ORIGINAL

OPEN MEETING

0000137227

MEMORANDUM

TO: THE COMMISSION

FROM: Utilities Division

DATE: June 6, 2012

RE: IN THE MATTER OF THE APPLICATION OF PEERLESS NETWORK OF ARIZONA, LLC TARIFF FILING TO MAKE CHANGES TO TARIFF NO. 3 (DOCKET NO. T-20590A-12-0053)

On February 15, 2012, Peerless Network of Arizona, LLC ("Peerless") filed an application to make changes to its Switched Access Services Tariff, Arizona Tariff No. 3, as it relates to intercarrier compensation for Voice over Internet Protocol-Public Switched Telephone Network ("VoIP-PSTN")[1] traffic. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make voice calls using a broadband Internet connection instead of a phone line.

On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN traffic.

The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular, VoIP-PSTN traffic[2]:

> *Voice over Internet Protocol (VoIP):* The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic that originates in IP or terminates in IP will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics and underlining added.)*; local termination rates would not be affected. All such traffic is

[1] "VoIP-PSTN traffic" is "traffic exchanged over the Public Switched Telephone Network that originates and/or terminates in internet protocol ("IP") format.

[2] The USF-ICC Order at para. 933, footnote 1869.

> incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at $0.0007 pursuant to the comprehensive reform plan described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.[3] Under the transitional framework[4]:

- Default charges for "toll" VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

Based on the above language and Staff's interpretation of the USF-ICC Order, Staff believes that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

Frontier Communications Corp. ("Frontier") filed a Petition for Clarification and/or Reconsideration ("Petition") at the FCC to clarify, or reconsider its decision to state, that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply to the origination of such calls.

Peerless' proposed tariff states that VoIP-PSTN traffic is traffic that is exchanged in Time Division Multiplexing ("TDM") format and originates and/or terminates in IP format. The proposed tariff further states that the relevant VoIP traffic will be billed at rates equal to Peerless' applicable tariffed interstate access rates as specified in Tariff FCC No. 3. This differs from Frontier's position that the charges apply only to traffic that is exchanged in TDM format and <u>terminates</u> in IP format.

On April 24, 2012, the FCC issued an Order[5] addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when

---

[3] The USF-ICC Order at para. 652.
[4] The USF-ICC Order at para. 944.
[5] The USF-ICC Order, *Second Order On Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶ 2 and ¶ 35 and footnote 96.

they originate VoIP traffic from the effective date[6] of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."[7]

On March 28, 2012, AT&T Services, Inc. ("AT&T") filed objections to Peerless' proposed tariff revisions. AT&T indicates that it objects to the effective date contained in Peerless' revised tariff. AT&T states that the FCC's order became effective on December 29, 2011 and required immediate implementation. AT&T suggests that the tariff should be modified to apply retroactively to December 29, 2011. Peerless' proposed tariff revision states that once the PVU factor is available and can be implemented, Peerless will adjust the customer's bills to reflect the PVU retroactively to January 1, 2012. The Commission's tariff approval procedures apply and proposed tariffs become effective after Commission approval.

Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of the proposed tariff revisions.

Steven M. Olea
Director
Utilities Division

SMO:PJG:sms/MAS

ORIGINATOR: Pamela Genung

---

[6] Id., Footnote 96, "Accordingly, our revised rules will become effective 45 days after publication in the Federal Register."
[7] Id., ¶ 35.

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF THE APPLICATION OF PEERLESS NETWORK OF ARIZONA, LLC TARIFF FILING TO MAKE CHANGES TO TARIFF NO. 3.

DOCKET NO. T-20590A-12-0053

DECISION NO. __________

ORDER

Open Meeting
June 19 and 20, 2012
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Peerless Network of Arizona, LLC ("Peerless") is certificated to provide telecommunications service as a public service corporation in the State of Arizona.

2. On February 15, 2012, Peerless filed an application to make changes to its Switched Access Services Tariff, Arizona Tariff No. 3, as it relates to intercarrier compensation for Voice over Internet Protocol-Public Switched Telephone Network ("VoIP-PSTN")[1] traffic. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make voice calls using a broadband Internet connection instead of a phone line.

. . .

---

[1] "VoIP-PSTN traffic" is "traffic exchanged over the Public Switched Telephone Network that originates and/or terminates in internet protocol ("IP") format.

3. On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN traffic.

4. The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular, VoIP-PSTN traffic[2]:

> *Voice over Internet Protocol (VoIP):* The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic <u>that originates in IP or terminates in IP</u> will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics and underlining added.)*; local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at $0.0007 pursuant to the comprehensive reform plan described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

5. The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.[3] Under the transitional framework[4]:

- Default charges for "toll" VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;

- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and

. . .

