March 1, 2012

Ex Parte Letter: By Electronic Filing

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

Dear Ms. Dortch:

Bandwidth.com, Inc., Hypercube Telecom, LLC, Level 3 Communications, LLC, Pac-West Telecomm, Inc., and COMPTEL (“Joint Commenters”) write in response to the recent ex parte letter filed by Vonage Holdings Corp. (“Vonage”) on February 9, 2012 (“Letter”). The Letter fails to address in any meaningful way the complications that would ensue if the Commission were to grant the petitions by non-carrier VoIP providers for the direct assignment of numbering resources (“Petitions”). These complications were described in detail by Joint Commenters in comments filed January 25, 2012 (“Joint Comments”).

Joint Commenters, joined by other carriers and other major trade associations, have highlighted the fact that granting the petitions of Vonage and other providers raises complex routing, number exhaust, interconnection, and intercarrier compensation issues. The Commission needs to address these issues, and the only mechanism to address them in a detailed and nondiscriminatory manner is through an existing rulemaking proceeding, such as the IP Enabled Services proceeding, or by issuing a notice of proposed rulemaking (“NPRM”) focused exclusively on these issues.

I. There is Substantial Industry and State Commission Opposition to the Petitions

Although the record in this proceeding speaks for itself, as a threshold matter, the Letter mischaracterizes the level of support for the Petitions, claiming that the comments “overwhelmingly support” the Vonage waiver. In fact, there is substantial opposition to the Petitions from across the telecommunications industry and the state commissions.

Three major trade associations, COMPTEL, the National Cable & Telecommunications Association (“NCTA”), and the National Telecommunications Cooperative Association (“NTCA”), all opposed the Petitions and urged the Commission to address them in a rulemaking proceeding.²

The state commissions have also voiced strong support for a rulemaking proceeding. The California Public Utilities Commission (“CPUC”) raised many of the same issues as the Joint Commenters: “California is concerned that allowing an unlicensed service provider, which maintains that it is not a telecommunications service provider and therefore not subject to the rules imposed on such service providers, would promote even more disregard for number conservation and the rules which promote number conservation.” CPUC Comments at 6. The CPUC calls for a variety of changes that would clearly require a rulemaking. See id. at 7. See also, Comments of the Pennsylvania Utility Commission, filed Oct. 6, 2011, at 8-9 (the Commission should deny the Petition and issue a rulemaking).

In addition to individual state support for an NPRM, the National Association of Regulatory Utility Commissioners (“NARUC”) recently declared its support for an FCC NPRM to address the Petitions. On February 8, 2012, NARUC adopted a resolution (“NARUC Resolution”) recommending that the FCC issue an NPRM to address many of the same issues raised by Joint Commenters. Attached as Exhibit A hereto. In its Resolution:

NARUC urges the FCC to issue a Notice of Proposed Rulemaking to address the waiver requests by VoIP and IP-enabled service providers, in CC Docket No. 99-200, in order to proceed in a non-discriminatory manner and to consider:

(1) Whether and on what conditions unlicensed or non-certificated VoIP and IP-enabled service providers should obtain numbering resources directly from the NANPA and the PA; and
(2) Delegating pooling authority to all States; and

² NTCA represents nearly 600 rural telecom providers, NCTA represents cable operators serving more than 90 percent of the nation’s cable television households, and COMPTEL is the leading competitive trade association, representing nearly 100 companies.
The broader implications of its decisions on numbering issues attributed to unlicensed and non-certificated VoIP and IP-enabled service providers, including their impact on:

i. Meeting number utilization and optimization goals; and
ii. Reducing area code exhaust; and
iii. Addressing critical routing issues; and
iv. Carrier and service provider interconnection and compensation obligations; and
v. Facilitating the efficient and timely porting of numbers between service providers . . . .

NARUC Resolution at 3. The Commission should therefore weigh the advice of a wide spectrum of telecommunications companies and the state commissions and defer the resolution of the Petitions to an existing or new rulemaking proceeding to address critical number utilization, area code exhaust, routing, interconnection, compensation, and number portability issues.

II. Petitioners Have Failed to Address the Substance of the Issues Raised by the Industry and the State Commissions

The Petitioners have never addressed the details as to how they would interact with existing carriers on critical intercarrier issues such as routing, interconnection, and compensation, and the recent Letter leaves many critical questions unanswered.

