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October 31, 2012

**Via Electronic Filing**

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 Coalition") submit this letter responding to the October 22, 2012 ex parte letter filed by Vonage Holdings Corp. ("Vonage")<sup>1</sup> discussing Vonage's request for waiver of Section 52.15(g)(2)(i) of the Commission's rules to obtain direct access to numbering resources.

In its October 22 Ex Parte, Vonage creates a straw man argument: that if the Commission were to just give Vonage alone direct access to numbering resources, there would only be a limited impact on the revenues of the carriers from which it purchase services, and therefore the Commission should grant such a waiver.<sup>2</sup> But as with any straw man argument, Vonage's October 22 Ex Parte ignores the principle arguments against giving non-carriers direct access to numbering resources, which have been presented not only by Level 3, but by Bandwidth, COMPTTEL, NCTA, NTCA, NARUC, the California Public Utilities Commission ("CPUC"), and the Pennsylvania Public Utilities Commission ("PPUC"). The reason so many carriers, carrier trade associations, and state regulators have lined up against the Vonage waiver is that

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<sup>1</sup> 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 (Oct. 22, 2012) ("Vonage Oct. 22 Ex Parte").

<sup>2</sup> *Id.* at 1.

granting a waiver solely to Vonage would be discriminatory as to all those carriers that have taken the steps necessary to become carriers (*e.g.*, certification in 50 states) and to remain carriers (*e.g.*, adherence to state and federal compliance obligations). As such, Vonage has not met its “heavy burden” to show that “special circumstances” warrant deviation from the Commission’s rules, nor that such deviation would be in the public interest.<sup>3</sup> In addition to being discriminatory, granting any waivers without conducting a rulemaking would inappropriately prejudice the ultimate outcome without sufficiently deliberating as to the critical issues associated with the direct assignment of numbering resources to non-carriers. Further, granting a waiver without a rulemaking would create an unpredictable and unstable operating environment without clear rules to govern, *inter alia*, IP interconnection, intercarrier compensation, and number portability.

Dealing with the question of whether non-carriers should be granted direct access to telephone number resources through a waiver process rather than through a comprehensive rulemaking proceeding will also create an inappropriate and unique cost advantage for Vonage over all other VoIP providers. In fact, in its October 22 Ex Parte, Vonage details the extent of that cost advantage measured in terms of the savings the waiver would bring to Vonage with respect to: 1) telephone numbers; 2) inbound networking costs; and 3) outbound voice termination.<sup>4</sup> There is nothing in the record that would support giving this special cost advantage only to Vonage. In fact, there are fourteen (14) similarly situated companies requesting the same waiver of the Commission’s rules in order to obtain the same cost advantages over both carriers and VoIP providers alike, and no “special circumstances” to favor Vonage over any of the others.

Vonage, as it presses the Commission to grant it carrier privileges without carrier obligations, engages in a remarkable exercise in doublespeak, claiming that “the carriers that oppose Vonage’s request for relief appear to be bypassing an opportunity to compete in the marketplace to provide service that will support evolving networks” and are “seeking to use regulatory roadblocks to delay the evolution of Vonage’s network . . . .”<sup>5</sup> It’s hard for Vonage to claim that Level 3 and Bandwidth are resorting to regulatory roadblocks when those carriers are playing by the Commission’s rules, and it is Vonage that is seeking a special Vonage-only regulatory waiver. Moreover, that waiver would give Vonage a series of cost advantages over its competitors—advantages that Vonage itself recognizes, itemizes, and quantifies. Vonage’s situation is one of its own making and not one that requires special favors to resolve. Vonage deliberately chose not to be a carrier. Yet Vonage could still very quickly become a carrier in order to obtain the regulatory rights of every other carrier in the country.

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

<sup>4</sup> Vonage Oct. 22 Ex Parte at 2.

<sup>5</sup> *Id.* at 1.

