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EX PARTE

July 20, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 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 July 18, 2012, Andrea Pierantozzi, Vice President, Voice Services (via telephone), Mack Greene, Director, Voice Services (via telephone), and the undersigned, of Level 3 Communications, LLC ("Level 3") and Jim Falvey, with Eckert Seamans, counsel to Level 3, met with Lisa Gelb, Randy Clarke, Travis Litman, Ann Stevens, Rhonda Lien, Sanford Williams, Marilyn Jones, and Merry Wulff of the Wireline Competition Bureau. The purpose of the meeting was to follow-up on Level 3's July 5, 2012 ex parte letter answering questions the Bureau had regarding Level 3's concerns about the impact that a Commission decision to grant voice over Internet protocol ("VoIP") provider petitions ("Petitions") for limited waiver of Section 52.15(g)(2)(i),¹ of the Commission's rules to obtain numbering resources directly from the North American

¹ 47 C.F.R. § 52.15(g)(2)(i).

Numbering Plan Administrator (“NANPA”) could have to intercarrier compensation (“ICC”). Specifically, the Bureau inquired about the circumstances under which a local exchange carrier (“LEC”) would be inclined to withhold payment of ICC when a VoIP provider is the holder of the telephone number (“TN”) in a given call flow, rather than a LEC.

Level 3 discussed with the Bureau the following ICC and interconnection-related questions raised by the potential grant of VoIP provider waivers, such as whether: 1) Vonage or any other VoIP provider granted a waiver will be required to participate in arbitration before a state commission if negotiations of a commercial arrangement for the exchange of local traffic and interconnection fails between the VoIP provider and a carrier seeking to interconnect with it directly; 2) VoIP providers receiving waivers will have to establish interconnection agreements (“ICAs”) with the incumbent local exchange carriers (“ILECs”) in each area where they receive numbers, so that other carriers will be able to indirectly interconnect with them; 3) such ICAs will be publicly filed at the state commissions or otherwise to ensure that ILECs do not discriminate against or play favorites with particular providers; 4) the state commission mandated cost-based reciprocal compensation rate will apply if a carrier were to make a bona fide request for interconnection with a VoIP provider that receives a waiver.²

Level 3 also asked whether all VoIP providers granted waivers will be required to submit Jurisdiction Information Parameter (“JIP”), the Signaling System 7 field widely used to identify the originating carrier for reciprocal compensation purposes. In its July 16 ex parte, Vonage asserts that Level 3’s concerns about reciprocal compensation are addressed by the fact that Vonage will pass calling party number (“CPN”) unaltered, which will allow Level 3 and other carriers to “route and bill Vonage traffic as local.”³ However, Level 3 noted that with the advent of LNP, JIP is the means that all incumbent tandem providers use to communicate in the call stream to the terminating carrier who the originator of the call was for local and intraLATA calls. Level 3 stated that is not sure how local calls exchanged with VoIP providers who receive waivers will be identified for reciprocal compensation purposes, if those providers do not provide the appropriate signaling to make identification possible. Given that VoIP providers are not carriers, and arguably are not under the Commission’s current rules required to pay reciprocal compensation, or entitled to collect it, they lack the incentive to ensure that their calls are properly identified.

² See *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 at §§ 67-77 (2001) (“*ISP Remand Order*”). See also 47 C.F.R. § 51.711(a)(2).

³ Letter from Brita D. Strandberg, counsel to Vonage to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 (filed Jul. 16, 2012) at 2 (“*Vonage July 16 Ex Parte*”).

The July 16 Vonage ex parte also begs the question as to what entity Vonage expects to be charged when carriers “bill Vonage traffic as local.”⁴ It is unclear whether Vonage is stating that, as the entity directly assigned the numbers, it will pay for the termination of such traffic, or whether it is volunteering its carrier partners to make payment on calls from Vonage numbers, which is a commitment that only those partners can make. As such, Level 3 argues that a rule change that should be established via a comprehensive rulemaking.

Level 3 also rebutted Vonage’s recent argument that Level 3’s ability to collect access charges will not be impacted by the grant of the waivers in question. Specifically, Vonage states that “the terminating LEC will continue to bill terminating access to the [interexchange carrier] IXC, delivering the traffic using IXC [carrier identification codes] CIC codes.”⁵ However, Level noted that VoIP traffic is frequently exchanged via trunks that do not always have CIC codes. Without a CIC code, or another way to identify that the traffic is coming from Vonage, or another VoIP provider that obtains a waiver, Level 3 stated that it is extremely unclear how billing for such calls would be accomplished.

Level 3 also addressed the Bureau’s questions about various call flows in which Level 3’s ability to collect ICC could be impacted by the grant of the waivers in question, specifically with regard to its status as a wholesale provider. Level 3 explained that as one of the nation’s largest competitive local exchange carriers, (“CLECs”) serving wholesale and enterprise customers, with tens of millions of active telephone numbers assigned to those customers, it is extremely concerned that it may be unable to collect appropriate ICC for all calls exchanged with VoIP providers that obtain waivers. Level 3 explained that it serves numerous retail enterprise customers, and also noted that while it does not directly serve residential customers, it indirectly serves millions of residential customers through the cable and VoIP service provider customers who use Level 3 to reach their residential subscribers. In addition, under current Commission rules, when Level 3 acting as a wholesale carrier bills another wholesale carrier serving a VoIP provider, it knows that the access and reciprocal compensation rules applicable to carriers will apply. If the number moves to VoIP provider, Level 3 is very concerned that carriers will deny payment on the basis that the number is not assigned to them, and that the VoIP provider will deny payment given that it is not a carrier.

Finally, Level 3 reiterated⁶ that in addition to the ICC and interconnection issues raised by the specter of such waivers, that there are many other Commission rules potentially impacted by the waivers, such as the Commission’s foreign affiliate and international transfer of control rules that currently govern the transfer of control of

⁴ *Id.*

⁵ Vonage July 16 Ex Parte at 1.

⁶ *See* Letter from James C. Falvey, counsel to CLEC Coalition, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket 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 7 (filed May 24, 2012).

carriers to foreign affiliates.⁷ Level 3 stated that VoIP providers that obtain waivers, effectively allowing them to function as carriers, would not be subject to the Commission's foreign ownership safeguards. Level 3 therefore urged the Bureau to work with the International Bureau and relevant agencies outside the Commission to ensure that proper safeguards are established prior to the grant of any further waivers. Level 3 urged that this should include a Commission rulemaking to address this issue, in lieu of proceeding on an *ad hoc* waiver basis. Level 3 stated that a rulemaking is the logical, and ultimately, only nondiscriminatory next step for the Commission to take in considering VoIP provider access to TNs.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Sincerely,

/s/ Erin Boone

Erin Boone

cc: Lisa Gelb
Randy Clarke
Travis Litman
Rhonda Lien
Ann Stevens
Sanford Williams
Marilyn Jones
Merry Wulff

⁷ See 47 U.S.C § 63.11; 63.18.