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October 3, 2016

VIA ECFS

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

Re: *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106

Dear Ms. Dortch:

On September 29, 2016, Glenn S. Richards, representing the Voice on the Net Coalition ("VON"), Brendan Kasper, of Vonage, Paula Boyd, Gunnar Halley, and Cari Benn, of Microsoft Corporation, and Yuxi Tian and the undersigned, of Harris, Wiltshire & Grannis LLP, met with Lisa Hone, Sherwin Siy, Melissa Kirkel (by phone), Heather Hendrickson, and Daniel Kahn of the Wireline Competition Bureau. The parties met to discuss the Notice of Proposed Rulemaking ("NPRM") regarding privacy requirements for broadband Internet access service ("BIAS") providers in the above-referenced docket. Specifically, the parties discussed the potential harmonization of any requirements adopted in the proceeding with privacy requirements already imposed on interconnected VoIP providers.

Vonage and VON explained that the proposed requirements should not be applied to interconnected VoIP providers because the existing framework established under Section 222 of the Communications Act adequately protects VoIP customers. There have been few, if any, FCC enforcement actions against VoIP providers related to violations of the privacy rules. Moreover, no party in this proceeding has advocated for additional privacy regulation for interconnected VoIP providers. This demonstrates that the existing rules work, and the Commission does not need to harmonize them. In addition, VoIP providers have access to limited customer information. Specifically, interconnected VoIP providers collect call detail records (which are subject to extensive protections under the Commission's existing rules), but do not collect the type of sensitive information of concern in this proceeding. Thus, many of the proposed privacy requirements are not a good fit for interconnected VoIP providers. Harmonization of the rules between BIAS and interconnected VoIP providers would thus impose unnecessary burdens on VoIP providers.

Vonage and VON also discussed their concerns that the extension of broadband privacy requirements to interconnected VoIP could hinder competition in the highly competitive VoIP marketplace. The existing interconnected VoIP market allows customers to reap the benefits of competition with lower prices and increased service options, which is markedly different than the BIAS market. Customers that do not like the privacy policies offered by an interconnected VoIP

provider may easily choose another of the hundreds of VoIP and traditional voice services available in the marketplace. Indeed, in part because of this fierce competition, interconnected VoIP providers typically do not impose term contracts and other penalties that inhibit switching among providers. By contrast, as the FCC has observed, the BIAS market has "high switching costs [for] consumers [] when seeking a new service."[1] Provided a customer receives full and appropriate disclosure of a VoIP provider's privacy practices, that customer can simply choose not to use a service that does not provide that customer with its desired level of privacy protection.

The Commission has emphasized the importance of robust competition and innovation in the marketplace in past decisions and highlighted those values in the 2015 *Open Internet Order*.[2] The proposed new requirements would be inconsistent with the Commission's goals.[3] In particular, Vonage and VON expressed concern that the proposed new requirements, such as the requirement to obtain opt-in consent to share data with third-party partners, would have a disparate impact on smaller providers that rely on third-party vendors for such functions as email marketing.

Finally, Microsoft acknowledged that others had sought an exemption from new requirements for business VoIP services and encouraged the Commission to broadly construe such an exemption to reflect different ways that business services are offered. In addition, Microsoft encouraged the Commission to avoid a prescriptive approach and to explicitly afford providers flexibility in the specifics of implementing any new requirements applicable to voice services.

Please do not hesitate to contact me at (202) 730-1346, or bstrandberg@hwglaw.com, if you have questions or would like additional information.

Sincerely,

Brita D. Strandberg
Counsel to Vonage Holdings Corporation

cc: Meeting attendees

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1 *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601, 5631 ¶ 81 (2015).

2 *Id.* ¶ 60.

3 *See Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, 31 FCC Rcd. 2500, 2543 ¶ 124 (2016).