In fact, on significant issues such as routing and facilities readiness, Vonage appears to rely entirely on Neutral Tandem and its other carrier partners for expertise. Letter at 3 (relying on Neutral Tandem products and similar “off-the-shelf routing solutions” to address carrier routing concerns if the Petitions were granted); see also Letter at 4. If critical routing expertise rests exclusively with carriers, then only carriers should be assigned phone numbers. For example, Vonage fails to address Joint Commenters’ routing concerns in the case where a non-carrier VoIP provider becomes a Code Holder of a pooled NXX. Joint Comments at 10-11. Given the lack of detailed solutions provided by Petitioners in this proceeding, the Commission should deny the Petitions and, if the Commission is so inclined, address these issues in a rulemaking.

The response to the industry’s concerns about number exhaust, including Joint Commenters concerns about LRN-related exhaust, is equally vague. The Letter relies for this
response on the states’ expertise. Letter at 4. But in fact, the states have raised specific concerns relating to the “impact on number exhaust as a myriad of VoIP and IP-enabled service providers become Code Holders to obtain local routing numbers (LRNs),” in finding that an NPRM is necessary to address these complex issues. NARUC Resolution at 2.

With respect to interconnection and compensation, the Letter again points to CLEC partners as the solution, begging the question why these responsible CLEC parties should not be the code holders of the numbers in the first instance. Letter at 3 (noting continued reliance on “CLEC partners for such services as inbound trunks and to home numbers to CLEC switches.”) In lieu of comprehensive, sophisticated responses to detailed industry issues and questions, the Letter offers only these tea leaves for the industry to interpret as to the legal rights and obligations of these putative non-certificated code holders. The Letter also suggests that IP interconnection and bill and keep will automatically resolve all interconnection and compensation issues. Letter at 3. Yet neither development is imminent: the ILECs continue to resist requests for IP interconnection and bill and keep is currently not scheduled to be implemented until July 2017 for price cap carriers and July 2020 for rate of return carriers.

Many questions therefore remain unanswered. See, e.g., Joint Comments at 10-11; NTCA Comments at 7; NCTA Comments at 2; NARUC Resolution at 1-3. How would petitioner numbers be listed in the LERG? Do carriers have a legal right to interconnect with petitioners and vice versa? What fundamental compensation obligations apply between petitioners and telecommunications carriers? And, ultimately, would allowing direct number assignment to non-carriers create far more problems than it would resolve?

Because Petitioners have not addressed these issues, the Commission should deny the Petitions and address these issues, if at all, in the IP-Enabled Services proceeding. Alternatively, the Commission could issue an NPRM to consider whether and on what terms and conditions non-carrier VoIP providers should be permitted to obtain direct access to numbering resources.

Respectfully submitted,

/s/ James C. Falvey

James C. Falvey
Brett H. Freedson
Counsel for Joint Commenters
WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has long recognized that telephone numbers are a limited resource which must be utilized in the most efficient way to accommodate new entrants and new technologies into the competitive telecommunications marketplace; and

WHEREAS, NARUC previously adopted resolutions concerning the availability of telephone numbers to Voice over Internet Protocol (VoIP) and Internet Protocol (IP)-enabled service providers at its November 2007 Annual Convention and July 2007 Summer Committee Meetings; and

WHEREAS, Poor management of numbering resources can lead to unnecessary exhaust of area codes requiring relief proceedings and development of implementation plans which are costly and can have a negative impact on consumers and commerce; and

WHEREAS, Pursuant to § 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Federal Communications Commission (FCC) has exclusive jurisdiction over the North American Numbering Plan (NANP) although the FCC may and has delegated some of that authority to the States; and

WHEREAS, The FCC has delegated day-to-day responsibilities for administering numbering resources to the North American Numbering Plan Administrator (NANPA) and the National Pooling Administrator (PA); and

WHEREAS, Under the FCC’s Part 52 numbering rules only carriers with FCC licenses, State certifications or FCC waivers may apply to the NANPA or the PA for direct access to numbering resources; and

WHEREAS, All eligible carriers seeking numbering resources directly from the NANPA or the PA are subject to the FCC’s Part 52 numbering rules, including the filing of Number Resources Utilization and Forecast (NRUF) information, as well as meeting the requisite number utilization requirements; and

WHEREAS, Consumers have increased access to VoIP and other IP-enabled services which can benefit consumers by providing more choices of competitive voice service alternatives, however this increase in the number of providers creates a greater demand for numbering resources; and

