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September 24, 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 September 20, 2012, John Murdock, President, and Greg Rogers, Deputy General Counsel, both with Bandwidth.com, Inc.; Andrea Pierantozzi, Vice President, Voice Services, and Erin Boone, Senior Corporate Counsel, Federal Regulatory Affairs, both with Level 3 Communications, LLC; and the undersigned ("CLEC Participants") met with Commissioner Jessica Rosenworcel and Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel. In the meeting, the CLEC Participants reiterated their significant concerns regarding the series of voice over Internet protocol ("VoIP") provider ("Petitioners") petitions seeking limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources.

The CLEC Participants emphasized that the Federal Communications Commission ("Commission") should not grant the Vonage or any other individual waiver because granting a single waiver would be discriminatory. Granting a waiver to one Petitioner would give that party an unfair advantage over its competitors in the marketplace. With fifteen (15) petitions currently pending at the Commission, no one Petitioner should receive special treatment from the Commission. CLEC Participants, and other CLECs, have taken the steps necessary to become certificated in accordance with the Commission's rules. Granting one Petitioner's waiver would provide one company with special treatment compared to carriers that have invested in their businesses in reliance on the established rules.

The 2007 *Number Portability Order*<sup>1</sup> reinforced that the wholesale carrier model, which relies upon certificated local exchange and commercial mobile radio service carriers to manage and distribute numbers to non-carrier VoIP providers, functions successfully. Furthermore, any VoIP provider that wants direct access to numbers can obtain them by making the showings necessary to become a carrier.

The CLEC Participants stressed that there are complex issues involving the introduction of non-carrier providers into the current operational ecosystem. If waivers are granted, there will inevitably be a significant level of operational breakdowns, including issues with successful call routing, call completion, and port completion. Introducing the industry uncertainty that would result from such breakdowns through a special waiver to one company would clearly be contrary to the public interest. The CLEC Participants have previously identified a series of novel factual, legal, and technical issues that must be addressed by the Commission before any further waivers are granted, including intercarrier compensation, IP interconnection, number exhaust, and number portability.<sup>2</sup> Moreover, NARUC passed a resolution earlier this year that identified a similar list of issues critical to ensuring a smooth transition to an all-IP ecosystem. Both the CLEC Participants and NARUC<sup>3</sup> have urged the Commission to conduct a detailed notice of proposed rulemaking (“NPRM”) rather than grant individual waivers in this proceeding. More recently, Richard Shockey, Principal of Shockey Consulting, provided a separate list of the complex numbering issues that the Commission should address in an NPRM.<sup>4</sup>

In addition to the complexities of the current operational environment, the CLEC Participants emphasized that carriers are currently working to adapt to the changes regarding intercarrier compensation and the Universal Service Fund resulting from the *Connect America*

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<sup>1</sup> See Letter from James C. Falvey, Eckert Seamans Cherin & Mellott, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Dkt. 99-200 (Sept. 7, 2012).

<sup>2</sup> See, e.g., Letter from James C. Falvey, Eckert Seamans Cherin & Mellott, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Dkt. 99-200 (Aug. 9, 2012).

<sup>3</sup> See Letter from James Bradford Ramsey, National Association of Regulatory Utility Commissioners, to Julius Genachowski, Chairman, Federal Communications Commission, CC Dkt. 99-200 (Mar. 30, 2012).

<sup>4</sup> See Letter from Richard Shockey, Shockey Consulting, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3, CC Dkt. 99-200 (Sept. 4, 2012) (“*Shockey Ex Parte*”). Richard Shockey, the Principal of Shockey Consulting, a private firm advising telecommunications companies and the investment community on any number of issues related to Next Generation Networks, Voice over IP, Communications Provisioning, Peering, Numbering, and Signaling. *Id.*, attached White Paper (*Technical Challenges in the PSTN Transition from Plain Old Telephone Service (POTS)*), Presented at the End of the Phone System Workshop Held at the Wharton May 16, 2012), at 1, n.1. He is also Chairman of the Board of Directors of the SIP Forum, an IP communications industry association that engages in numerous activities that promote and advance SIP-based technology [RFC 3261]. *Id.* The views expressed in the ex parte and attached white paper are those of Mr. Shockey and do not appear to be submitted in any official capacity, or on behalf of any party. *Id.*

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*Fund* Order.<sup>5</sup> Granting individual waiver petitions at this time would require new systems and back office changes before the industry has even digested the new *Connect America Fund* requirements. This would be detrimental to the industry and the public interest, especially when there have been no demonstrated operational problems with the current system.

Further, the CLEC Participants asserted that Vonage and other Petitioners do not meet the high bar and heavy burden necessary to support a waiver.<sup>6</sup> The law requires that the Commission demonstrate that there are “special circumstances” in order to grant a waiver. No Petitioner has demonstrated: a) that such “special circumstances” exist to support granting its waiver request; or b) that deviating from the Commission’s rules will not harm the public interest.<sup>7</sup> The CLEC Participants emphasized that the Commission should address IP interconnection and other pressing needs before reworking aspects of the industry that are working well. If the Commission decides to proceed, it should do so in a comprehensive and deliberate manner through an NPRM.

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 CLEC Participants*

cc: Commissioner Rosenworcel  
Priscilla Delgado Argeris  
Julie Veach  
Lisa Gelb

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<sup>5</sup> *Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 17663 (2011).

<sup>6</sup> See *Administration of the North American Numbering Plan, Order*, 20 FCC Rcd. 2957, ¶ 3 (2005).

<sup>7</sup> *Id.*