WILTSHIRE & GRANNIS LLP

May 7, 2012

Ex Parte

Marlene H. Dortch
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: *Vonage's Petition for Limited Waiver*, CC Docket No. 99-200

Dear Ms. Dortch:

Vonage has long sought direct access to numbering resources and has demonstrated that good cause exists for Vonage's request for waiver of the Commission's numbering rules.[1] Vonage appreciates the time and careful consideration the Commission has given to this request, and understands, as well, the Commission and state commenters' concerns that numbering resources be responsibly assigned and managed. Vonage shares these concerns, and has accordingly sought a waiver that will be carefully conditioned to ensure high number utilization, improve the transparency of number use, and continue FCC and state oversight of numbering resources. By this filing, Vonage details its substantial agreement with conditions supported by state commenters.

Vonage also shows that concerns about number routing, intercarrier compensation, and number exhaustion raised by competitive carriers—carriers that stand to lose revenue if Vonage's waiver is granted and Vonage obtains numbers directly—are misplaced. Vonage will continue to route traffic consistent with existing industry guidelines and practices using commercially available routing solutions. Vonage's waiver will likewise not affect intercarrier compensation, as the Commission has already set clear rules that will govern Vonage's contemplated arrangements. Finally, Vonage notes that the Commission is more than competent to determine whether a petitioner is qualified to meet the responsibilities of gaining direct access to numbers. The CLEC Coalition's efforts to complicate this proceeding should be rejected as a transparent effort to delay Vonage's transition to IP interconnection and bill and keep in order to preserve CLEC profits.

For these reasons, and the reasons detailed below, Vonage asks that the Commission expeditiously grant its request for direct access to numbering resources.

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[1] *See* Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200 (filed Mar. 8, 2011) (citing *In the Matter of Administration of the North American Numbering Plan*, 20 FCC Rcd. 2957 (Feb. 1, 2005))("Mar. 8 Ex Parte").

1. Vonage Supports the States' Requested Conditions.

The states propose several conditions on any grant of numbering authority. Vonage understands that numbering resources are scarce and must be subject to safeguards in order to protect the public interest. Vonage has long acted as a careful steward of the numbering resources it has obtained indirectly, and will continue to do so if it is granted direct access to numbers. Accordingly, Vonage has already indicated its willingness to accept most conditions suggested by the states in this proceeding. Below, Vonage details each commenting states' requested conditions and notes its support. In addition, Vonage reiterates its commitment, made repeatedly in this proceeding,[2] to comply with the numbering authority the FCC has delegated to the states.

> Wisconsin and Nebraska: Wisconsin "supports . . . VoIP providers having direct access to numbering resources as long as VoIP providers are subject to the same numbering resource conditions currently imposed on traditional telecommunications carriers and SBCIS, including the FCC's number utilization and optimization standards, industry guidelines and practices, and the numbering authority delegated to the states."[3]
>
> *Vonage agrees that it would be appropriate to condition its requested waiver on compliance with the Commission's Part 52 Numbering Rules and the conditions imposed on SBCIS,[4] including the FCC's number utilization and optimization standards, industry guidelines and practices, and the numbering authority delegated to the states.[5]*

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[2] *See* Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200 at 2-3 (filed Feb. 9, 2012) ("Feb. 9 Ex Parte"); Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200 at 2-3 (filed Mar. 21, 2012) ("Mar. 21 Ex Parte"); Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200 at 1 (filed Apr. 6, 2012) ("Apr. 6 Ex Parte").

[3] Comments of the Public Service Commission of Wisconsin, CC Docket No. 99-200 at 1-2 (filed Jan. 25, 2012).

[4] Vonage seeks a minor modification of the facilities readiness requirement imposed on SBCIS; specifically, Vonage requests that it be permitted to demonstrate readiness through arrangements with competitive providers. *See* Feb. 9 Ex Parte at 4.

