SWIDLER BERLIN LLP

The Washington Harbour
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Phone 202.424.7500
Fax 202.424.7647
www.swidlaw.com

December 8, 2005

VIA ELECTRONIC FILING

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

Re: *Ex Parte* Communication, WC Docket Nos. 05-196 and 04-36

Dear Ms. Dortch:

On behalf of Vonage Holdings, Corp, ("Vonage") enclosed for filing and association with the above referenced dockets, is Vonage's December 7, 2005 response to an *ex parte* submission filed by BellSouth Corporation on November 28, 2005.

Sincerely,

William B. Wilhelm, Jr.

Counsel for Vonage Holdings Corp.

Enclosure

cc: Daniel Gonzalez (Via E-Mail)
Michelle Carey (Via E-Mail)
Jessica Rosenworcel (Via E-Mail)
Lauren Pete Belvin (Via E-Mail)
Scott Bergmann (Via E-Mail)
Thomas Navin (Via E-Mail)
Julie Veach (Via E-Mail)
Pamela Arluk (Via E-Mail)
Christi Shewman (Via E-Mail)
Nicholas Alexander (Via E-Mail)
Tim Stelzig (Via E-Mail)

VONAGE
THE BROADBAND PHONE COMPANY®

December 7, 2005

VIA FACSIMILE AND OVERNIGHT DELIVERY

Mr. Bennett L. Ross
General Counsel - D.C.
Legal Department
BellSouth D.C, Inc.
1133 21st Street, N.W., Suite 900
Washington, DC 20036-3351

Re: ***IP-Enabled Services Rulemaking*, WC Docket No. 04-36;**
***E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196**

Dear Mr. Ross,

By this letter, Vonage Holdings Corporation ("Vonage") responds to the *ex parte* submitted by BellSouth Corporation ("BellSouth") to the Federal Communications Commission ("Commission") on November 28, 2005 in connection with the above-referenced dockets. In the *ex parte*, BellSouth misleads the Commission by painting a picture of cooperation and progress. Yet BellSouth has delayed, if not obstructed, the implementation of enhanced emergency services ("E9-1-1") to Vonage customers. BellSouth's history of impeding access to necessary E9-1-1 services to competitors is no mystery. Due in large part to BellSouth's delays, E9-1-1 has been slow to deploy to wireless customers in the BellSouth region.[1]

The fact is, BellSouth continues its dilatory behavior by failing to work cooperatively with Vonage to reach an E9-1-1 solution. Vonage objects to the proffering of misleading statements to the Commission and, therefore, responds to your *ex parte* to clarify the record.

1. Misleading Representation Regarding pANI

BellSouth claims that it places no limitation that pseudo-Automatic Number Identification ("pANI") be non-dialable, and that it allows both non-dialable numbers and dialable numbers to be used for pANI purposes. The use of non-dialable pANI alone for the provision of nomadic voice over Internet Protocol ("VoIP") E9-1-1 solutions represents the industry consensus of the North American Numbering Council ("NANC"), NANC's pANI Issue Management Group ("pANI IMG"), the Alliance for Telecommunications Industry Solutions ("ATIS") and the Emergency Service Interconnection Forum ("ESIF"). BellSouth participated in the establishment of this consensus by each of these bodies. If BellSouth views the use of dialable numbers as an adequate solution for pANI, it should have taken this up within the relevant industry forum working groups. To our knowledge, BellSouth did not raise these concerns, so it seems disingenuous to voice them now before the Commission in its *ex parte*.

[1] *See Enhanced 911 Calls Still Far From Wide Coverage*, USA Today, October 24, 2002. *http://www.usatoday.com/money/industries/telecom/2002-10-24-e911_x.htm*

23 Main Street • Holmdel, New Jersey 07733-2136
Main No: 732-528-2600 • Main Fax: 732-287-9119

Further, to the extent BellSouth refers to the use of dialable numbers as an adequate solution for the routing of E9-1-1 calls, the public safety community has expressed a number of technical and operations concerns about such use of these numbers. Indeed, the National Emergency Number Association ("NENA") has recommended the need to convert the use of dialable numbers in E9-1-1 systems to non-dialable pANIs.[2]

2. Misleading Representation About BellSouth's Cooperation

BellSouth claims that it has worked cooperatively with Vonage on E9-1-1 issues since May 2005. This claim is untrue. In fact, BellSouth created a number of obstacles to Vonage's E9-1-1 deployment. Among the most significant obstacles are: the introduction of a new FCC tariff service description for the purchase of E9-1-1 services, the lack of genuine cooperation in the Master Street Address Guide ("MSAG")/shell creation process, and the requirement of a Professional Services Agreement for access to pANI.

a. FCC Tariff

BellSouth insisted that a new service offering be included in its FCC tariff *prior* to any ordering, testing or offering of VoIP E9-1-1 services. This was unnecessary. BellSouth did not have to develop any "new service" for connectivity to BellSouth's selective routers as it may claim. All network components and service functionalities already existed within BellSouth's network and tariffs to allow Vonage to implement an E9-1-1 capable system. In fact, what BellSouth ultimately "developed" was a mere regulatory obstacle by delaying Vonage access to the very same network components that could be purchased by non-VoIP service providers under its existing tariffs. Indeed, during the course of the parties' deployment discussions, the BellSouth team admitted that the facilities Vonage would purchase under the FCC tariff are not physically distinct from those presently available under BellSouth's existing tariffs, and that the distinction is purely a regulatory one.

