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August 9, 2012

Notice of Ex Parte

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 August 7, 2012, Jeff Storey, President and Chief Operating Officer, Michael Mooney, General Counsel, Regulatory Policy, Sara Baack, Senior Vice President, Voice and Collaboration Services, and Erin Boone, Senior Corporate Counsel, Federal Regulatory Affairs, all with Level 3 Communications, LLC; John Murdock, President, and Greg Rogers, Deputy General Counsel, both with Bandwidth.com; and the undersigned ("Carrier Participants") met with Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel. In the meeting, we discussed the Carrier Participants' urgent concerns with several voice over Internet protocol ("VoIP") provider ("Petitioners") petitions for limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources.

The Carrier Participants emphasized in the meeting that granting a waiver to the Petitioners (or any one of them), would be discriminatory and would give them an unfair and unearned advantage in the marketplace over their competitors. Carriers like the Carrier Participants have made the initial and continue to make the significant ongoing investments in the legally mandated regulatory infrastructure which is required to become and remain carriers, a longstanding prerequisite to obtaining direct access to number resources. The Commission has established that "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.”¹ The Petitioners have failed to meet the heavy burden to show that special circumstances warrant a deviation from the Commission’s rules. Nothing prevents the Petitioners from becoming carriers if they desire direct access to numbering resources, and everything they claim to be able to do with direct access to numbering resources they can do with numbering resources obtained via their carrier numbering partners. In the end, these waiver requests have little to do with anything other than the Petitioners’ efforts to avoid costs in a way that would provide them with a special competitive advantage over every provider unable to do the same.

If the Commission is inclined to allow non-carriers direct access to phone numbers, the right way to accomplish that is by denying the petitions and issuing a notice of proposed rulemaking. Conducting a rulemaking proceeding would not only provide equal treatment to all providers (both as to the process for changing the rules and under the rules resulting from that process), but it would also give the industry adequate notice and lead-time to make operational and business plan adjustments. A wide range of industry parties and regulators, including NCTA, NTCA, COMPTTEL, NARUC, the California Commission, and the Pennsylvania Commission, are supportive of this approach.

The Carrier Participants also emphasized the need for a rulemaking to ensure that operational and regulatory complexities are fully considered before non-carriers are issued phone numbers. While certain of the Petitioners want to make call routing appear simple, the fact is that it is not. Even when carriers with decades of operational experience interact, it can be extremely challenging to ensure successful interoperability. These challenges include proper call routing, ensuring call completion, and ensuring that customers can keep their local dialing patterns. If new providers that lack any operational experience are to be introduced into the current ecosystem, it is critical that an orderly foundation is first established through a rulemaking proceeding.

The Carrier Participants have and will continue to raise critical issues relating to number exhaust, number portability, and intercarrier compensation that affect the entire industry and cannot be adequately addressed in an ad hoc waiver proceeding. If the Commission proceeds by issuing individual waivers, there is a danger of a regulatory race to the bottom, where carriers seek to redefine and restructure their companies solely for the purpose of gaining preferred regulatory treatment. Allowing non-carrier providers direct access to numbers without clearly defined rules will also harm consumers, as operational issues translate directly into consumer outage and service quality issues.

Importantly, providing direct access to phone numbers to any of the Petitioners will not advance the industry-wide transition to IP interconnection, as certain Petitioners have claimed. Granting one non-carrier direct access to phone numbers will have no impact on the intransigence of the largest ILECs, which have to date been resistant to IP interconnection with

¹ *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).

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their CLEC competitors. The best way to promote IP interconnection is by addressing the issue in the pending *Connect America Fund* Further Notice of Proposed Rulemaking² on a nondiscriminatory basis, not by providing carrier numbering rights to select non-carriers. The Commission should therefore deny the pending waiver petitions, and initiate a rulemaking proceeding to address the complex issues implicated by the direct assignment of phone numbers to non-carriers in a nondiscriminatory manner.

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 proceedings. 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 Carrier Participants

cc: Priscilla Delgado Argeris
Michael Steffen
Julie Veach
Lisa Gelb
Angela Giancarlo
Angela Kronenberg
Matthew Berry

² *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, (Nov. 18, 2011).