[5] *See* March 8 Ex Parte at n.4 (agreeing to conditions in the SBCIS waiver, including the "Commission's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices."); Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200 at 5-6 (filed Nov. 11, 2011) ("Nov. 11 Ex Parte") (seeking to facilitate Commission oversight and committing to industry-leading number utilization, compliance with other Commission numbering requirements to ensure appropriate numbering management, and providing a migration plan with regular reporting); Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200 at 1 (filed Dec. 1, 2011) ("Dec. 1 Ex Parte") (Marc Lefar, CEO of Vonage Holdings Corp., expressing Vonage's willingness to undertake additional conditions beyond those in the SBCIS waiver); Ex Parte Letter to Marlene Dortch, Secretary, FCC, CC Docket No. 99-200

Wisconsin suggests five additional conditions on Vonage's waiver:

1. Requiring the Petitioners to provide the relevant state commission with both regulatory and numbering contacts (name, telephone number, and e-mail address) at the time the Petitioners first request numbering resources in that state.

   Vonage agrees that it would be appropriate to condition its waiver on Vonage's provision of the requested information to states at the time that Vonage first requests numbering resources in a state.

2. Requiring the Petitioners to consolidate and report all of their numbering resources under their own unique Operating Company Number (OCN).

   Vonage agrees that it would be appropriate to condition its waiver on Vonage reporting all of its directly obtained numbering resources under a single OCN. Vonage also does not object to consolidating its numbering resources, whether directly or indirectly obtained, under a single OCN, to the extent that doing so is feasible. Alternatively, Vonage would not object to a requirement that it supplement its NRUF reports with an appendix detailing numbering resources and usage for numbering resources obtained from third parties.

3. Requiring the Petitioners to provide their customers with the ability to access all N11 numbers in use in a state.

   Vonage agrees that it would be appropriate to condition its waiver on Vonage providing access to all N11 numbers in use in a state, provided the state notifies Vonage of the N11 numbers in use in that state.

4. Requiring Vonage to obtain numbering resources from pooling rate centers.

   Vonage agrees that it would be appropriate to condition its waiver on Vonage obtaining numbering resources from pooling rate centers.

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at 2 (filed Dec. 6, 2011) ("Dec. 6 Ex Parte") (reiterating Vonage's commitment to comply with all reasonable conditions); Comments of Vonage Holdings Corp., CC Docket No. 99-200 at 1-2, 4, 7 (filed Jan. 25, 2012) ("Jan. 25 Comments") (noting Vonage's voluntary offer "to comply with additional conditions that ensure efficient number utilization, facilitate IP interconnection, and enable Commission oversight."); Feb. 9 Ex Parte at 2-3 (voicing Vonage's support for conditions requested the public service commissions in Wisconsin, Nebraska, and California where technically feasible."); Mar. 21 Ex Parte at 2 (stating that Vonage "reaffirmed its commitment to work with states on additional reasonable conditions to preserve this valuable [numbering] resource.")

5. Requiring Vonage to maintain the original rate center designation of all numbers in its inventory.

   Vonage agrees that it would be appropriate to condition its waiver on Vonage maintaining the original rate center designation of all numbers in its inventory.

Nebraska supports grant of waiver subject to the conditions proposed by Wisconsin.[6] Subject to the limited qualifications noted above, Vonage agrees that Wisconsin's conditions are appropriate.

California: California asks that VoIP providers that receive direct access to numbering resources "be subject to the same rules and authority, including authority delegated to the states, as other providers."[7] California notes that its authority over providers is necessary to ensure "prompt submissions of utilization reports, limitations on holding of reserved numbers, and return of unused or underutilized numbering resources."[8]

Vonage agrees that it would be appropriate to condition its waiver on Vonage's compliance with numbering authority delegated to the states.[9]

California also suggests that the FCC consider broader changes to the numbering rules in a rulemaking proceeding.

Vonage does not oppose a rulemaking, provided the Commission not postpone action on Vonage's longstanding waiver request pending the resolution of a rulemaking. Indeed, as Vonage has noted, granting Vonage's waiver request will provide the Commission with real-world data that will aid it in the rulemaking process.

