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)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources	)	

REPLY COMMENTS OF BANDWIDTH.COM, INC. REGARDING BANDWIDTH.COM, INC. PETITION FOR LIMITED WAIVER

The opening comments addressing the Bandwidth.com, Inc. ("Bandwidth") Petition for Limited Waiver of Section 52.12(g)(2)(i) ("Bandwidth Petition") articulate a litany of reasonable and valid concerns for the communications industry on the whole should the Federal Communications Commission ("Commission") proceed with granting any of the Pending Petitions.[1] Other than Bandwidth's requests to be treated in a non-discriminatory fashion, not a single set of comments were filed in support of granting the Bandwidth Petition. While those that have vigorously advocated for direct access to

[1] *See* fn. 1 of Bandwidth.com, Inc. Opening Comments, CC Docket No. 99-200 (filed Aug. 23, 2012) for full list of all Petitions for Limited Waivers of Section 52.15(g)(2)(i) ("Pending Petitions").

North American Numbering Plan ("NANP") numbers in the past chose not to file comments, the absence of comments in support of Bandwidth's Petition highlights that the proverbial "race to the bottom" is already crystallizing. Rather than continuing to entertain the prospect of a flash-cut to an unregulated environment, the path to advancing the public interest is for the Commission to promptly deny all Pending Petitions and aggressively shift the industry's focus to the sweeping reform that is embodied in the Commission's *ICC FNPRM* already.[2]

Bandwidth was an outspoken proponent for the swift reform of the industry's long-standing access charge regime as a way to spur innovation, investment and adoption in the Internet Protocol ("IP") technology space.[3] However, after conducting a thorough and aggressive rulemaking proceeding, the Commission instead adopted a relatively lengthy transition period in order to allow the diverse segments of the communications industry time to make an orderly transition to a broadband IP environment where terminating compensation will ultimately become "bill and keep."[4] For better or worse, the *USF/ICC Reform Order* and the attendant *ICC FNPRM* set the industry on a defined procedural path that was fundamentally premised upon the fact that being a certificated

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[2] *In the Matter of 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, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 796 (rel. Nov. 18, 2011) *(ICC FNPRM* or *USF/ICC Reform Order).*

[3] Comments of Bandwidth.com, Inc. on Section XVII. L-R *In the Matter of 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,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, , FCC 11-161, p. 3, (rel. Nov. 18, 2011).

[4] *USF/ICC Reform Order* at ¶¶ 798-808.

telecommunications carrier would remain relevant over the course of the terminating access compensation transition period at the very least. While Bandwidth continues to be a proponent of a policies that encourage the aggressive transition to an all-IP marketplace, it cannot effectively operate in an industry environment where the rules of the road are subject to sudden and arbitrary shifts in favor of a chosen few on a moment's notice.

In accordance with established rules, Bandwidth invested considerable resources to become and operate a certificated telecommunications carrier over the last several years. Non-carrier providers who are now pressing for rule waivers, should have done the very same. The California Public Utilities Commission succinctly emphasized these points in its opening comments when it said:

> The rules also are intended to protect the public interest, which is the Commission's mission. In light of that mission, it would be imprudent for the FCC to facilitate the business plan or goal of one company or a class of companies, when that plan or goal will have the effect of circumventing rules created to protect the public.[5]

In addition to undermining established rules aimed squarely at protecting end-users, granting Pending Petitions would cast interconnection and intercarrier compensation carrier relationships into chaos. Vonage of course claims that its traffic volumes do not justify such concerns.[6] But the Vonage Waiver Petition cannot be considered in a vacuum. The implications of granting Vonage's or any other provider's petition has never been about lost revenue from a single customer, but is instead about setting the

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[5] Comments of the California Public Utilities Commission and the People of the State of California; In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources; CC Docket No. 99-200, p. 2 (Filed Aug. 23, 2012)("CA PUC Comments").