Unlike Verizon, Frontier and Qwest, where services are directly purchased out of existing access tariffs, BellSouth is the only incumbent carrier that required a new tariff filing for the purchase of E9-1-1 services. Notably, while BellSouth promised a June filing for the FCC tariff, its four-page service offering that referenced *existing* rates for *existing* network elements under its FCC tariff, was not filed until the end of July 2005 and did not become effective until August 2, 2005. In light of the late effective date of BellSouth's FCC tariff filing, Vonage's provisioning teams are still working with BellSouth's provisioning team so that trunk orders can be turned-up to the needed selective routers.

b. MSAG/Shell Creation Process

BellSouth's hands-off approach to the MSAG/shell creation process continues to shackle Vonage's deployment efforts. During a conference call on October 13, 2005, the parties discussed the service order input ("SOI") process at length, yet BellSouth could not provide details surrounding the MSAG ledger creation and notification process on this call. During a November 2, 2005 call, representatives of BellSouth shared with Vonage that BellSouth did not have a process to notify carriers when MSAG ledgers have been created and, therefore, BellSouth would not be able to notify Vonage when this critical task was completed. Rather than cooperating with Vonage (as Verizon has) to help manage the end-to-end process for shell creation, BellSouth has consistently abdicated responsibility and required that Vonage individually contact the thousands of PSAPs in BellSouth territory, on an individual PSAP by PSAP basis, in order to coordinate the creation of the shell records to be used within BellSouth's own E9-1-1 network.

[2] *See, e.g., Ex Parte* Letter from David F. Jones, President, NENA to Kevin J. Martin, Chairman, FCC (filed Nov. 4, 2005).

c. Professional Services Agreement

Although Vonage initially requested pANIs in May 2005, BellSouth waited until July 29, 2005 to present Vonage with its Professional Service Agreement, despite repeated requests by the Vonage E9-1-1 deployment team and a formal written request from Jeffrey Citron. Vonage reviewed the draft Agreement and voiced its concerns to the BellSouth team over a number of the Agreement's provisions as early as the first week in August. Further, in light of a number of disagreements Vonage had regarding BellSouth's proposed terms, Vonage explored alternative approaches to obtaining pANI access on a parallel track but determined conclusively that pANI could only be obtained from BellSouth.

Under BellSouth's proposed terms, the Agreement automatically terminates upon the appointment of an interim RNA. During the September to October 2005 time frame, Vonage actively participated in working groups and task forces to help establish a consensus approach for pANI assignment, including the establishment of the interim RNA. Once it became clear, however, that the RNA would not be appointed within the anticipated time frame, Vonage quickly worked to finalize any remaining proposed changes to the Agreement and returned the document to BellSouth. Discussions with BellSouth to finalize the Agreement were scheduled to take place on November 19, 2005, but BellSouth announced during the November 19, 2005 call that it was not able to get the attention of appropriate personnel to be able to entertain a productive discussion. The call was rescheduled by BellSouth for the following week, and further calls were held thereafter to complete the Agreement.

As of December 6, 2005, BellSouth and Vonage appear to have come to resolution on all remaining issues under the Agreement. Worth noting, however, is one of the final issues in the contract discussions related to BellSouth's expectation that Vonage utilize pANIs to all PSAPs behind its 9-1-1 tandems, regardless of whether Vonage has subscribers served by every PSAP behind the tandem. Whereas BellSouth initially refused to provide pANIs due to concerns over NPA-NXX exhaust, it now requires Vonage to purchase more pANIs than it can use, thus unnecessarily resulting in a waste of numbering resources. Vonage has expressed its concern about this matter to BellSouth, and seeks to continue working with BellSouth to create a process to be able to return unused and unneeded pANIs to BellSouth for use by other service providers.

Regular conference calls have been held between BellSouth and Vonage beginning in May 2005 to discuss Vonage's deployment plans. While some progress has been made, BellSouth's cooperation and assistance in Vonage's E9-1-1 deployment has fallen well short of the efforts put forth by other incumbent carriers across the country. Nevertheless, Vonage remains committed to working diligently with the BellSouth deployment teams to get in place as promptly as possible nomadic VoIP E9-1-1 capabilities, and seeks BellSouth's cooperation in this endeavor.

If you have any questions regarding the foregoing, please do not hesitate to contact me at 732-202-5266. Thank you.

Sincerely,

Sharon O'Leary /kas

Sharon O'Leary
Chief Legal Officer & Executive Vice President
Vonage Holdings Corp.

cc: Daniel Gonzalez (Daniel.Gonzalez@fcc.gov)
Michelle Carey (Michelle.Carey@fcc.gov)
Jessica Rosenworcel (Jessica.Rosenworcel@fcc.gov)
Lauren Pete Belvin (Lauren.Belvin@fcc.gov)
Scott Bergmann (Scott.Bergmann@fcc.gov)
Thomas Navin (Thomas.Navin@fcc.gov)
Julie Veach (Julie.Veach@fcc.gov)
Pam Arluk (Pamela.Arluk@fcc.gov)
Christi Shewman (Christi.Shewman@fcc.gov)
Nicholas Alexander (Nicholas.Alexander@fcc.gov)
Tim Stelzig (Tim.Stelzig@fcc.gov)