Vonage further agrees that it would be appropriate to condition its waiver on compliance with two of California's suggested rule changes, with slight modifications. Specifically, Vonage agrees it would be appropriate for states to have the right to designate which rate centers are available to Vonage, provided this requirement (1) does not require Vonage or its customers to relinquish existing numbers, (2) does not prevent customers from porting numbers to Vonage from non-designated rate centers, and (3) is applied in a nondiscriminatory fashion to all VoIP providers. Vonage also agrees that it would be appropriate for Vonage to maintain 75% number utilization before obtaining growth numbering resources, as required by the Commission's Part 52 numbering rules.[10]

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6 *See* Comments of the Nebraska Public Service Commission, CC Docket No. 99-200 at 2 (filed Jan. 25, 2012).

7 Comments of the California Public Utilities Commission and the People of the State of California, CC Docket No. 99-200 at 4 (filed Jan. 25, 2012) ("California PUC Comments").

8 *Id.*at 6.

9 *See supra* at 1.

10 *See* 47 C.F.R. § 52.26(g)(3).

Pennsylvania: Pennsylvania has raised the concern that if Vonage's waiver is granted, Pennsylvania will not be able to ensure Vonage's compliance with state numbering authority.[11]

Vonage agrees that it would be appropriate to condition its waiver on Vonage's compliance with numbering authority delegated to the states.

NARUC: NARUC advocates two specific conditions; first, that states be given the ability to determine which rate centers are available to waiver recipients, and second, that waiver recipients be required to comply with the FCC's Part 52 numbering rules and the conditions imposed on SBCIS.[12]

Vonage's waiver request is expressly conditioned on compliance with the FCC's Part 52 numbering rules and the conditions imposed on SBCIS.[13] Vonage also agrees it would be appropriate for states to have the right to designate which rate centers are available to Vonage, provided this requirement (1) does not require Vonage or its customers to relinquish existing numbers, (2) does not prevent customers from porting numbers to Vonage from non-designated rate centers, and (3) is applied in a nondiscriminatory fashion to all VoIP providers.[14]

Vonage appreciates the states' careful attention to its request for direct access to numbers and their articulation of conditions necessary to ensure that Vonage's waiver does not endanger numbering resources, limit state authority, or harm the public interest. As detailed above, Vonage agrees that these conditions are reasonable and, with minor qualifications, stands ready to abide by the conditions proposed by the states.

2. Vonage's Waiver Does Not Present Routing Concerns.

Vonage's waiver will not create unusual routing concerns for call originated by providers that do not have IP interconnection arrangements with Vonage.[15] As Vonage and others have already demonstrated, the marketplace has developed products that enable call routing for

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[11] *See* Comments of the Pennsylvania Public Utility Commission, CC Docket No. 99-200, WC Docket Nos. 11-119, 01-92 at 7-8 (filed Oct. 6, 2011).

[12] *See* National Association of Regulatory Utility Commissioners ("NARUC") Request for Rulemaking, CC Docket No. 99-200 at 8 (filed Mar. 30, 2012).

[13] *See* Mar. 8 Ex Parte; Nov. 11 Ex Parte at 3; Dec. 1 Ex Parte; Dec. 6 Ex Parte at 2; Jan. 25 Comments at 1-2, 4, 7; Mar. 21 Ex Parte at 2.

[14] *See* Feb. 9 Ex Parte at 3; Mar. 21 Ex Parte at 2.

[15] We discuss only routing of calls originated by providers that do not have IP interconnection arrangements with Vonage because routing for IP interconnection arrangements will be agreed upon by Vonage and its IP interconnection partner.

providers that lack ubiquitous switches, and Vonage intends to rely on these or similar solutions as needed to ensure that all Vonage calls are successfully routed.[16] Neutral Tandem (now Inteliquent), for example, has noted the availability of competitive tandem products. Neutral Tandem further explained that Vonage can route its traffic by designating alternate tandems in the LERG as the homing tandems for its telephone numbers, just as many CLECs already do today.[17]

For example, if Vonage were to use a competitive tandem service, it could structure service and routing as follows. *First*, the competitive tandem provider would order trunks on Vonage's behalf (or use its existing trunks) from its switch to other carriers. *Second*, Vonage would establish separate CLLI Codes and LRNs on the competitive tandem provider's switch for the purpose of routing calls destined for Vonage telephone numbers (*i.e.* Vonage's telephone numbers would home on the competitive tandem provider's switch). *Third*, the competitive tandem provider would route traffic received at its tandem to Vonage's IP switch/point of interconnection over a SIP or TDM connection as needed. Solutions like this are already deployed in the market for CLEC customers, and will work for routing traffic to Vonage telephone numbers when the originating carrier does not have an IP interconnection arrangement with Vonage.

