June 20, 2011

By Electronic Filing

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

Re: Ex Parte Letter; CC Docket No. 99-200

Dear Ms. Dortch:

Vonage Holding Corp. (“Vonage”) has recently filed ex parte notices regarding its 2005 petition for limited waiver of Section 52.15(g)(2)(i), 47 C.F.R. § 52.15(g)(2)(i), of the Commission’s rules to allow Vonage to obtain numbering resources directly from the North American Numbering Plan Administrator (“NANPA”). In the petition, they seek a waiver comparable to the waiver the Commission granted to SBCIS in 2005.¹ Vonage requests the waiver so that it has direct access to the number resources without having to become a state-certified common carrier.² In its petition, Vonage states that it intends to use these numbering resources to deploy IP-enabled services, such as Voice over Internet Protocol (“VoIP”) services, on a commercial basis to residential and business customers.³

A waiver applicant bears a heavy burden, as Commission rules are presumed valid.⁴ “In general, the waiver request must demonstrate special circumstances warranting a deviation

¹ See Order, Administration of the North American Numbering Plan, FCC 05-20 (2005)(“SBCIS Waiver”).


³ Id.

⁴ SBCIS Waiver at ¶3.
from the general rules and that such deviation will service the public interest.”5 Vonage has failed to meet this burden, as it has not demonstrated any special circumstances that warrant deviation from the rules.6 The Commission, in its VoIP LNP Order, recognized that “many interconnected VoIP providers may not obtain numbering resources directly from the NANPA because they will not have obtained a license or a certificate of public convenience and necessity from the relevant states.”7 In fact a significant number of providers have filed similar waiver requests.8 So Vonage is not unique. If it is in the public interest to allow such providers to have direct access to numbering resources, the Commission should make such a determination in a rulemaking proceeding, not through the grant of waivers.9

Indeed, subsequent to the waiver petitions of SBCIS and Vonage et al, the Commission considered the very question at issue in the waiver requests in the VoIP LNP Order. In that

5 Order, AT&T Inc. Petition for Waiver of Section 61. 42(g) of the Commission’s Rules, WCB/Pricing File No. 11-06, DA 11-981, ¶4 (Jun. 2, 2011)(emphasis added).

6 Vonage and the other petitions have also failed to demonstrate the waivers would be in the public interest.


9 In response to the Commission’s Public Notice seeking comment on these waiver petitions, a number of state public utility commissions filed comments expressing concern with the granting of such waivers and urged the Commission to consider this issue through rulemaking rather than continue to provide individual waivers. See e.g., Comments of the Nebraska Public Service Commission, CC Docket No. 99-200, p. 2 (filed Apr. 112005)[The “NPSC does not believe the Petitioners have made their case with respect to demonstrating a waiver is warranted. The NPSC does not believe the Petitioners have shown good cause as to why a waiver is appropriate, nor have they shown that a waiver would be in the public interest.”]; Comments of the Maine Public Utilities Commission, CC Docket No. 99-200, p. 2 (filed Apr. 11, 2005)[“Thus, we urge the Commission to move expeditiously to establish industry-wide rules for VOIP providers’ use of numbering resources, rather than continue to provide individual waivers.”]
Order the Commission reaffirmed that only a carrier may access numbering resources directly from the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (PA). As the Commission stated, this is a well established principal “to ensure that the numbers are used efficiently and to avoid number exhaust.” They determined that Interconnected VoIP providers that have not obtained license or certificate of public convenience and necessity from the relevant state are to make numbers available to their customers through commercial arrangements with carriers (i.e., numbering partners). While the Commission stated that the Order does not prejudge the pending waiver petitions, since the petitioners have not demonstrated any unique circumstances the petitions should be denied.

Moreover, the waiver granted to SBCIS of section 52.15(g)(2)(i) of the Commission’s rules was only to be effective until the Commission adopted numbering rules regarding IP-enabled services. The Commission has since considered and addressed the question of whether VoIP providers that do not have a license or certificate (or otherwise authorized) to provide service in the area in which they are requesting numbering resources should have direct access to such numbering resources. Therefore the waiver granted to SBCIS should no longer be considered valid.

The Commission needs to abide by the Administrative Procedures Act and Commission rules for rulemaking proceedings when deciding questions of general applicability, and not make such determination through the waiver process. Consequently, the pending waiver requests of Vonage and the other petitioners should be denied.

Respectfully submitted,

/s/ Karen Reidy

cc: Zac Katz
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    Christine Kurth
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    Douglas Klein
    Michelle Sclater
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10 VoIP LNP Order at ¶ 18.

11 Id at ¶20.

12 SBCIS Waiver Order at ¶4.