Vonage also demonstrates substantial confusion when it claims that the grant of a special Vonage-only waiver “would not have a broader impact on the wholesale CLEC market.” We know there are at least 14 other providers—including substantial ones like CenturyLink—that are lining up to seek similar waivers. If Vonage does not know of other providers “of significant size that purchase TNs and related services,” it need look no further than the list of other waiver petitioners.

Vonage argues that cable-based providers rely on affiliated carriers to obtain numbers and “therefore appear unlikely to seek the same relief requested by Vonage.”<sup>6</sup> Vonage misses the point. In fact, the cable carriers, in compliance with and reliance upon the Commission’s rules and express direction, as enunciated, *inter alia*, in the *2007 Number Portability Order*,<sup>7</sup> have already established certificated carrier affiliates to obtain direct access to numbering resources. They are not seeking the same relief as Vonage because they, like the CLEC Coalition, believe that a rulemaking and not individual waivers is the only appropriate means to create a level playing field. As NCTA stated in its January 25, 2012 Comments: “To the extent there are public interest benefits to be gained by allowing non-carrier VoIP providers direct access to numbers from NANPA and the PA, the benefits should be available to all similarly situated providers through rules that apply to all.”<sup>8</sup>

In its October 22 Ex Parte, Vonage suggests, inconsistent with the Vonage-specific numbers throughout its ex parte, that not just Vonage but all interconnected VoIP providers (“IVPs”) should be entitled to direct access to numbering resources.<sup>9</sup> This is not the first time that Vonage has suggested that all IVPs should be granted direct access to numbering resources and that other VoIP providers should not.<sup>10</sup> But a waiver proceeding is procedurally inapt for such critical decisions. Whether only carriers, carriers and IVPs, or all VoIP providers should obtain direct access to numbering resources is precisely the type of question that should be addressed in a rulemaking, as recommended by NCTA, NARUC, the CPUC, and many others. To grant Vonage’s waiver would pre-judge that decision in favor of changing the current system,

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *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, ¶ 20 (2007) (“It is well established that our rules allow only carriers direct access to NANP numbering resources to ensure that the numbers are used efficiently and to avoid number exhaust”).

<sup>8</sup> Comments of the National Cable Telecommunications Association at 3, CC Docket 99-200 (Jan. 25, 2012).

<sup>9</sup> Vonage Oct. 22 Ex Parte at 3-4.

<sup>10</sup> 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 (Aug. 14, 2012) (“CLECs provide only a portion of their numbers to interconnected VoIP providers such as Vonage. . . . Far more of the CLEC’s revenues flow from numbers provided to non-interconnected VoIP providers such as Google Voice and others.”) (“Vonage Aug. 14 Ex Parte”).

and in a manner that would provide a special cost advantage to only one company. It's a given that Vonage, like any provider, would save money by getting a special waiver, but the question that has never been answered is, "Why special treatment for Vonage?"

In its effort to carve out a special niche for itself, Vonage makes some exceedingly broad claims that are patently incorrect, claiming for example, that "Vonage is likely the only interconnected VoIP provider of any size that obtains telephone numbers indirectly."<sup>11</sup> It's only because Vonage alone has decided to focus its efforts on special regulatory relief while other IVPs have not, that this waiver proceeding has been heavily focused on Vonage—but that alone does not support Vonage's bald claim. In fact, there really is no record evidence at all as to how many IVPs obtain telephone numbers indirectly, or what percentage of the total IVP (or other VoIP provider) numbers belong to Vonage. These are precisely the sort of data points a rulemaking proceeding could address and where a waiver proceeding is inherently flawed. The fact is that there are many more IVPs (*e.g.*, 8x8, Inc.) waiting in the wings. If allowed, all providers will engage in a race to self-define the nature of the provider to suit the particular benefit being sought and the Commission and the industry will be left with the task of trying to untangle the consequences of this race to the bottom.