The CLEC Coalition also raises concerns about the impact of Vonage becoming a Code Holder of a pooled NXX.[18] Vonage notes, first, that its waiver request is conditioned on compliance with industry guidelines, including the Central Office Code Assignment Guidelines ("COCAG"), which details the responsibilities of Code Holders.[19] In any event, Vonage does not anticipate becoming a Code Holder, as Vonage does not anticipate ordering 10,000 number blocks. Rather, Vonage expects to order numbers in 1,000s blocks, and to promptly return numbers it does not immediately require. Indeed, Vonage has suggested that its waiver be subject to aggressive numbering utilization requirements that will, as a practical matter, dictate that Vonage order numbers in 1,000s blocks and promptly return unused numbers. Accordingly, Vonage would not object were the Commission to condition Vonage's waiver on Vonage's agreement not to become a Code Holder.[20]

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[16] *See* Jan. 25 Comments at 10-11; Feb. 9 Ex Parte at 3-4; Mar. 21 Ex Parte at 1-2; Apr. 6 Ex Parte; Comments of Neutral Tandem, Inc. in Support of Vonage's Petition for Waiver of the Commission's Rules Regarding Access to Numbering Resources, CC Docket No. 99-200 at 1 (filed Feb. 8, 2012) ("Neutral Tandem Comments").

[17] *See* Neutral Tandem Comments at 2. Peerless Network offers similar services.

[18] *See* Comments of Bandwidth.Com, Inc., Hypercube, LLC, Level 3 Communications, LLC, Pac-West Telecomm, Inc., and Comptel, CC Docket No. 99-200 at 9-10 (filed Jan. 25, 2012).

[19] *See gen'lly* CENTRAL OFFICE CODE (NXX) ASSIGNMENT GUIDELINES (COCAG) (JAN. 20, 2012), *avail. at* http://www.trainfo.com/products_services/tra/documents.html

[20] If the Commission imposes such a condition, Vonage notes that it may seek a modification of that condition in the event that Vonage seeks authority to become a Code Holder. Vonage recognizes that any such request would be subject to the same waiver test applicable here.

The CLEC Coalition and California raise similar concerns about the number of LRNs Vonage might require. These concerns are misplaced, however, as Vonage has numbers available to use as LRNs in all of its existing rate centers. Vonage would thus need LRNs only in the event it requests numbers from a new rate center. Even then, Vonage would require only a handful of LRNs, as it would require only one LRN per rate center for each Vonage switch (or transit provider's switch), a number that could be as few as four and is likely to be at most 50. This is, in other words, not the problem of 1 LRN per LATA per rate center that California cites as raising number exhaust concerns.[21] To put the scope of this issue in perspective, there are currently approximately 50,000 LRNs in service. Vonage's addition of 50 (at most) LRNs per new rate center it enters will not materially affect the number of LRNs in service.

California raises a related concern that Vonage could strand numbers in rural rate centers where it requests LRNs. Because Vonage will be subject to a 65% overall number utilization requirement, it will not be free to strand thousands of numbers in rural rate centers where it has LRNs lest it risk its continued access to numbering resources. Instead, Vonage will return numbers wherever and whenever it is able to do so.

In short, Vonage's waiver is carefully tailored to foster efficient number utilization. By granting Vonage's waiver with the conditions suggested by Vonage, the FCC will ensure that Vonage maintains at least 65% overall number utilization and will enable greater transparency into number use. As Wisconsin notes, the indirect assignment of numbers hampers the states' ability to monitor and manage number use. Vonage's direct access to numbers and NRUF reporting will provide states like Wisconsin greater transparency into number use than is available today. Vonage's requested waiver therefore would deliver public interest benefits beyond those the Commission found when it granted the SBCIS waiver.