---

[2] The USF-ICC Order at para. 933, footnote 1869.
[3] The USF-ICC Order at para. 652.
[4] The USF-ICC Order at para. 944.

- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

Based on the above language and Staff's interpretation of the USF-ICC Order, Staff believes that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

6. Frontier Communications Corp. ("Frontier") filed a Petition for Clarification and/or Reconsideration ("Petition") at the FCC to clarify, or reconsider its decision to state, that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply to the origination of such calls.

7. Peerless' proposed tariff states that VoIP-PSTN traffic is traffic that is exchanged in Time Division Multiplexing ("TDM") format and originates and/or terminates in IP format. The proposed tariff further states that the relevant VoIP traffic will be billed at rates equal to Peerless' applicable tariffed interstate access rates as specified in Tariff FCC No. 3. This differs from Frontier's position that the charges apply only to traffic that is exchanged in TDM format and terminates in IP format.

8. On April 24, 2012, the FCC issued an Order[5] addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date[6] of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."[7]

9. On March 28, 2012, AT&T Services, Inc. ("AT&T") filed objections to Peerless' proposed tariff revisions. AT&T indicates that it objects to the effective date contained in Peerless' revised tariff. AT&T states that the FCC's order became effective on December 29, 2011 and required immediate implementation. AT&T suggests that the tariff should be modified to apply retroactively to December 29, 2011.

. . .

---

[5] The USF-FCC Order, *Second Order On Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶ 2 and ¶ 35 and footnote 96.

[6] Id., Footnote 96, "Accordingly, our revised rules will become effective 45 days after publication in the Federal Register."

[7] Id.., ¶ 35.

10. Peerless' proposed tariff revision states that once the PVU factor is available and can be implemented, Peerless will adjust the customer's bills to reflect the PVU retroactively to January 1, 2012.

11. The Commission's tariff approval procedures apply and proposed tariffs become effective after Commission approval.

12. Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of the proposed tariff revisions.

CONCLUSIONS OF LAW

1. Peerless Network of Arizona, LLC is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Peerless Network of Arizona, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated June 6, 2012, concludes that the proposed tariff revisions are reasonable, fair and equitable and therefore in the public interest.

...

...

...

...

...

...

...

...

...

...

...

...

ORDER

IT IS THEREFORE ORDERED that the amended tariff revisions submitted by Peerless Network of Arizona, LLC be and hereby are approved, as discussed herein.

IT IS FURTHER ORDERED that Peerless Network of Arizona, LLC shall file its tariff, in compliance with this Decision, for Staff's review and approval, within 10 days from the date of this decision.

IT IS FURTHER ORDERED that this Decision be and hereby is effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _______ day of __________________, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: ___________________________

DISSENT: ___________________________

SMO:PJG:sms/MAS

SERVICE LIST FOR: PEERLESS NETWORK OF ARIZONA, LLC
DOCKET NO.: T-20590A-12-0053

Mr. Daniel Meldazis
Director Regulatory Affairs
Peerless Network of Arizona, LLC
222 S. Riverside Plaza, Suite 2730
Chicago, Illinois 60606

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Janice M. Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

TABLE OF CONTENTS

DEFINITIONS

Digital Signal Level 1 (DS1

The 1.544 Mbps first level signal in the time division multiplex hierarchy. In the time division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

Digital Signal Level 3 (DS3)

The 44.736 Mbps third level in the time division multiplex hierarchy. In the time division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing

End Office Switch

A local telephone switching system established to provide local exchange service and/or exchange access services.

End User

A customer of telecommunications services that is not a carrier. End users can include a business, company or enhanced service providers (including but not restricted to, internet service providers, C
conference calling providers, and Voice over Internet Protocol service providers) or other entities. C

FCC

The Federal Communications Commission

Grandfathered

Services ordered under the provisions of this tariff but are no longer available to new customers.

Individual Case Basis

A condition in which the regulations (if applicable), rates and charges for an offering under the provision of this tariff are developed based on the circumstance in each case.

Intrastate Access Service

Provides for a two-point communications path between a Customer's premises or a collocated interconnection location and an end user's premises for originating and terminating calls within the state.

Local Access and Transport Area (LATA)

A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C. NO. 4.

Local Exchange Routing Guide (LERG)

The telecommunications industry database tool used to provision NPA/NNXs and provide routing information to facilitate call completion.

REGULATIONS

2.10 Individual Case Basis (ICB)

Arrangements will be developed on a case-by-case basis in answer to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such service in this tariff. ICB rates will be offered to the Customer in writing.

