

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Administration of the North American Numbering Plan)	CC Docket No. 99-200
)	
Bandwidth.com Inc. Petition for Limited Waiver of Section 52.15(g) of the Commission's Rules Regarding Access to Number Resources)	
)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association¹ (“NTCA”) submits these comments in response to the Public Notice² seeking comment on the Petition for Limited Waiver filed by Bandwidth.com (“Bandwidth”). In its Petition, Bandwidth seeks access to telephone numbers as an unregulated enhanced service provider (“ESP”), consistent with a number of pending petitions that seek similar relief.³ If its petition were granted, Bandwidth asserts that it would be better positioned to compete with these other entities through level placement on a deregulated playing field, rather than being forced to incur the costs and burdens of compliance with carrier-certification requirements.⁴

¹ NTCA is an industry association representing nearly 600 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (“LECs”) and many of its members provide wireless, cable, Internet, satellite, video, and/or long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (the “Act”).

² *Wireline Competition Bureau Seeks Comment on Bandwidth.com Inc. Petition for Limited Waiver of Commission’s Rules Regarding Access to Telephone Numbers*, CC Docket No, 99-200, DA 12-1228, Public Notice (rel. Aug. 9, 2012).

³ See Bandwidth Petition at n.1 (listing pending petitions).

⁴ *Id.* at 8.

Bandwidth's Petition accentuates the "Pandora's box" that would be opened by grants of "one-off" waivers that permit service providers to sidestep regulation and yet still obtain the benefits of carrier status. Indeed, NTCA highlighted months ago that the questions presented by these petitions implicate not only practical issues surrounding compliance and interconnection, but also fundamental legal issues and decades of Federal Communications Commission (the "Commission") precedent. As NTCA explained in comments filed in January of this year:

The relief requested in the instant petitions constitutes an effective request for reconsideration and/or expansion of the ESP exemption. . . . A decision this far-reaching – one that selectively obliterates some key distinctions between carriers and ESPs while leaving others in place – requires robust examination in a formal rulemaking rather than slipping through in the context of a "waiver" request.

In fact, such action calls into question legal matters far beyond the narrow question of access to numbering resources or even a shift in long-standing Commission precedent. Specifically, granting the relief sought by the pending petitions would introduce substantial jurisdictional complications. For example, the relief requested would effectively enable *any* provider hereafter to sidestep state regulation and obtain direct access to numbering resources without state certification. . . . Indeed, in the wake of any grant of relief here, it is not difficult to foresee a parade of current *carriers* suddenly seeking to surrender state certificates and declare themselves "ESPs," since the benefits of direct access to numbering resources could now be obtained without bearing many of the commensurate obligations of being a carrier.⁵

And so now this very concern is coming to pass, as a carrier like Bandwidth spots the opportunity presented by the potential grant of such waiver petitions and seeks similar recourse to likewise obtain selective deregulation. Taking such a step to dismantle basic regulatory constructs and depart from Commission precedent outside of the context of a formal rulemaking process – and certainly considering the issuance of such relief by a bureau of the Commission on

⁵ Comments of NTCA, CC Docket No. 99-200 (filed Jan. 25, 2012) at 3-4 (emphasis in original).

delegated authority – would be imprudent, contrary to the Commission’s own rules,⁶ and call into question what purpose and meaning, if any, Title II and corresponding state regulation of communications services have going forward.

The Bandwidth Petition, like those filed before by other self-declared ESPs seeking access to numbering resources without becoming carriers, further fails to address many of the technical and practical questions that remain outstanding with respect to such waiver requests. As NTCA has noted previously, a series of interconnection and intercarrier compensation issues will arise to the extent that non-carrier entities are injected directly into the exchange and routing of calls. For example, while it has been asserted that a grant of these waivers will promote Internet Protocol (“IP”)-based interconnection,⁷ the terms and conditions applicable to such interconnection remain the subject of a pending Commission rulemaking.⁸ It makes little sense to race ahead with “one-off” waivers that are so interrelated with the subject of a detailed (and highly contentious) rulemaking.⁹ In fact, IP interconnection would be far better promoted

⁶ See 47 C.F.R. § 0.291 (“The Chief, Wireline Competition Bureau shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.”)

⁷ See, e.g., *Ex Parte* Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Commission, CC Docket No. 99-200 (dated July 31, 2012) (“*Vonage July 31 Letter*”), at 1-2.

⁸ *Connect America Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, WT Docket No. 10-208, and CC Docket Nos. 01-92, and 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), at ¶¶ 1335-1398.

⁹ An AT&T filing several months ago in support of the petitions highlights that a grant of such waivers would effectively pre-judge the outcome of that pending rulemaking by indicating that IP-based interconnection should take place in a deregulated framework beyond the Act’s purview – or, at the very least, AT&T’s letter confirms that some would interpret grants of the waivers in just this manner. *Ex Parte* Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, to Marlene H.

through a well-developed framework (such as under Sections 251 and 252) in which the ground rules of interconnection are clear to all market participants, rather than through a series of “one-off” waivers that send self-declared ESPs out on their way to try to secure “commercial agreements” as best they can. Similarly, while Vonage has indicated that it will work to require any tandem providers/carrier partners through whom it may route traffic to pay applicable intercarrier compensation,¹⁰ it is not clear that this would be enforceable. Even if this were made a condition of any waiver grant to a self-declared ESP, such a condition presumably would and could not bind a tandem provider/carrier partner through whom that ESP routes calls. Thus, the tandem provider/carrier partner would remain free to “point fingers” back at the ESP (who holds the calling telephone number and is in effect the “originating carrier”) for collection of reciprocal compensation or access charges. Sorting through the responsibility for such payments – and even figuring out where to seek enforcement of such payment obligations in the first instance¹¹ – presents novel questions of law and policy that have yet to be answered or even examined in detail.

Dortch, Secretary, Commission, 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; CC Docket No. 99-200 (dated May 21, 2012), at 4. (“The Commission’s continued inaction [on granting VoIP waivers] is . . . impeding industry efforts to achieve the very type of voluntary, commercial IP-to-IP interconnection arrangements that the Commission is seeking to encourage in the *ICC-USF Order*.”)

¹⁰ *Vonage July 31 Letter* at 5.

¹¹ As NTCA has highlighted in prior filings, it remains unclear whether interconnection and intercarrier compensation disputes involving these unregulated number-holding entities and their tandem provider/carrier partners could be brought before state commissions or where such disputes might otherwise be resolved. *See Ex Parte* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, WT Docket No. 10-208, and CC Docket Nos. 01-92, 99-200, and 96-45 (filed May 31, 2012).

For the foregoing reasons and those set forth in prior NTCA filings in this proceeding, the Commission should deny the Bandwidth Petition. Rather, if the Commission is interested in exploring such issues further, the proper course of action is to issue a formal notice of proposed rulemaking that will facilitate such exploration and provide specific rule language for parties to consider in connection with this fundamental shift in the distinction between carriers and ESPs. In particular, the Commission should undertake foundational work on the significant legal and jurisdictional questions associated with departing from decades of precedent and also establish with certainty and clarity what its new interconnection and intercarrier compensation rules look like *before* attempting to wedge non-carrier VoIP providers into the existing framework on a “one-off” basis.

Respectfully submitted,



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