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June 26, 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***

Dear Ms. Dortch:

On June 20, 2012, Terry Peck, CEO of SmartEdgeNet (“SEN”), and I met with Marilyn Jones, William Dever, Ann Stevens, Sanford Williams and Kiara Williams of the Competition Policy Division of the Wireline Competition Bureau (“WCB”), along with Lisa Gelb, Deputy Chief, WCB, and Travis Litman, Legal Advisor, WCB, to discuss SEN's Petition for Waiver of Section 52.15(g)(2)(i) of the Commission's Rules. On June 21, 2012, I filed an *ex parte* notice of the meeting.

During the meeting, Ms. Gelb asked what states, if any, allow enhanced service providers (“ESPs”) to permissively obtain a Certificate of Public Convenience and Necessity (“CPCN”). I stated that I did not believe any state could allow such a request because regulation of ESPs had been preempted by the Commission<sup>1</sup> but I also stated that I would look into the question and provide a response. This letter is my response.

SEN is unaware of any state that allows ESPs to permissively obtain a CPCN. SEN has confirmed, however, that at least 24 jurisdictions have precluded their utility commissions from regulating VoIP service (including issuing CPCNs), *viz.*: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, District of Columbia and Wisconsin.

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<sup>1</sup> See *e.g.*, *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 88 F.C.C.2d 512, n.34 (1981).

Ms. Marlene H. Dortch

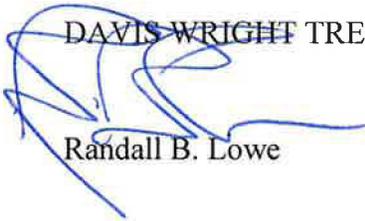
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In short, even if a state did permit a permissive CPCN filing, the fact that 24 jurisdictions have prohibited the regulation of VoIP services means that VoIP providers, such as SEN, cannot apply for a CPCN to provide VoIP services in those jurisdictions. As a result, and unlike its non-IP-enabled competitors, SEN cannot obtain access to crucial number resources. SEN is thereby crippled in its attempt to deploy its IP-enabled services because it either needs to drop VoIP service from its suite of services (which may cause it to cease providing any IP-enabled service) or it must rely on third parties, such as its competitors, for telephone numbers and for higher cost retail services, such a PRI and DID services.

SEN again submits, therefore, that the requirement to first obtain a CPCN before it can gain access to number resources is not, at least in this instance, in the public interest. To the contrary, imposing the requirement on SEN is detrimental to the public interest because the consumer is either denied the benefit of IP-enabled services, such as VoIP, or it must pay a higher price for services that should be lower cost.

Sincerely,

DAVIS WRIGHT TREMAINE LLP

Randall B. Lowe

cc.: William Dever  
Lisa Gelb  
Marilyn Jones  
Travis Litman  
Ann Stevens  
Kiara Williams  
Sanford Williams