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October 19, 2004

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

**Re: WC 03-211; Vonage Petition for Declaratory Ruling**

Dear Ms. Dortch:

Vonage submits this letter to provide additional information on the appropriate jurisdictional classification of its service. As Vonage has explained, irrespective of the classification of its service as either a telecommunications or information service, Vonage's service is inherently interstate in nature.[1] Indeed, other than its use to facilitate voice communications, Vonage's service is functionally indistinguishable from other Internet applications such as e-mail and instant messaging, and, as such, should be similarly classified as an interstate, information services.[2] The service is accessed over broadband Internet connections

[1] *See Vonage Holdings Corp.'s Petition for Declaratory Ruling*, Docket No. 03-211, at 27-31 (filed Sept. 22, 2003) ("*Vonage Petition*").

[2] *See, e.g., Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, at ¶ 20 (rel. Feb. 19, 2004) (finding that the service offered by pulver.com could not be segregated into inter- and intrastate components) ("*Pulver Order*"); *GTE Tel. Operating Cos. GTOC Transmittal No. 1148*, 13 F.C.C. Rcd. 22466 (1998) ("*GTE ADSL Order*"); *see, e.g., Promotion of Competitive Networks in Local Telecommunications Markets*, 15 F.C.C. Rcd. 22983, ¶ 107 (2000) ("[b]ecause fixed wireless antennas are used in interstate and foreign communications and their use in such communications is inseverable from their intrastate use, regulation of such antennas that is reasonably necessary to advance the
(cont'd)

supplied by third-party ISPs, and Vonage customers can access the service from anywhere in the world where broadband Internet connectivity is available.[3] A customer's physical location is irrelevant. And although Vonage customers are assigned 10-digit numbers that "look like" traditional NANPA numbers,[4] these numbers have no inherent connection to a user's physical address.[5] Vonage's service maps these location agnostic numbers to non-geographic Internet IP addresses for purposes of routing communications from one network (the Internet) to the other (the PSTN).

Vonage does not have actual knowledge of its customers location when they use the service. In fact, for Vonage users it is the decoupling of geography from the communications capability that makes the service valuable. So long as broadband Internet connectivity is available, Vonage users can travel worldwide and use the same dialing number to place and receive communications. As a result, not only is geography irrelevant to Vonage and its customers, but Vonage has no technical feasible means of accurately verifying the physical location of a call.[6]

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purposes of the Act falls within the Commission's authority"); *Rules and Policies Regarding Calling Number Identification Service -- Caller ID*, 10 F.C.C. Rcd. 11700, ¶¶ 85-86 (1995) (preempting California default line-blocking policy because it would preclude transmission of Caller ID numbers on interstate calls, and effect of the policy was inseverable).

[3] *See Vonage Petition* at 1-8; *see also* Letter from William B. Wilhelm, Counsel for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 03-211, 04-36, at 3-4 (August 13, 2004) ("*Vonage August 13, 2004 Ex Parte*").

[4] *See Vonage Petition* at 1-9; *see also Vonage August 13, 2004 Ex Parte*, *supra* n.3, at 4-5.

[5] Through the use of Virtual Numbers, Vonage customers can utilize a dialing number that is not associated with their billing address. For example, a customer with a billing address in Washington, DC can utilize a dialing number in Boston, MA. A customer can have more than one Virtual Number assigned to their account. Since the service is portable, calling parties can reach the Vonage customer irregardless of whether they are in Washington, Boston, or anywhere else they can obtain access to a broadband Internet connection.

[6] *See Vonage Petition*, at 1-4, 27-31; *Memorandum in Support of Vonage Holdings Corp.'s Motion for Preliminary Injunction*, File No. 03-528MJD/JGL (filed Sept. 24, 2003) (attached as Exhibit 6 to Letter from William B. Wilhelm, Jr. and Ronald W. Del Sesto, Jr., Counsel for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-211 (Oct. 1, 2004) ("*Vonage October 1, 2004 Ex Parte*")).

The location-agnostic service Vonage offers is reflected in the Company's marketing material and pricing plans, which make no price distinctions based on where communications are initiated or terminated.[7] Instead, Vonage sells minutes of use for originating communications. Priced as low as $14.99 for residential users, Vonage does not draw distinctions between local and long distance. Vonage has no idea of, nor a need to know for billing purposes, the physical locations of its customers when they use the service – only IP addresses are transmitted to Vonage.[8] Accordingly, it is impossible for Vonage to segregate its service into inter- and intrastate components.[9]

Emergency services. As part of its continuing effort to improve the delivery of emergency services to its customers, Vonage has explored the possibility of adding location capabilities to its equipment, including the feasibility of incorporating global positioning satellite ("GPS") chips in the specialized computing devices that customers use to access the service. But Vonage has found that, in addition to the prohibitive cost that including GPS chips would add to Vonage-enabled devices and its service, GPS functionality would be of little practical utility. First, GPS devices are often ineffective indoors because of the physical obstruction between the device and the satellites that provide the service. Though some customers may use the service outdoors, most do not. In addition, Vonage customers can utilize either a Multimedia Terminal Adapter ("MTA") computing device or install the Vonage Soft Phone software client on their laptop to initiate or receive communications. Unless or until GPS capabilities are incorporated into every laptop or computing device, relying on GPS technology would not provide any practical benefit to these customers.[10]

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[7] *See* http://www.vonage.com/products.php (last visited Oct. 17, 2004).

[8] For example, a Vonage customers may have a New York telephone number associated with a Rhode Island billing address or a New York billing address with a Rhode Island telephone number. Since Vonage prices its service based on minutes of use originated, so long as the communication is placed to a telephone number assigned within the United States and Canada, the *actual* originating or terminating point of the communication is completely irrelevant to both the Company and the Vonage customer.

