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June 25, 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 21, 2012, Greg Rogers with Bandwidth.com, Inc., Erin Boone with Level 3 Communications, LLC, Karen Reidy with COMPTTEL (collectively, "CLEC Participants"), and I met with Matthew Berry, Chief of Staff for Commissioner Pai, to discuss the petitions of Vonage and other non-carriers ("Petitions") for limited waiver of Section 52.15(g)(2)(i) of the Commission's rules regarding access to number resources.

The CLEC Participants focused on the discriminatory impact of permitting only one provider, or a small group of providers, to obtain direct access to number resources without becoming a state certificated carrier, as currently required by Commission rules.¹ We emphasized that because the Commission has not established a clear standard as to when a non-carrier would be considered qualified to obtain direct access to number resources, the Commission is opening the door to a steady stream of unqualified VoIP providers obtaining numbers without the requisite expertise to not only manage numbers, but also to undertake other

¹ 47 C.F.R. 52.15(g)(2)(i).

critical tasks, such as call routing.² Vonage itself has demonstrated that it does not have an adequate understanding of numbering issues, as indicated by its confusion over the requirements to establish a Local Routing Number ("LRN").³ Vonage's response to this criticism—that it will use ported numbers to establish LRNs—is in clear violation of the ATIS *Local Routing Number ("LRN") Assignment Practices* which require that an "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."⁴

CLEC Participants also indicated that they share substantial agreement concerning many of points made by Bandwidth.com in its recent waiver petition.⁵ The *Bandwidth.com Petition* demonstrates that, if waivers are granted to one provider, other providers, including some who currently operate as regulated carriers, will be quick to insist on being granted the same privileged regulatory status as other successful petitioners. The Commission would either be acting in a discriminatory manner in favor of Vonage (or other select providers) or effectively changing a rule through an ad hoc waiver process rather than a rulemaking, which is the procedurally appropriate mechanism for rule changes. The waiver process is particularly inapt given the industry-wide impacts on number exhaust, routing, number portability, interconnection, and intercarrier compensation. Moreover, carrier status provides regulators the tools necessary to impose important safeguards on the assignment of what is a valuable and scarce resource.⁶

Granting the Petitions of Vonage and others would have widespread industry ramifications that cannot be contained or controlled by placing conditions on Vonage. CLEC Participants have previously indicated that granting the Petitions would clearly harm consumer and other public interests due to the adverse impact in several key areas:

Number Exhaust: Whereas today, one carrier can serve hundreds of VoIP providers with a single LRN, if each of those VoIP providers had to establish its own LRN in every LATA, each of the hundred would have to obtain a separate 10,000 block in each LATA where

² State commissions typically require that a provider be financially, managerially, and technically qualified before allowing it to become a carrier. This requires a demonstration that management personnel have adequate telecommunications expertise, and that they have a track record of compliance with rules and regulations in other states.

³ See Ex Parte Letter from James C. Falvey, Counsel for CLEC Coalition, to Marlene H. Dortch, CC Docket No. 99-200, 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, at 2-5 (May 24, 2012).

⁴ ATIS Location Routing Number ("LRN") Assignment Practices, ATIS Standard ATIS-0300065, § 4 (Sept. 30, 2011) ("ATIS Assignment Guidelines") (emphasis added).

⁵ *In the Matter of Administration of the North American Numbering Plan, Bandwidth.com Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, CC Docket No. 99-200, Petition for Limited Waiver (filed June 13, 2012) ("*Bandwidth.com Petition*").

⁶ See, e.g., *supra* n. 2.

they intend to serve. Vonage fails to understand the magnitude of this impact because it is still laboring under the misconception that a provider can use ported numbers to establish an LRN.

Number Portability: The FCC's 2007 Number Portability Order reiterated and reinforced the rule, two years after the AT&T-IS (formerly SBC-IS) waiver, that only carriers can obtain numbers,⁷ and that Order only addressed circumstances where a VoIP provider had a numbering partner that was a carrier.⁸ This is consistent with the Telecom Act, which only creates a statutory obligation to port numbers "when switching from one telecommunications *carrier* to another," and to users of "*telecommunications services*."⁹ There is no legal requirement for carriers to port numbers to non-carriers or to providers of services that are potentially not considered "telecommunications services." Furthermore, creating a system where many numbers are not subject to number porting would be confusing and contrary to the public interest.

Routing: It is not clear that calls will be routed properly and will not be dropped. Vonage has incorrectly claimed that it will rely upon a Level 3 product for routing, but that product does not accomplish the type of local routing addressed by the CLEC Participants in recent ex partes.¹⁰ Vonage has also not explained how it will route its traffic that will not be routed through its wholesale carrier partners.

IP Interconnection: Vonage hold out the carrot that they will be able to negotiate successfully IP interconnections agreements if its petition could just be granted. The CLEC Participants have addressed this issue at length in their June 6 ex parte letter to the Commission.¹¹ In short, however, Vonage has never provided the specifics necessary for parties to respond, and appears to be attempting to circumvent the issues being comprehensively considered in the pending Further Notice of Proposed Rulemaking¹² ("*FNPRM*"). Those issues must be addressed in a rulemaking before non-carriers are permitted direct access to numbers.

⁷ "Interconnected VoIP providers that have not obtained a license or certificate of public convenience and necessity from the relevant states or otherwise are not eligible to receive numbers directly from the administrators may make numbers available to their customers through commercial arrangements with carriers (i.e., numbering partners)." *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, ¶ 20 (rel. Nov. 8, 2007) ("*VoIP Number Portability Order*").

⁸ *VoIP Number Portability Order*, ¶ 34.

⁹ 47 U.S.C. § 153(a)(46).

¹⁰ See Ex Parte Letter from James C. Falvey, Counsel for CLEC Participants, to Marlene H. Dortch, CC Docket No. 99-200, at 3 (April 13, 2012).

¹¹ See Ex Parte Letter from James C. Falvey, Counsel for CLEC Coalition, to Marlene H. Dortch, CC Docket No. 99-200, 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, at 2-5 (June 6, 2012).

¹² See *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 1028-1403(Nov. 18, 2011) ("*FNPRM*").

Intercarrier Compensation: The Commission has just recently addressed the treatment of VoIP-PSTN traffic in the *Connect America Fund Order*. Permitting a non-carrier to obtain numbers could immediately muddy the waters again and will lead to arbitrage by opportunistic VoIP providers. Vonage has never committed to making any intercarrier compensation payments that would apply to its traffic. Vonage does state that it will team up with its “CLEC partners” to ensure that they will continue to *collect* intercarrier compensation¹³ but Vonage will not commit that either Vonage or its CLEC partners will *pay* intercarrier compensation associated with Vonage’s traffic.

These industry-wide ramifications highlight why a waiver petition is simply the wrong procedural vehicle, even if the Commission were to decide that giving non-carrier VoIP providers direct access to number resources is a workable, common sense, or legally defensible policy. The Commission cannot address these key issues through waiver conditions applicable only to Vonage or other petitioners. In order to establish industry-wide rules regarding interconnection agreements, on what porting obligations apply to all carriers, on call routing, and as to what payments must be made by all providers, the Commission would have to proceed by a general rulemaking applicable to all providers, and not through conditions placed only on Vonage. The Commission should therefore deny these petitions and implement what would effectively be rule changes through a rulemaking.

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

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cc: Matthew Berry
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¹³ 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”).