Contracts will be used in the circumstance of Individual Case Basis (ICB) service offerings. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially comparable circumstances. Contracts are obtainable to any similarly situated Customer that places an order within 90 days of their effective date. In the event of a conflict between the Customer and the Company, the contract will take precedence over this tariff in regards to resolution of the conflict. Contracts are subject to applicable law of a *competent jurisdiction.*

2.11 Identification and Rating of VOIP Traffic N

(A) General

1. VOIP traffic is defined as traffic that is exchanged between a Company end user and the customer in time division multiplexing (TDM) format that originates and/or terminates in Internet protocol (IP) format. These rules establish the method of separating such traffic from the customer's traditional intrastate access traffic, so that such relevant VOIP traffic can be billed in accordance with the FCC Order (see Report and Order in WC Docket Nos. 10-90, etc. FCC Release No. 11-161 (November 18. 2011)).

2. This section will be applied to the billing of switched access charges to a customer that is a local exchange carrier only to the extent that the customer has also implemented billing of interstate access charges for relevant VOIP tariff in accordance with the FCC order.

3. The rates, terms, and conditions of this section will apply to transit services provided in connection with the origination or termination of LEC-CMRS intraMTA traffic. N

REGULATIONS

2.11 Identification and Rating of VOIP Traffic (cont'd) N

(B) Rating of VOIP Traffic

The relevant VOIP traffic that is identified in accordance with this tariff section will be bill at rates equal to the Company's applicable tariffed interstate access rates as specified in Tariff FCC No. 3.

(C) *Calculation And Application of Percent of VOIP Usage Factor*

The Company will determine the number of relevant VOIP traffic minutes of use (MOU) to which the interstate rates will be applied under subsection B above, by applying a percent VOIP usage (PVU) factor to the total intrastate access MOU exchanged between a Company end user and the customer. The PVU will be determined and applied as follows:

(1) The customer will calculate and furnish to the Company a factor (customer factor) representing the percentage of the total intrastate and interstate access MOU that the customer exchanges with the Company in the state, that (a) is sent to the Company and that originated in IP format; or (b) is received from the Company and terminated in IP format. This customer factor shall be based on information such as traffic studies, call details, the number of the customer's retail VOIP subscriptions in the state (as reported in FCC Form 477) or other relevant and verifiable information.

(2) The Company will also calculate a factor (Company factor) representing the percentage of the Company's total intrastate and interstate access MOU in the state that the Company originates or terminates on its network in IP format. This Company factor shall be based on information such as traffic studies, call details, the number of the customer's retail VOIP subscriptions in the state (as reported in FCC Form 477) or other relevant and verifiable information.

(3) The Company will use the Company factor and the customer factor to calculate a PVU factor that represent the percentage of total intrastate and interstate access MOU exchanged between a Company end user and the customer that is originated or terminated in IP format, whether at the Company's end, at the customer's end or at both ends. The PVU factor will be calculated as the sum of: (A) the customer factor and (B) the Company factor times (1.0 minus the customer factor). N

REGULATIONS

2.11 Identification and Rating of VOIP Traffic (cont'd) N

(C) Calculation And Application of Percent of VOIP Usage Factor (cont'd)

(4) The Company will apply the PVU factor to the total intrastate access MOU exchanged with the customer to determine the number of relevant VOIP traffic MOUs.

Example 1: The Company factor is at 20% and the customer factor is 40%. The PVU factor is equal to 40% + (20% x 60%) = 52%. The Company will bill 52% of the customer's intrastate access MOU at the Company's applicable tariffed interstate access rates. If the customer does not supply the Company with a customer factor according to the preceding paragraph 1, the Company will use a PVU equal to the Company's factor.

(D) Initial PVU Factor

If the PVU factor is not available and/or cannot be implemented in the Company's billing systems by January 1, 2012, once the factor is available and can be implemented the Company will adjust the customer's bills to reflect the PVU retroactively to January 1, 2012. In calculating the initial PVU, the Company will take the customer specified PVU into account retroactively to January 1, 2012, provided that the customer provides the factor to the Company no later than April 15, 2012; otherwise the Company with set the initial PVU equal to the Company factor as specified in subsection (c)(5) above.

(E) PVU Factor Updates

The customer may update their factor quarterly using the method set forth in subsection (C)(1), above. If the customer chooses to submit such updates, it shall forward to the Company, no later than 15 days after the first day of January, April, July and/or October of each year, a revised customer factor based on data for the prior three months, ending the last day of December, March, June and September, respectively, The Company will use the revised customer factor to calculate a revised PVU. The revised PVU factor will apply prospectively and serve as the basis for billing until superseded by a new PVU.

(F) Verification of PVU

Not more than twice in any year, the Company can ask the customer to verify the customer factor that they furnished to the Company and the customer can ask the Company to verify the Company factor and the calculation of the PVU factor. The party so requested shall comply, and shall reasonably provide the records and other information used to determine the respective Company and customer factors.

N