearly identify and mark each page, or portion thereof, which includes confidential designations. *See* 47 CFR § 1.731(a)(1). A party asserting confidentiality for any information or materials should restrict its designations to encompass only the specific information that it asserts is confidential. We note that the Complaint contains a significant number of confidential designations and caution the parties to be judicious with such designations.⁶ Commission staff may deny requests for confidentiality where such information does not warrant confidential treatment under the Commission's rules or require the parties to narrow overly broad requests. Therefore, the parties should promptly determine whether request for confidentiality of their respective information is warranted and advise Commission staff accordingly.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must do so in compliance with section 1.731 of the Commission's rules and the Protective Order entered in this proceeding,⁷ and must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. *See* 47 CFR § 1.731. In addition to filing the unredacted version with the Office of the Secretary, please provide two additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

connection with its switched access services, Petitioners respectfully seek relief pursuant to 47 U.S.C. § 208(b)(1) and request that the Commission issue a final order within five months after the Complaint is filed.”).

⁶ For example, because CenturyLink has asserted that entire exhibits, e.g., depositions, should be treated as confidential, any information in the Complaint derived from those exhibits is also designated by CenturyLink as confidential without regard to whether the specific information warrants confidential treatment under the Commission rules. 47 CFR §§ 0.457, 0.459. CenturyLink also has designated Peerless information as confidential that Peerless may determine does not warrant such designation.

⁷ Letter from Lisa B. Griffin, Deputy Chief, FCC, EB, MDRD, to Timothy Boucher and Charles Steese, Counsel for CenturyLink, and Henry T. Kelly, Counsel for Peerless, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (dated May 9, 2022).

This proceeding is restricted for *ex parte* purposes. See 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3 and 1.720-1.740 of the Commission's rules, 47 CFR §§ 1.3, 1.720-1.740, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Rosemary H McEnery".

Rosemary H. McEnery
Division Chief
rosemary.mcenery@fcc.gov