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February 20, 2013

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Meetings with the FCC's Technology Transitions Policy Task Force*, GN Docket No. 13-5; *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. and Level 3 Communications, LLC ("CLEC Coalition") file this letter in opposition to the *ex parte* filed by Vonage on February 12 regarding its February 8 meeting with the Technology Transitions Task Force ("TTTF").¹ The meeting concerned Vonage's petition for limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources ("Waiver Petition").

The most recent filing by Vonage again ignores the applicable legal standard for special relief through a waiver. Although a waiver might promote Vonage's business interests, the waiver standard does not contemplate this rationale. Rather, the standard is different and much higher, requiring that a petitioner meet a "heavy burden" to show that there are "special circumstances" that set Vonage apart from all of the other non-carriers that would also like to have direct access to number resources without the burdens of becoming and remaining carriers.²

¹Letter from Brita D. Strandberg, Wiltshire Grannis, LP, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (Feb. 12, 2013) ("*Vonage Feb. 12 Ex Parte*").

² See *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd. 2957, ¶ 3 (2005).

Level 3 and Bandwidth, among many others, have previously urged the TTTT and the Commission to consider the implications of non-carriers gaining direct access to number resources in a rulemaking that addresses the matter holistically, alongside all of the other critical IP transition issues, in a comprehensive and coordinated manner. Then, if the rules are going to be changed, they should be simultaneously changed for everyone. Any other course of action is patently discriminatory.

The Vonage filing suggests that opposition to its waiver is limited to the “CLEC opponents,” neglecting to point out to the TTTT that there is very broad-based opposition to granting the Waiver Petitions. In addition to opposition from the CLEC Coalition, the National Association of Regulatory Utility Commissioners (“NARUC”), which coordinates with the North American Numbering Plan Administrator (“NANPA”) and the Pooling Administrator (“PA”) to manage number resources, has stated that neither “the NANPA nor the PA has a mechanism to directly monitor utilization of numbers by unlicensed and non-certificated VoIP and other IP-enabled service providers.”³ Additionally, trade associations representing hundreds of CLECs (CompTel), cable providers (NCTA), and rural phone companies (NTCA and the RBA),⁴ have all urged the Commission to deny the waivers and address the issues in a nondiscriminatory rulemaking. Further, the California Public Utilities Commission⁵ and Pennsylvania Public Utilities Commission⁶ also opposed the waivers and urged the Commission to proceed by rulemaking.

All of the supposed benefits raised by Vonage—IP interconnection, bill and keep compensation, product enhancement, increased call quality, and number portability—are readily achievable by Vonage today, by simply following through with the established state and federal procedures to become a telecommunications carrier. Vonage continues to act as though it is powerless to address its apparent problems by declaring that “Vonage is an interconnected VoIP provider, not a CLEC.”⁷ But the fact that Vonage is not a CLEC is purely a matter of choice by Vonage – which is not a valid basis upon which to obtain special relief. As an interconnected

³ Letter from James Bradford Ramsay, General Counsel, NARUC, to Chairman Genachowski, Commissioner McDowell, and Commissioner Clyburn, at 4, CC Docket. 99-200 (Mar. 30, 2012).

⁴ See, e.g., Letter from James C. Falvey, Eckert Seamans Cherin & Mellott, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket. 99-200 (Oct. 31, 2012); Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket. 99-200 (Jan. 8, 2013); Comments of the National Telecommunications Cooperative Association, CC Docket. 99-200 (Aug. 23, 2012); Letter from Stephen G. Kraskin, Communications Advisory Counsel, LLC, counsel to the Rural Broadband Alliance (“RBA”), to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 99-200 (July 2, 2012).

⁵ Comments of the California Public Utilities Commission and the People of the State of California, CC Docket No. 99-200 (Jan. 25, 2012) (“*California Comments*”).

⁶ Comments of the Pennsylvania Public Utility Commission at 7, CC Docket No. 99-200 (Oct. 6, 2011).

⁷ *Vonage Feb. 12 Ex Parte* at 3.