Vonage's attempts in its October 22 Ex Parte to paint certificated carriers as the cause of Vonage's problems is nothing more than a smokescreen. Despite Vonage's claims, it is not Level 3's or any other individual carrier's revenue reductions that have brought NARUC, NCTA, and NTCA, among others, to the Commission in staunch opposition to the waivers.<sup>12</sup> Opposition has been focused on the confusion and disarray that would result if non-carriers receive direct access to numbers without first clarifying the regulatory framework relating to, for example, IP interconnection, intercarrier compensation, and number portability, clarification that can only come from a rulemaking proceeding. Rather than attempting to address these issues directly, Vonage leads the Commission through an examination of Level 3's revenues, even though Level 3 is just one of many carriers opposed to a Vonage waiver, and Vonage is just one non-carrier provider seeking a waiver. Fundamentally, these arguments are irrelevant. Instead, the impact of ignoring established regulations that are at the core of the telecommunications ecosystem would be felt industry-wide. Accordingly, a rulemaking, and not an individual waiver or series of waivers is the only appropriate procedural mechanism to consider structural industry changes.

Moreover, Vonage relies heavily on its alleged existing agreements for IP interconnection as one of the key reasons why its waiver should be granted. The Commission cannot rely on unsubstantiated claims to support a waiver. If those agreements exist and are relevant to

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<sup>11</sup> Vonage Oct. 22 Ex Parte, at 2. *See also* Vonage Aug. 14 Ex Parte at 3.

<sup>12</sup> *See, e.g.*, Ex Parte Letter from James B. Ramsey, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (July 19, 2012).

Vonage's waiver request, the Commission should request the agreements and Vonage should make them public for discussion in this proceeding.

Throughout its lengthy advocacy for special treatment, Vonage has done nothing to address the interconnection and intercarrier compensation problems inherent in its proposal. Rather, Vonage repeats the same old arguments, but always falls far short of suggesting clarifying rules to these complex and wide-ranging issues. The reason Vonage does not advocate such rule changes is because it knows that only the Commission can establish such rules and only in a rulemaking proceeding.

Further, Vonage also has not and cannot address on the merits previous CLEC Coalition concerns relating to IP interconnection,<sup>13</sup> number exhaust,<sup>14</sup> number portability,<sup>15</sup> and call routing<sup>16</sup> that can only be comprehensively addressed in a rulemaking. Nothing in the most recent October 22 Ex Parte changes the fact that Vonage has not met its “heavy burden” to show that “special circumstances” warrant deviation from the Commission’s rules, nor that such deviation would be in the public interest.<sup>17</sup> The CLEC Coalition is not addressing whether it is even true that the impact on Level 3 would be “miniscule,” as claimed by Vonage,<sup>18</sup> because the impact on just one carrier, Level 3, is an irrelevant and isolated data point. The Commission’s waiver test is not focused on one competitor, and should not be when the impact will be felt industry-wide. The test is whether Vonage has met its heavy burden to demonstrate its “special circumstances” and, with 14 other petitioners requesting waivers, it is clear that Vonage has not.

CLEC Participants encourage the Commission to address first, in existing or new rulemakings IP interconnection, intercarrier compensation, number portability, number exhaust, and other key issues before prematurely granting waivers to any of the waiver applicants.

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<sup>13</sup> See, e.g., Ex Parte Letter from James C. Falvey, Counsel for CLEC Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, at 1-2 (June 6, 2012).

<sup>14</sup> See, e.g., Ex Parte Letter from James C. Falvey, Counsel for CLEC Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, at 2-5 (May 24, 2012) (“May 24 CLEC Coalition Ex Parte”).

<sup>15</sup> See, e.g., May 24 CLEC Coalition Ex Parte at 5-7.

<sup>16</sup> See, e.g., Ex Parte Letter from James C. Falvey, Counsel for Joint Commenters, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, at 3-4 (Mar. 1, 2012).

<sup>17</sup> See *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd. 2957, ¶ 3 (2005).

<sup>18</sup> Vonage Oct. 22 Ex Parte at 3, fn. 3.

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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  
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