[6] *Ex Parte* Letter of Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, Docket No. 99-200, at p. 1 (filed Aug. 14, 2012).

entire communications industry off on a race to strip unwanted costs out of their businesses which are currently perceived to be a function of being regulated as a telecommunications carrier. Prime examples of such costs that today are legitimately borne by all carriers are the costs to interconnect as a telecommunications carrier and the costs to exchange traffic as a telecommunications carrier. Should the Commission give its blessing to Vonage or other non-carrier entities, it would signal to those watching that they may again pursue arbitrage opportunities that appeared to be closed.[7]

As NTCA identified in its opening comments and in its other filings in this proceeding as well, "[s]orting through the responsibility for such payments – and even figuring out where to seek enforcement of such payment obligations in the first instance – presents novel questions of law and policy that have yet to be answered or even examined in detail."[8] To grant any waiver petition without a transparent public certification standard would call "into question the very statutory framework from which the Commission derives its authority over communications in the first instance."[9] Further, in addition to unwinding progress toward a unified intercarrier compensation and interconnection regime, granting non-carriers access to NANP numbers will accelerate

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[7] *Ex Parte* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, 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)("May 31 NTCA Ex Parte"); *See also USF/ICC Reform Order.*

[8] Comments of The National Telecommunications Cooperative Association, CC Docket No. 99-200, p. 4 (filed Aug. 23, 2012) citing May 31 NTCA Ex Parte.

[9] Ex Parte Letter from James C. Falvey, on behalf of Level 3 Communications, LLC, Bandwidth.com, Inc., COMPTEL, and NTCA, to Marlene H. Dortch, Secretary, FCC, 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, p.2 (filed Aug. 27, 2012).

number exhaust,[10] cause confusion in the porting processes[11], and threaten the stability of call routing and call completion.[12]

The industry has operated with a basic understanding of how telecommunications carriers and information service providers are to be differentiated and positioned for regulatory purposes for almost three decades.[13] Pending Petitions have fundamentally failed to demonstrate any identifiable hardship or special circumstance that would justify such a dramatic deviation from established procedures that currently serve the public interest.[14] There is widespread consensus from key industry constituents such as COMPTEL, NCTA, and NTCA, as well as the state regulators within NARUC, that a rulemaking proceeding is a requisite procedural step to follow at a bare minimum. The record on this matter clearly indicates that the Commission should not repeat the problematic procedural approach of changing fundamental industry-wide technological expectations associated with long-established rules through individual waivers.[15] Finally, the fact that the issues raised here are already set forth in the *ICC FNPRM* should make the decision to deny the Pending Petitions straightforward. To do otherwise would be

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[10] *See* CA PUC Comments, p. 3; *Ex Parte* Letter from Mr. James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 (filed June 12, 2012).
[11] *See* Comments of Level 3 Communications, LLC and COMPTEL, CC Docket No. 99-200, p. 8 (filed Aug. 23, 2012).
[12] *See* May 31 NTCA Ex Parte.
[13] *In re: MTS and WATS Market Structure,* Memorandum Opinion and Order, 97 FCC 2d 682 (1983).
[14] *See,* CLEC Coalition Millicorp and SEN Comments, pp.3-4.
[15] *See e.g. In the Matter of Lightsquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component; In re Application of Lightsquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component,* IB Docket No. 11-109; File No. SAT_MOD-20101118-00239 (Order and Authorization by Chief International Bureau) (rel. Jan. 26, 2011).

perplexing and problematic.[16] Yet, should the Commission proceed in that manner, Bandwidth requests that it be allowed to compete on the same footing as others that may be granted relief too.

Respectfully submitted,

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[16] *See* CA PUC Comments, p. 2, stating: "California also is mystified as to why the Commission would seriously consider Vonage's petition when Vonage, since its inception, has declared that the Commission's rules – rules designed to give consumers minimal expectations of a telecommunications service provider – do not and should not apply to Vonage."