



1717 Pennsylvania Avenue,
N.W.
12th Floor
Washington, D.C. 20006

Tel 202 659 6600
Fax 202 659-6699
www.eckertseamans.com

James C. Falvey
jfalvey@eckertseamans.com
Phone: 202 659-6655

April 15, 2013

Ex Parte Letter

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.*, 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; *Technology Transitions Task Force*, GN Docket No. 13-5

Dear Ms. Dortch:

Bandwidth.com, Inc. and Level 3 Communications, LLC (“Joint CLECs”) file this ex parte letter, pursuant to 47 C.F.R. 1.1206(b)(2)(iv), in reply to issues raised in an ex parte letter filed by Public Knowledge on April 12, 2013,¹ and two ex parte letters filed by Vonage Holdings Corp. on April 12, 2013,² and pursuant to 47 C.F.R. 1.1206(b)(2)(v), in reply to issues raised in an ex parte letter filed by Free Press on April 12, 2013.³

The letters filed by Free Press and Public Knowledge urge the Commission not to conduct a trial testing out technical issues related to direct assignment of numbers to non-carriers without first initiating a rulemaking proceeding. Both letters refer to the April 11 joint letter filed by Free Press and Public Knowledge, and joined also by NARUC, NASUCA, AARP, Common Cause, Consumer Federation of America, Consumers Union, and the National Consumer Law Center (on behalf of its low-income clients) that is the root cause of the flurry of ex parte activity and demonstrates that there are widespread and significant concerns with the

¹ Letter from Harold Feld, Public Knowledge, to Marlene H. Dortch, CC Docket No. 99-200 (Apr. 12, 2013).

² Brita D. Strandberg, Counsel for Vonage Holdings Corp., to Marlene H. Dortch, CC Docket No. 99-200 (Apr. 12, 2013) (concerning Lefar Voicemail) (“Vonage Ex Parte I”); Letter from Brita D. Strandberg, Counsel for Vonage Holdings Corp., to Marlene H. Dortch, CC Docket No. 99-200 (Apr. 12, 2013) (“Vonage Ex Parte II”).

³ Letter from Matt Wood, Free Press, CC Docket No. 99-200 (Apr. 12, 2013) (“Free Press Ex Parte”) (relating to conversations with Michael Steffen on Apr. 11, 2013).

proposed orders on the April 18 open meeting agenda.⁴ The concerted outcry from these consumer groups confirms what the Joint CLECs have been saying for some time, that giving special waivers to a handful of non-carriers without conducting a rulemaking significantly undermines the current regulatory framework in a way that is detrimental both to consumer interests and the state commissions which protect those interests. In particular, the *ex partes* filed by Free Press and Public Knowledge urge the Commission not to conduct a trial testing out technical issues related to direct assignment of numbers to non-carriers without first initiating a rulemaking proceeding. Both letters plainly state that the proposal to grant waivers to enable trials in advance of an NPRM is a critical “sequencing flaw,” and that making “policy by waiver has proven time and again the wrong method” because it will be difficult to “claw back” special privileges once granted.⁵ Conducting a trial at the same time as the NPRM is, as Public Knowledge points out, “ill advised” because the Commission will be playing with one set of moving parts before fully analyzing the IP Transition.

The *ex partes* from these consumer and public interest groups also belie the efforts of Vonage and other providers to suggest that the trials are in the public interest because they “will create enormous consumer benefits.”⁶ The fact that Free Press, Public Knowledge and so many other consumer groups have spoken out in unison illustrates that conducting trials without first conducting a rulemaking would “do consumers a great disservice.”⁷ They also reinforce the Joint CLECs argument that the Commission will trigger a regulatory “race to the bottom,” with providers of all sorts, as Free Press states, “shedding their public interest obligations without any loss in the benefits they enjoy as regulated entities.”⁸

Nor can Vonage continue to claim that this is “a narrow trial”⁹ without much broader implications. The consumer groups have recognized that this is not an inconsequential waiver request but, as Free Press states, a “rush to judgment”¹⁰ in the above-captioned proceedings and one that requires notice and comment rulemaking in order to avert adverse results for consumers. This last round of state and consumer opposition to the proposed trials should signal to the Commission that it should not vote on the trial order later this week, but should withdraw the item and focus instead on a holistic and comprehensive consideration of the IP Transition.

⁴ Letter from AARP, Common Cause, Consumer Federation of America, Consumers Union, Free Press, Public Knowledge, National Consumer Law Center on behalf of its low income clients, National Association of State Consumer Advocates, and National Association of Regulatory Utility Commissioners, to Chairman Genachowski, Commissioner Robert McDowell, Commissioner Mignon Clyburn, Commissioner Ajit Pai, and Commissioner Jessica Rosenworcel, CC Docket No. 99-200 (Apr. 11, 2013) (“NARUC/Consumer Letter”).

⁵ Free Press *Ex Parte* at 1.

⁶ Vonage *Ex Parte II* at 3.

⁷ Free Press *Ex Parte* at 2.

⁸ *Id.* at 2.

⁹ Vonage *Ex Parte II* at 2.

¹⁰ Free Press *Ex Parte* at 2.

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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
Justin L. Faulb
Counsel for Joint CLECs

cc: Chairman Genachowski
Commissioner McDowell
Commissioner Clyburn
Commissioner Pai
Commissioner Rosenworcel
Zac Katz
Michael Steffen
Priscilla Delgado Argeris
Dave Grimaldi
Nicholas Degani
Erin McGrath