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November 16, 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:

On November 14, 2012, Greg Rogers, Deputy General Counsel, Bandwidth.com, Inc. ("Bandwidth"), and Justin Faulb and the undersigned of Eckert Seamans Cherin & Mellott, LLC met with Randy Clarke, Bill Dever, Lisa Gelb, Victoria Goldberg, Marilyn Jones, Rhonda Lien, Deena Shetler, Ann Stevens, and Don Sussman of the Wireline Competition Bureau. During the meeting, Bandwidth reiterated its concerns regarding any Commission action beyond issuing a Notice of Proposed Rulemaking ("NPRM") regarding the many voice over Internet protocol ("VoIP") provider ("Petitioners") petitions for limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources ("Waiver Petitions").

Bandwidth asserted that granting the Waiver Petitions and permitting the direct assignment of numbers to non-carriers would effect a paradigm change within the industry. The Commission should, in response to this series of waivers, initiate, as past Commissioners have advised, an NPRM that addresses all major issues, including number exhaust, intercarrier compensation, routing, number portability, the interplay with IP interconnection issues in the pending *Connect America Fund* FNPRM, and the level of expertise the Commission will require for a provider to take on what is effectively the role of a carrier. Bandwidth and other parties opposed to the Waiver Petitions have emphasized these issues in previous discussions and filings with Commission staff.<sup>1</sup> Bandwidth also emphasized that contrary to repeated assertions by

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<sup>1</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)

Vonage, Vonage is not uniquely qualified relative to others in the industry, nor has it demonstrated or created a record for the standards that could be used to determine qualification for non-carriers seeking access to numbering resources. In today's IP marketplace, some of the most common applications that rely heavily upon numbering resources may not technically constitute interconnected VoIP services as those services are presently defined. Nevertheless, it stands to reason that such providers would also be keenly interested in achieving specialized treatment akin to that requested by Vonage. Again, there is nothing in the record that adequately addresses such issues.

Bandwidth asserted that proceeding with an NPRM is the only avenue that avoids discrimination in favor of Vonage or other individual Petitioners. Proceeding with a waiver or a "trial" for any one Petitioner would discriminate against other Petitioners, and a wide array of other service providers—most notably CLECs who have invested substantial resources to become certificated in reliance upon the rules. Further, any advance pronouncement of the approval or actual grant of direct access to numbering resources for non-certified providers prior to conducting a full inquiry will trigger a race to the bottom among industry participants, and fundamentally and inappropriately skew the market and potentially the final rules. Granting a waiver or endorsing a closed trial would give a favored provider an undue head start in developing systems and processes while the rest of the industry continues to operate under a more onerous and presumably outdated regime. In addition to being given a competitive advantage from Day 1, while an NPRM proceeding is conducted, the grantee or trial participants would extend the competitive gap by capitalizing on lessons learned during the trials to which other competitors were not privy. A proceeding such as this where one provider has an inside track would violate fundamental due process.

Staff asked what the financial impact of a waiver or trial would be on Bandwidth. In response, Bandwidth discussed the significant financial impact tied to certification and the network costs of implementing Bandwidth's CLEC operations over the last five years. Bandwidth reiterated that it invested substantial resources to establish a CLEC based on the Commission's consistent indications, including the 2007 *Number Portability Order*,<sup>2</sup> that only carriers should have access to number resources. Bandwidth indicated that only Vonage and one CLEC, Level 3, have provided specific revenue detail in this proceeding. Providing additional revenue detail that is limited to Vonage's impact as an interconnected VoIP provider ("IVP"), on one hand, and a limited number of carriers, on the other hand, does not provide a reasonable calculation of the impact of a potential waiver (or trial) on the entire industry. Thus, it would not

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(discussing concerns to IP interconnection); 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) (discussing concerns regarding number exhaust and number portability); and 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) (discussing concerns regarding call routing).

<sup>2</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 (2007).

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be appropriate to extrapolate from any data provided by Bandwidth anything other than the size of Bandwidth's business. Bandwidth suggested that if the Commission believes that industry-wide revenue data is important, it should conduct a broad survey in the context of an NPRM.<sup>3</sup>

Therefore, if the Commission is to collect data, Bandwidth urged the Commission to look beyond Vonage on the provider side to include all Petitioners, including recent applicants such as Bandwidth, SEN, and Millicorp. Additionally, on the carrier side, the Commission must resist the urge to analyze only carriers that have been the most active in the proceeding. Organizations such as COMPTTEL, NTCA, and NCTA all oppose granting waivers and collectively represent hundreds of carriers, many of which could incur a direct financial impact if a waiver or series of waivers were granted.

Bandwidth expressed its appreciation that the Commission is considering issuing an NPRM, and strongly supported that approach without any accompanying waivers or trials. Bandwidth emphasized that only through an NPRM can the Commission take a broader view and receive industry-wide information on the variety of issues implicated by the Waiver Petitions. Any NPRM should be focused on, *inter alia*, the issues Bandwidth and other CLECs have raised in this proceeding. Only a broad NPRM seeking comment on a variety of potential options, including maintaining the status quo, will provide the thorough record needed to support Commission action on these issues.

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 Bandwidth.com, Inc.*

cc: Bill Dever  
Lisa Gelb  
Victoria Goldberg  
Randy Clarke  
Marilyn Jones  
Rhonda Lien  
Deena Shetler  
Ann Stevens  
Don Sussman

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<sup>3</sup> In addition, no data has been requested of AT&T as to its experience with its waiver since 2005. Rather than new waivers or trials, the Commission could study the seven-year experience of AT&T if it is interested in empirical data relating to a waiver or trial.