VoIP (“IVP”) provider, Vonage receives one set of rights and obligations, while as a carrier it would receive a different set, including direct access to number resources. These carrier rights and obligations are integrated into the statute and the Commission’s rules. To provide Vonage special treatment would put them in a privileged class by themselves, discriminating against IVPs and carriers alike.

Vonage also mistakenly asserts that “all issues have been comprehensively addressed on the record in the docket.” Although a long list of critical industry concerns with Vonage’s continued demands for a waiver have been highlighted by the broad-based opponents, the fact is that despite the numerous *ex partes* filed in response, Vonage has consistently failed to address these critical industry concerns. A rulemaking is necessary to address these issues on a granular level for all providers equally, as opposed to ad hoc and discriminatory single-provider waivers.

For example, number exhaust issues have not been addressed. If IVPs obtain direct access to number resources, they will consume number resources when they obtain codes to establish an LRN for every LATA in which they operate. The California Public Utilities Commission has urged the Commission to undertake a broader review of number resource allocation before considering giving IVPs direct access.⁸ No action has been taken to ensure that IVP access to number resources will not exacerbate number exhaust. Moving in the direction of broad IVP access without addressing number exhaust would be irresponsible, and granting isolated, direct access only to Vonage would be patently discriminatory.

In addition, there is no clarity on the issue of intercarrier compensation, which remains unresolved.⁹ The *Connect America Fund Order* only addressed the exchange of traffic between two carriers.¹⁰ Vonage has never agreed to take responsibility for payments for access and Section 251(b)(5) calls emanating from its phone numbers. Carriers have a serious concern that neither Vonage nor its intermediary carriers will pay to terminate Vonage calls. Today, the intermediary carrier can be held responsible because the calls are traced to numbers assigned to that carrier. If numbers are assigned directly to Vonage, neither the carrier nor Vonage will pay to terminate not only Section 251(b)(5), but also access traffic. While Vonage suggests that this flash cut to bill and keep is consistent with Commission policy, the Commission adopted a gradual compensation transition to “help minimize disruption to consumers and service providers by giving parties time, certainty, and stability as they adjust to an IP world and a new

⁸ See *California Comments*.

⁹ For a more extensive discussion of this issue, see 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). (“June 6 Ex Parte”).

¹⁰ *Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 17663, ¶ 940 (Nov. 18, 2011) (“*Connect America Fund Order*”).

compensation regime.”¹¹ Originating access has not even begun to transition to lower rates at this time.

Additionally, while Vonage has premised its demands for special treatment largely on its theoretical ability to more readily obtain IP interconnection arrangements as a result of obtaining direct access to numbering resources rather than through a partnership with an underlying carrier, there continues to be fundamental and widespread disagreement throughout the industry as to the proper regulatory structure for such arrangements.¹² Again, the idea of giving Vonage a head start and preferential treatment relative to the rest of the industry in this regard is unjustifiable and must be rejected.

The CLEC Coalition urges the TTF and the Commission to conduct a comprehensive rulemaking on issues relating to the IP transition in order to guarantee that all carriers are given an equal opportunity to move into the all-IP world on an equal footing. There are no “special circumstances” to support Vonage’s or any other provider’s waiver request, and granting such a waiver would tear at the fabric of ongoing and future rulemakings to establish the baseline ground rules for that transition.¹³

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
Justin L. Faulb
Counsel for CLEC Coalition

¹¹ *Id.*, ¶ 798.

¹² A large number of comments and ex partes have been filed in WC Docket No. 10-90 advocating a wide variety of proposals for interconnection. *See Connect America Fund*, WC Dkt. 10-90. *See also* AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, WC Dkt. 12-353 (Nov. 7, 2012); Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, WC Dkt. 12-353 (filed Nov. 19, 2012)

¹³ Vonage alludes to a grant of number resources of limited scope “in terms of numbers and duration.” *Vonage Feb. 12 Ex Parte* at 3. A limited grant of number resources to one carrier would be no less discriminatory than an unlimited one, and raises all the same unresolved issues discussed above. If the Commission were to consider such a limited grant, it would need to conduct a rulemaking to define what rules would apply to Vonage’s use of those number resources.

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