[9] *SeePulver Order*, *supra* n.2, at ¶21; *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-97, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 F.C.C. Rcd. 7779, 7784, ¶ 15 (2002); *GTE ADSL Order*, *supra* n.2, 13 F.C.C. Rcd. at 22479, ¶ 22.

[10] Nor is it a simple matter of adapting assisted GPS ("AGPS") technology used in the wireless sector with the CDMA and iDEN air interfaces to VoIP. AGPS can be used with CDMA and iDEN because the network software is able to take advantage of information inherent in a cell site system architecture. On the other hand, VoIP uses the Internet for connection and transmission, and for VoIP customers who are connected to the Internet by wire
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As Vonage has explained before, it is always working to improve the quality of its emergency calling service, and recognizes that providing emergency responders with accurate location information is important.[11] However, other than for the need to provide originating location information to emergency services personnel, Vonage emphasizes that the geographic location of the parties initiating and receiving Vonage communications is completely irrelevant to Vonage and its customers. Indeed, even if Vonage successfully adds automatic emergency location information to its service at some future time, that information will be limited to the location of *the Vonage customer* originating the call. Were it somehow necessary for regulatory purposes to determine the end-to-end jurisdictional nature of a communication – not only would Vonage need to expend at least hundreds of millions of dollars attempting to develop a dubiously effective location technology – but Vonage's solution for determining the originating location of a call would *also* need to be adopted and deployed industry-wide and incorporated into every computer, software program, MTA, Wi-Fi enabled Pocket-PC other device capable of *receiving* a Vonage call. This is true not only because mobile telephones and VoIP have disassociated dialing numbers from location – but also because as IP telephony matures, more and more IP calls will be routed entirely over the geographically agnostic Internet[12].

Vonage, for example, is seeking arrangements with other Internet-based VoIP providers in an effort to reduce the amount of traffic that travels over the PSTN.[13] Vonage currently has a peering agreement with pulver.com and is negotiating with others.[14] Likewise, Vonage is exploring agreements with cellular providers for the direct exchange of communications traffic. In each of these cases, the call termination location is not only unknown but irrelevant to Vonage. Indeed, when a Vonage customer calls either another Vonage customer, mobile users, or a pulver.com subscriber, the physical location of the called party is unknown to Vonage and could be anywhere worldwide. Even when a Vonage customer calls a traditional telephone

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or fiber, there is no cell site architecture to make either AGPS or network wireless E911 technologies workable.

[11] *See* Letter from B. Wilhelm and R. Del Sesto, Counsel for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 04-36 and 03-211 (Oct. 14, 2004).

[12] *See* Press Release, *Vonage Holdings Corp. and Boingo Wireless, Inc., Boingo Wireless and Vonage Team to Simplify Wireless VoIP Services* (Oct. 18, 2004) (announcing the bundling of Vonage's SoftPhone service with Boingo's Wi-Fi service to allow travelers to use Vonage service at Boingo's hotel, airport and café wireless network locations, and demonstrating that VoIP technology includes both wireless and fixed line communications).

[13] *See Vonage October 1, 2004 Ex Parte, supra* n.6, at 3-4.

[14] *See id.*

number it is possible that that number is actually a virtual telephone number assigned to another VoIP provider customer. In such instances, the communication originates and terminates on the Internet and the physical end points are unknown.

Even if it were possible for Vonage to track the information necessary to determine the jurisdictional nature of a call – and it is not – such information would be useful only to facilitate regulation, and would be unrelated to any business aspect of Vonage's service. Since there is no practical way to determine the ultimate geographic destination of communications initiated over Vonage's service today, it is difficult to reliably forecast costs to provide such information. At a minimum, Vonage suspects that it would have to develop new location based technology, license and deploy it to computer chip manufacturers, redesign its network architecture, modify a host of other internal network operations, including its billing systems, solely to track the originating and terminating points of Internet communications for the purpose of regulation. Assuming such a technology is feasible at all – a question Vonage does not concede - the company estimates that the costs and timelines associated with the development and worldwide deployment of this technology would cost many hundreds of millions of dollars and easily exceed by many multiples those incurred in developing location technology for the wireless handset industry.

Such expenses would, of course, be utterly wasteful, as the Commission recognized in the *Pulver Order*:

> Even if it were relevant and possible to track the geographic location of packets and isolate traffic for the purpose of ascertaining state jurisdiction over a theoretical intrastate component of an otherwise integrated bit stream, such efforts would be impractical. Tracking FWD's packets to determine their geographic location would involve the installation of systems that are unrelated to providing its service to end users. Rather, imposing such compliance costs on providers such as Pulver would be designed simply to comply with legacy distinctions between the federal and state jurisdictions. Here, such distinctions do not appear to serve any legitimate public policy purpose. Investment in such systems would improve neither service nor efficiency. In a dynamic market such as the market for Internet applications like FWD, we find that imposing this substantial burden would make little sense and would almost certainly be significant and negative for the development of new and innovative IP services and applications.[15]

Vonage respectfully submits that the problems identified by the Commission with incorporating a location based system on pulver.com's service are identical to those that Vonage would face. Compelling Vonage and the industry as a whole to develop systems and technology solely to enable regulators to maintain traditional distinctions between intra- and interstate

[15] *Pulver Order*, *supra* n.2, at ¶24.

communications would be equally impractical, would not serve any legitimate public policy purpose, would not improve or enhance the efficiency of Vonage's service, would increase dramatically the cost of the service to all VoIP customers, and would ultimately negatively impact the development of new and innovative IP services and applications.

Respectfully submitted,

/s/

William B. Wilhelm, Jr.
Ronald W. Del Sesto, Jr.

Attorneys for Vonage Holdings Corp.