



1717 Pennsylvania Avenue,  
N.W.  
12<sup>th</sup> Floor  
Washington, D.C. 20006

Tel 202 659 6600  
Fax 202 659-6699  
www.eckertseamans.com

James C. Falvey  
jfalvey@eckertseamans.com  
Phone: 202 659-6655

June 13, 2012

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

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On June 11, 2012, Erin Boone of Level 3 Communications, LLC, Greg Rogers of Bandwidth.com, Karen Reidy of COMPTTEL, and I ("CLEC Participants") met with Priscilla Delgado Argeris, Wireline Legal Advisor to Commissioner Rosenworcel. In the meeting, we discussed the significant industry concerns about a series of unresolved regulatory issues in connection with the petitions of Vonage and other petitioners ("Petitioners") for limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources. CLEC Participants emphasized that the granting of the Petitions would be discriminatory, essentially providing carrier rights to certain non-carriers that do not also shoulder carrier obligations.

The CLEC Participants expressed their urgent concern that neither Vonage nor any other Petitioner has met the "heavy burden" necessary to demonstrate that "special circumstances" warrant deviation from the Commission's rules.<sup>1</sup> As CLEC Participants have highlighted in

---

<sup>1</sup> The Petitioners face the same "heavy burden" as other petitioners to obtain a waiver of the Commission's rules: "Commission rules are presumed valid . . . and *an applicant for waiver bears a heavy burden*. Waiver of the Commission's rules is therefore appropriate *only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.*" *In the Matter of Administration of the North American Numbering Plan*, CC Docket 99-200, Order, CC Docket 99-200, ¶ 3 (rel. Feb. 1, 2005) ("*SBCIS Waiver Order*") (citations omitted, emphasis added).

previous ex parte meetings and filings,<sup>2</sup> there are a number of critical industry concerns that must be addressed before number resources are directly assigned to non-carriers.

There is no question that granting direct access to Vonage or other Petitioners will accelerate number exhaust, as recently highlighted by NARUC in its June 1 ex parte.<sup>3</sup> Vonage itself, in trying to explain that obtaining direct access will not lead to number exhaust, has only served to highlight that it lacks the requisite numbering expertise to be given direct access to numbers.<sup>4</sup> The ATIS Local Routing Number (“LRN”) Assignment Practices are clear: “The LRN must be selected and assigned from a valid NPA/NXX that has been *uniquely assigned* to the service provider by the Central Office Code Administrator and published in the LERG Routing Guide.”<sup>5</sup> Nevertheless, Vonage still claims that by having other carriers’ numbers ported to Vonage, those numbers can then be used to establish Vonage LRNs. But Vonage still does not understand the ATIS rules: ported numbers are not “uniquely assigned” to Vonage and simply cannot be used to establish LRNs. Because Vonage does not understand these basic rules and procedures, it completely miscalculates the enormous adverse effect that granting the Petitioners’ waivers would have on number exhaust. This accelerating effect on number exhaust has also been repeatedly raised in this proceeding by both NARUC and state commissions.<sup>6</sup> Additionally, Vonage’s continued demonstration that it lacks a critical prerequisite to obtaining direct access to number resources—a sufficient understanding of industry numbering rules and guidelines—is itself grounds for denying its Petition.

CLEC Participants also highlighted that there are a series of unanswered issues connected to the granting of such waivers that will lead to new disputes and uncertainty. For example, the Commission has never addressed the fact that carriers do not have a statutory obligation to port to non-carriers. In addition, given that the Commission is in the midst of a

---

<sup>2</sup> See, e.g., Ex Parte Letter from James C. Falvey, Counsel to CLEC Coalition, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 (June 6, 2012); Ex Parte Letter from James C. Falvey, Counsel to CLEC Participants, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 (May 24, 2012) (“*CLEC Participants May 24 Ex Parte*”); Ex Parte Letter from James C. Falvey, Counsel to CLEC Participants, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 (May 3, 2012); Ex Parte Letter from James C. Falvey, Counsel to CLEC Participants, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 (April 13, 2012); *In the Matter of Vonage Holdings Corp. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, CC Docket 99-200, Comments of Bandwidth.com, Hypercube, LLC, Level 3 Communications, LLC, Pac-West Telecomm, Inc., and COMPTel (Jan. 25, 2012).

