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September 7, 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; *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:

Bandwidth.com, Inc., Level 3 Communications, LLC, and COMPTTEL (collectively "CLEC Participants") submit this letter responding to the July 31, 2012 *ex parte* letter filed by Vonage¹ discussing, *inter alia*, carrier number portability obligations in the event non-carriers are granted waiver of Section 52.15(g)(2)(i) of the Commission's rules to obtain direct access to number resources.

In the Commission's 2007 *VoIP Number Portability Order*,² the Commission limited its guidance to circumstances where an interconnected VoIP provider ("IVP") works in tandem with a wholesale numbering partner: "by requiring interconnected VoIP providers *and their numbering partners* to ensure that users of interconnected VoIP services have the ability to port their telephone numbers when changing service providers to or from an interconnected VoIP provider, we benefit not only customers but the interconnected VoIP providers themselves."³ The Commission also stated clearly that "[i]t is well established that our rules allow only carriers direct access to NANP numbering resources to ensure that the numbers are used efficiently and

¹ Ex Parte letter from Brita D. Strandberg, Wiltshire & Grannis, on behalf of Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (July 31, 2012) ("Vonage July 31 Ex Parte").

² *Telephone Number Requirements for IP-Enabled Service Providers, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, 22 FCC Rcd. 19531 (2007) ("*VoIP Number Portability Order*").

³ *VoIP Number Portability Order*, ¶ 34 (emphasis added).

to avoid number exhaust.”⁴ As such, every example of carrier porting obligations to IVPs addressed by the Commission in that Order relates to carriers porting to “an interconnected VoIP provider that partners with a wireline carrier for numbering resources”⁵ The only other circumstance addressed by the Order is the case where the IVP is itself a carrier, and therefore obligated to port numbers and entitled to receive ported numbers as a carrier.⁶

Any application of the Commission’s rules and orders to other novel factual scenarios is, at best, unclear. For example, the Commission’s rules and orders do not establish a clear carrier porting obligation in circumstances: a) where an IVP operates without a numbering partner; b) where an IVP works with a CLEC partner but where the number is directly assigned to an IVP; or c) where a non-interconnected VoIP provider is involved. Thus, a rulemaking on these issues, at a minimum, becomes necessary. In the meantime, the Commission should not grant waivers that are likely to create carrier and customer confusion in light of the current lack of clarity surrounding porting obligations in these novel scenarios. The result will be, at best, operational snafus that would harm consumers and the public interest, and at worst, porting failures caused by entities refusing to port numbers on the basis that the existing rules do not cover certain novel port requests. In this manner, among others, the legal standard for waiving the Commission’s rules is not met under these circumstances.

The Commission’s focus on carrier obligations in the *VoIP Number Portability Order* is consistent with the statutory definition of number portability, which is limited to the porting of numbers used by carriers for telecommunications services: “The term ‘number portability’ means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of the quality, reliability, or convenience when switching from one telecommunications carrier to another.” 47 U.S.C. § 153(a)(46). The Act’s statutory number portability obligation therefore applies “when switching from one telecommunications *carrier* to another” and to users of “*telecommunications services*.”

Vonage in its July 31, 2012 *ex parte* letter⁷ claims that the *VoIP Number Portability Order* created an obligation for a carrier to port directly to a non-carrier without an intervening carrier partner, referring to the following excerpt:

We exercise our authority under the Act to ensure that consumers’ interests in their existing telephone numbers are adequately protected whether the customer is using a telephone number *obtained from a LEC* directly or indirectly via an interconnected VoIP provider. In either case,

⁴ *Id.*

⁵ *VoIP Number Portability Order*, ¶ 34. See generally, ¶¶ 34, 35.

⁶ *VoIP Number Portability Order*, ¶ 35 & n.117.

⁷ Vonage July 31 Ex Parte at 3.

the LEC or LEC numbering partner must comply with the Commission's LNP rules.⁸

This excerpt in fact supports the position of the CLEC Participants that the *VoIP Number Portability Order* was grounded on a foundation where carriers are only required to port numbers to other carriers. Whether an end user's number is "obtained from a LEC directly or indirectly," it is always obtained from a LEC. And in either case, it is a carrier porting to another carrier pursuant to the Act's statutory number portability obligation. There is no basis in the statute or in the *VoIP Number Portability Order* for an obligation requiring a carrier to port a number to a non-carrier, particularly if the non-carrier is not offering "telecommunications services."

Vonage also claims support from Section 52.35 of the Commission's rules, which merely establishes porting intervals for porting obligations established elsewhere in the Commission's rules. Vonage, in its recent *ex parte*, makes the claim that Section 52.35 obligates:

"[a]ll telecommunications carriers required by the Commission to port 'telephone numbers' to 'complete . . . port request[s].'" LECs are undoubtedly 'telecommunications carriers required by the Commission to port telephone numbers.' The rule does not in any way limit this porting obligation to ports to other carriers, and even if it did, the rule defines carrier to include IVoIP providers.⁹

While Vonage is correct that the rule defines carrier to include IVPs, Vonage misses the fact that the rule does not state that a *carrier* is required to port a number to a non-carrier IVP. This rule only applies to "carriers required to port telephone numbers," which is limited by the Commission's rules, orders, and by statute, to carriers porting to other carriers. Further, Section 52.35 defines carrier to include IVPs but does not define IVPs to include carriers. In the end, the only new porting obligations added by the *VoIP Number Portability Order* are in Rule 52.34,¹⁰ which applies only to IVPs and not to carriers.

The current system, which is neither broken nor in need of fixing, should be left unaltered during the pendency of an industry-wide transition to an IP environment. IVPs should not be able to claim that they are not "carriers" and do not offer "telecommunications services" in order to reap preferred regulatory treatment, and then turn around and demand number portability rights that are statutorily limited to carrier-to-carrier ports for users of telecommunications services.

⁸ Vonage July 31 Ex Parte at 3, quoting *VoIP Number Portability Order*, ¶ 23 (emphasis added).

⁹ Vonage July 31 Ex Parte at 3, quoting 47 C.F.R. § 52.35.

¹⁰ 47 C.F.R. § 52.34.

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If, however, the Commission is still considering attempting to restructure fundamentally the marketplace by permitting non-regulated IVPs to gain the same rights as regulated common carriers, an NPRM, and not a waiver proceeding, would be necessary to explore the many significant legal, policy, and operational issues presented by such proposed changes.

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
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