February 12, 2014

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

On February 11, 2014, Brendan Kasper, of Vonage Holdings Corp. ("Vonage"), together with Randall W. Sifers and the undersigned, of Wiltshire & Grannis LLP, counsel to Vonage, met with Kalpak Gude, Deena Shetler, Victoria Goldberg, Rhonda Lien, and Thom Parisi, of the Wireline Competition Bureau, to discuss Vonage's support for the pending Level 3 Communications, LLC and Bandwidth.com, Inc. request that the Commission issue a declaratory ruling clarifying that Sections 51.903(d), 51.913(b), and 69.106 of the Commission's Rule permit CLECs to collect end office switching access charges for over-the-top ("OTT") VoIP calls when providing the functional equivalent of end office switching but not a physical loop.[1] The Vonage parties met separately with Daniel Alvarez, Wireline Advisor to Chairman Wheeler, to discuss the same matter.

Vonage explained that it has been seeking to negotiate direct IP interconnection agreements with incumbent LECs, but that these agreements have been hampered by AT&T's misinterpretation of the Commission's VoIP access charge rules. Vonage seeks IP interconnection agreements because the exchange of traffic in IP delivers substantial public interest benefits including cost reduction, improved service quality, and the ability to deliver advanced services such as HD voice. Indeed, the Commission has recognized the benefits of IP networks, making the IP transition a key policy goal.

But Vonage has found that at least one incumbent LEC is unwilling to enter into a direct IP interconnection arrangement unless that arrangement imports the asymmetrical compensation

[1] *See* Letter from John T. Nakahata, Wiltshire & Grannis LLP, counsel to Level 3 Communications, LLC *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al*. (filed April 8, 2013).

structure that AT&T has argued, incorrectly, was adopted by the Commission in the *USF/ICC Transformation Order*.[2] Specifically, Vonage has faced demands that it agree to asymmetrical compensation arrangements as a condition of IP interconnection. Vonage understands the basis for this position to be the ILEC's view that it would be entitled to asymmetrical compensation for the TDM exchange of VoIP traffic, and should receive the same economic benefit when exchanging traffic in IP.

The Commission made clear when it adopted the VoIP Symmetry Rule that it intended for access charges to be symmetric for OTT VoIP, loop-facilities-based VoIP, and TDM services. As the Commission explained, this symmetrical framework "avoids marketplace distortions that give one category providers an artificial regulatory advantage in costs and revenues relative to other market participants."[3]

Vonage explained that AT&T's misinterpretation of the *USF/ICC Transformation Order* has led to the very market distortions that the Commission sought to avoid. Here, outside of the TDM network, Vonage faces demands that it pay unbalanced compensation based on legacy network functions. Moreover, it faces these demands even though the Commission has already made clear that its intercarrier compensation framework applies symmetrically to <u>all</u> VoIP-PSTN traffic "regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture."[4]

Vonage also explained that it generally does not seek intercarrier compensation, and its interest in this matter thus arises from the impact of intercarrier compensation on Vonage's ability to negotiate IP interconnection agreements. When Vonage enters into direct interconnection agreements with other IP providers, it prefers to seek bill and keep arrangements.[5] This is consistent with the Commission's stated goal of moving all compensation to a bill and keep regime, a goal that the Commission has found serves the public interest.[6] By moving as much traffic as possible into bill and keep arrangements, Vonage will merely accelerate the transition the Commission has already mandated.

Finally, permitting an asymmetrical approach to VoIP intercarrier compensation leaves incumbent LECs with perverse incentives to perpetuate legacy TDM technology, contrary to the Commission's goals. By contrast, making it clear that the Commission adopted symmetrical compensation rates for VoIP-PSTN traffic will remove an unnecessary barrier to IP interconnection and create incentives to invest in IP networks.

Therefore, Vonage urged the Bureau to take swift action to enforce the symmetrical compensation provisions that were adopted in the *USF/ICC Transformation Order*.

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[2] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 942 (2011) ("*USF/ICC Transformation Order*").

[3] *USF/ICC Transformation Order* ¶ 942.

[4] *Id.* ¶ 970.

[5] Vonage will, of course, negotiate in good faith with providers that prefer alternative arrangements.

[6] *See USF/ICC Transformation Order* ¶¶ 740-759.

If you have questions or require any additional information, please do not hesitate to contact me at (202) 730-1346 or bstrandberg@wiltshiregrannis.com.

Sincerely,

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