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April 16, 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)(v), in reply to issues raised in the *ex parte* letter filed by Vonage Holdings Corp. on April 15, 2013 ("Vonage Letter").¹ The ongoing discussions between Michael Steffen, Legal Advisor to Chairman Genachowski and Vonage during the Sunshine Period, as described in the Vonage Letter, concerning the scope of the Vonage trial raise serious concerns.

The eleventh hour bilateral discussions between Vonage and the Commission appear to be focused on developing a Vonage trial geared toward serving Vonage's interests. Making last minute calls to the intended recipient of a special waiver is not a transparent manner in which an administrative agency should arrive at reasoned decisions. Further, the scope and nature of the trial itself should be the subject of public notice and comment. Joint CLECs continue to urge the Commission not to conduct a trial prior to conducting a rulemaking, but if there is to be a trial, the trial should at least be subject to public comment.

¹ Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, CC Docket No. 99-200 (Apr. 15, 2013).

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Rather than considering last-minute condition requests by Vonage for its own waiver, the Commission should set aside the trial concept and conduct an equitable rulemaking. Because a transparent process has not been followed and transparent discussions cannot be conducted before the April 18, 2013 meeting, the Commission must schedule the matter for a later meeting date in order to allow concerned parties to fully participate. If there is to be a trial to inform the NPRM, the Commission should at least take broad public comment from all parties as to the nature and scope of such trial.

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: Michael Steffen
Priscilla Delgado Argeris
Dave Grimaldi
Nicholas Degani
Erin McGrath