<sup>3</sup> Ex Parte Letter from James Bradford Ramsay, General Counsel, NARUC General Counsel, to Marlene H. Dortch, Secretary, FCC, at 7-9 (June 1, 2012) (“*NARUC June 1 Ex Parte*”).

<sup>4</sup> The recent May 24, 2012 ex parte letter filed by CLEC Participants provides significant detail as to Vonage’s lack of numbering expertise. *CLEC Participants May 24 Ex Parte*, at 2-5.

<sup>5</sup> ATIS Location Routing Number (“LRN”) Assignment Practices, ATIS Standard ATIS-0300065, § 4 (Sept. 30, 2011) (“*ATIS Assignment Guidelines*”) (emphasis added).

<sup>6</sup> See, e.g., *NARUC June 1 Ex Parte*, at 7-9; *In the Matter of Petitions of SmartEdgeNet, LLC and Millicorp, LLC for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, CC Docket No. 99-200, Comments of the California Public Utilities Commission and the People of the State of California, at 4-8 (May 8, 2012).

critical *FNPRM* concerning the future of industry interconnection, the Commission must avoid adding unnecessary confusion before even the basic questions presented in the *FNPRM* are addressed. And although the Commission has added some clarity with respect to intercarrier compensation for VoIP-PSTN traffic through its *Connect America Fund Order*, Vonage has never committed to making any intercarrier compensation payments that would apply to its traffic.<sup>7</sup>

CLEC Participants also emphasized that the Commission cannot impose waiver conditions on a third party. For example, the Commission cannot impose conditions on Vonage that control the intercarrier compensation obligations of the carriers that exchange traffic with Vonage. Nor can the Commission in this waiver proceeding impose an obligation on other carriers to port numbers to Vonage. Only revised rules, developed in a rulemaking proceeding, can have broad application to all carriers and VoIP providers.

Not surprisingly, AT&T and Verizon, as the two most dominant carriers in the industry, are supportive of the Petitions because they are eager to create a new, parallel regulatory regime devoid of critical pro-consumer and pro-competition protections. While advocating for fundamental industry change, neither dominant carrier has attempted to address the series of clarifications that would have to be made to the Commission's rules if the Commission were to consider giving direct access to number resources to Vonage or other Petitioners.

When the *SBCIS Waiver Order* was granted seven years ago, Commissioner Copps said that the decision “neglects the need for broader reform that could accommodate other IP service providers. It puts this off for another day, preferring instead to address what may soon be a stream of wavier petitions on this subject.”<sup>8</sup> Commissioner Adelstein agreed:

these issues would be more appropriately addressed in the context of the Commission's IP-Enabled Services rulemaking. Addressing this petition through the IP-Enabled Services rulemaking would allow the Commission to consider more comprehensively the number conservation, intercarrier compensation, universal service, and other issues raised by commenters in this waiver proceeding. It would also help address commenters' concerns that we are setting IP policy on a business plan-by-business plan basis rather than in a more holistic fashion.<sup>9</sup>

---

<sup>7</sup> Vonage does state that it will team up with its “CLEC partners” to ensure that they will continue to *collect* intercarrier compensation. Ex Parte Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, CC Docket 99-200, at 7 (May 7, 2012) (“Vonage May 7 Ex Parte”). But Vonage will not commit that either Vonage or its CLEC partners will *pay* intercarrier compensation associated with Vonage's traffic.

<sup>8</sup> *In the Matter of Administration of the North American Numbering Plan*, CC Docket 99-200, Order, Concurring Statement of Michael J. Copps (Feb. 1, 2005) (“*SBCIS Waiver Order*”).

<sup>9</sup> *SBCIS Waiver Order*, Concurring Statement of Jonathan S. Adelstein.

Ms. Marlene H. Dortch  
June 13, 2012  
Page 4 of 4

CLEC Participants emphasized that granting VoIP providers direct access to number resources on a waiver basis will lead to amplified regulatory confusion and, at a minimum, a proliferation of complaints across the industry. If the Commission intends to adopt this new model, it must at least pursue it in an orderly and nondiscriminatory rulemaking proceeding.

If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey

James C. Falvey  
*Counsel for CLEC Participants*

cc: Priscilla Delgado Argeris  
Michael Steffen  
Sharon Gillett  
Travis Litman  
Angela Kronenberg  
Christine Kurth  
Matthew Berry