3. Vonage's Waiver Will not Impact the FCC's Established Intercarrier Compensation Regime.

The CLEC coalition next raises concerns about intercarrier compensation. These concerns are unfounded, and overlook the Commission's clear guidance on compensation for VoIP traffic. Today, Vonage does not collect intercarrier compensation. Instead, its CLEC partners collect intercarrier compensation on Vonage's traffic. Vonage's waiver will not significantly alter this regime. Where Vonage continues to rely on CLEC partners (*i.e.* when Vonage does not have a direct IP to IP interconnection arrangement), those CLECs will be entitled to collect intercarrier compensation pursuant to the Commission's rules for functions they or Vonage perform. And, as the Wireline Competition Bureau recently reiterated,[22]

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[21] *See* California PUC Comments at 5, 8-9.

[22] *See USF/ICC Transformation Order Clarification Order*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109 CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208(rel. Feb. 3, 2012).

Vonage's CLEC partners may not "charge for functions not performed" by the CLEC or by Vonage.[23]

When Vonage enters into direct interconnection agreements with other IP providers, it intends to seek bill and keep arrangements.[24] This is consistent with the Commission's stated goal of moving all compensation to a bill and keep regime, a goal that the Commission has found serves the public interest.[25] Indeed, by moving as much traffic as possible into bill and keep arrangements, Vonage will merely accelerate the transition the Commission has already mandated.

4. The CLEC's Remaining Concerns are Baseless.

Finally, the CLEC Coalition raises concerns that there is no "litmus" test for the Commission to apply to determine whether Vonage is qualified to receive numbers. But this assertion underestimates the FCC's ability to evaluate the qualifications of Vonage and other petitioners. The Commission routinely determines whether parties before it are qualified to receive waivers, a determination the Commission is eminently qualified to make. As the Commission makes that determination, Vonage stands by its history of regulatory compliance and of responsible management of numbers it has received indirectly, as well as the substantial regulatory and market oversight of Vonage as a public company. In addition, Vonage has proposed extensive conditions, including a 65% overall number utilization requirement and ongoing reporting, that will ensure that Vonage's direct access to numbers improves number utilization and transparency.

Similarly, the CLEC Coalition suggests Vonage should be required to become a certificated carrier in every state where it seeks numbering resources. This request ignores the Commission's determination that it would be "impossible" for to Vonage comply with traditional state certification requirements.[26] The CLEC Coalition also fails to explain why this step is necessary in light of the availability of numbering resources to wireless carriers, carriers that are not state certified. The Commission has repeatedly demonstrated its ability to impose effective national regulation in areas such as numbering, and Vonage has already indicated that it believes it appropriate to condition any waiver on Vonage's compliance with numbering authority delegated to the states. Requiring state certification (and the many other requirements that flow from state certification) would simply add an unnecessary obstacle to the availability of numbering resources.

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[23] 47 C.F.R § 51.913(b).

[24] Vonage will, of course, negotiate in good faith with providers that prefer alternative arrangements.

[25] *See* CAF Order, ¶¶740-759.

[26] *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd. 22404 (2004), *aff'd sub nom. Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

Vonage stands ready to adopt IP interconnection[27] and move to bill and keep for intercarrier compensation,[28] goals the Commission has endorsed. The CLEC Coalition would, instead, lock Vonage into a legacy numbering, networking, and regulatory regime simply to protect its own intercarrier compensation and numbering revenue. The Commission should not countenance this plainly anti-competitive effort to preserve profit at the expense of the public interest.

Conclusion

Vonage has demonstrated that its requested waiver serves the public interest, has detailed its agreement with conditions proposed by the states, and has answered routing and intercarrier compensation concerns raised by commenting parties. Vonage urges the Commission to act on the extensive record before it and expeditiously grant Vonage's requested waiver.

If you have questions or require any additional information, please do not hesitate to contact me at (202) 730-1346.

Sincerely,

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Rachel W. Petty

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[27] *See id.* ¶ 1335.

[28] *See id.* ¶¶ 740-759.