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November 29, 2011

By Electronic Filing

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

Re: Ex Parte Letter; CC Docket No. 99-200

Dear Ms. Dortch:

Vonage Holding Corp. (“Vonage”) has recently filed *ex partes* regarding its 2005 petition for limited waiver of Section 52.15(g)(2)(i), 47 C.F.R. § 52.15(g)(2)(i), of the Commission’s rules to allow Vonage to obtain numbering resources directly from the North American Numbering Plan Administrator (“NANPA”). In the petition, Vonage seeks a waiver so that it has direct access to the numbering resources without having to become a state-certified common carrier.<sup>1</sup> As COMPTEL has stated before, Vonage is in effect seeking a change in Commission Rules - at matter that should be addressed through a rulemaking proceeding, not the waiver process.

In COMPTEL’s June 20, 2011 *Ex Parte Letter* in the above referenced docket, we pointed out that Vonage has not demonstrated any special circumstances that warrant deviation from the rule at issue,<sup>2</sup> as many interconnected VoIP providers may not obtain numbering resources because they fail to meet the rules requirement that they obtain a license or

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<sup>1</sup> Vonage Holdings Corp. Petition for Limited Waiver, CC Docket No. 99-200, p 3, filed March 4, 2005.

<sup>2</sup> “In general, the waiver request must demonstrate *special circumstances* warranting a deviation from the general rules and that such deviation will service the public interest.” Order, *AT&T Inc. Petition for Waiver of Section 61. 42(g) of the Commission’s Rules*, WCB/Pricing File No. 11-06, DA 11-981, ¶4 (Jun. 2, 2011)(emphasis added).

certification of public convenience and necessity from the relevant states.<sup>3</sup> In its November 11, 2011 *Ex Parte Letter*, Vonage asserts that precedent supports the granting of Vonage's waiver because the Commission "has, in the past, granted either blanket waivers or waivers common under many other rules to as many as hundreds of individual parties outside the rulemaking process."<sup>4</sup> Vonage cites, however, multi-party waivers where the Commission was granting a waiver of a deadline established by the rules or a temporary waiver pending a final decision on the matter. Vonage is not seeking a waiver of a deadline and the Commission has already considered the matter at issue in Vonage's waiver. Vonage is seeking what effectively amounts to a change in a Commission rule on a specific matter the Commission considered in a rulemaking proceeding, namely, whether to allow a provider that has not obtained a license or a certificate of public convenience and necessity from the relevant state to obtain numbering resources directly from the NANPA. If the Commission chooses to revisit this matter, it is more appropriately handled by a rulemaking proceeding, not the waiver process.

In an attempt to demonstrate precedent of the Commission granting waivers to multiple parties, Vonage cites to waivers in which the matter at hand was a deadline. For instance, in the *TRS Waiver Orders* the Commission granted waivers "to allow *more time* for the industry to work on developing standards to enable Internet-based TRS providers *to comply* will all mandatory minimum standards regardless of the type of CPE used to access their services."<sup>5</sup> In the *LMDS Waiver Order*, the Commission extended "the ten year construction requirement under Section 101-1011(a) of the Commission's Rules for [licenses of petitioners] until June 1, 2012."<sup>6</sup> Indeed, with regard to the requirement in the LMDS waiver, the Commission's Rules specifically contemplate and provide for a waiver to extend the time to comply when certain

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<sup>3</sup> See *Telephone Number Requirements for IP-Enabled Services Providers et al*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, WC Docket Nos. 07-243, 07-244 and 04-36, CC Docket Nos. 95-116 and 99-200, FCC 07-188, ¶ 20 (2007)("VoIP LNP Order")(emphasis added).

<sup>4</sup> Letter of Brita D. Strandberg, Counsel to Vonage Holdings Company, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 at 2 (filed Nov. 11, 2011)(Vonage November Ex Parte).

<sup>5</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, Order*, 26 FCC 9449, ¶23 (2011)("TRS Waiver Order"). In the Consolidated Requests for Waiver of Section 76.1204(a)(1), also cited by Vonage, MVPDs sought a waiver to provide equipment with integrated security beyond the July 1, 2007 deadline. *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd. 11780 (2007).

<sup>6</sup> *Application filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extension of Time to Construct and Demonstrate Substantial Service*, Memorandum Opinion and Order, DA 08-867, ¶ 1 (2008).

circumstances were met.<sup>7</sup> Granting a waiver that provides parties more time to comply with the regulation is far different than granting a waiver that changes the actual requirement.

In the wireless microphone waiver cited by Vonage the Commission, in granting “the limited term” waivers, “stressed[ed] that these waivers are temporary and ... [enable them] to compile a record and consider more fully the issues and proposals in response to the Further Notice concerning [the issue presented by the waiver].”<sup>8</sup> Likewise, the waiver granted to SBCIS of section 52.15(g)(2)(i) of the Commission’s rules was only to be effective until the Commission adopted numbering rules regarding IP-enabled services.<sup>9</sup>

Subsequent to the grant of the SBCIS waiver – the same waiver Vonage seeks - the Commission considered the very question at issue in these waivers in the *VoIP LNP Order*. In that Order the Commission reaffirmed that only a carrier may access numbering resources directly from the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (PA). As the Commission stated, this is a well established principal “to ensure that the numbers are used efficiently and to avoid number exhaust.”<sup>10</sup> They determined that Interconnected VoIP providers that have not obtained license or certificate of public convenience and necessity from the relevant state are to make numbers available to their customers through commercial arrangements with carriers (i.e., numbering partners).<sup>11</sup> Therefore, the waiver granted to SBCIS should no longer be considered valid and, if the Commission decides to revisit the requirements it established for direct access to numbering resources, it should do so in a rulemaking proceeding, not by granting waivers such as the one requested by Vonage.

Respectfully submitted,

/s/ Karen Reidy

cc: Ann Stevens

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<sup>7</sup> See 47 CFR §1.946(e)(1).

<sup>8</sup> *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 643, ¶88 (2010)

<sup>9</sup> Order, *Administration of the North American Numbering Plan*, FCC 05-20, ¶ 1 (2005)(“SBCIS Waiver”).

<sup>10</sup> *VoIP LNP Order* at ¶ 20.

<sup>11</sup> *Id.*