WHEREAS, Most VoIP and IP-enabled service providers do not obtain FCC licenses, seek State certification, or obtain FCC waivers to gain direct access to numbering resources, but instead partner with eligible carriers to indirectly gain access to numbering resources; and

WHEREAS, Neither the NANPA nor the PA have a mechanism to directly monitor utilization of numbers by unlicensed and non-certificated VoIP and other IP-enabled service providers
which may not have an incentive to efficiently utilize numbering resources and, thereby, increases the difficulty for States monitoring numbering resources utilization; and

WHEREAS, There is currently no consistent or stated FCC rule or policy regarding the assignment of numbers to unlicensed or non-certificated service providers; and

WHEREAS, In 2005, the FCC granted a waiver of the certification requirements to SBC Internet Services Inc. (SBCIS), an affiliate of an incumbent local exchange carrier, that enabled SBCIS to gain direct access to numbering resources, even though it was not an FCC licensed or State certificated service provider; and

WHEREAS, The FCC imposed a number of conditions on SBCIS requiring it to adhere to the same requirements as FCC licensed and State certificated service providers, including requirements that SBCIS comply with: (1) all numbering utilization and optimization requirements; (2) all numbering authority delegated by the FCC to States; (3) all industry numbering guidelines and practices; (4) all numbering request requirements and timelines; and (5) all facilities readiness requirements; and

WHEREAS, Neither the 2005 SBCIS Waiver nor the 2007 NARUC Resolutions appeared to recognize the detrimental impacts of expanding number resource access to non-carrier VoIP and IP-enabled service providers, including:

• The impact on number exhaust as a myriad of VoIP and IP-enabled service providers become Code Holders to obtain local routing numbers (LRNs);
• The impact on call routing issues raised by permitting VoIP and IP-enabled service providers that are not listed in the Local Exchange Routing Guide (LERG) to obtain numbers;
• The impact on State commission consumer protection capabilities;
• The uncertainty relating to whether VoIP and IP-enabled service providers have interconnection and compensation obligations;
• The impact on area code exhaust if VoIP and IP-enabled service providers were allowed access to numbering resources in rural rate centers still designated as “Pooling Excluded” by the PA; and
• The impact on area code exhaust if VoIP and IP-enabled service providers acquire numbering resources without regard for utilization and conditions in the local telecommunications market; and

WHEREAS, In “Pooling Excluded” rate centers there are no thousands-blocks of numbers available to VoIP and IP-enabled service providers, and assignment of NXXs in ten thousands-blocks of telephone numbers would likely lead to premature area code exhaust in rural areas; and

WHEREAS, The numbering resource management authority delegated by the FCC to the States has greatly contributed to the overall success in meeting number utilization and optimization goals, reducing area code exhaust, and facilitating the efficient and timely porting of numbers between service providers; and
WHEREAS, Granting to the States the ability to determine which rate centers in the respective State are available to unlicensed and non-certificated VoIP and IP-enabled service providers will promote conservation and optimization of number utilization; and

WHEREAS, On December 27, 2011, the FCC requested Comments to refresh the record on petitions for waiver, in CC Docket No. 99-200, from unlicensed or non-certificated VoIP and IP-enabled service providers to allow them to gain direct access to numbering resources from the NANPA and PA; now, therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Winter Committee Meetings in Washington, D.C., reaffirms and clarifies its positions “Concerning Availability of Numbers to Voice over Internet Protocol Providers and IP-Enabled Services” previously stated in November 2007 and “Concerning Adherence to Numbering Rules by Voice over Internet Protocol and IP-Enabled Service Providers” previously stated in July 2007; and be it further

RESOLVED, That NARUC urges the FCC to issue a Notice of Proposed Rulemaking to address the waiver requests by VoIP and IP-enabled service providers, in CC Docket No. 99-200, in order to proceed in a non-discriminatory manner and to consider:

1. Whether and on what conditions unlicensed or non-certificated VoIP and IP-enabled service providers should obtain numbering resources directly from the NANPA and the PA; and
2. Delegating pooling authority to all States; and
3. The broader implications of its decisions on numbering issues attributed to unlicensed and non-certificated VoIP and IP-enabled service providers, including their impact on:
   i. Meeting number utilization and optimization goals; and
   ii. Reducing area code exhaust; and
   iii. Addressing critical routing issues; and
   iv. Carrier and service provider interconnection and compensation obligations; and
   v. Facilitating the efficient and timely porting of numbers between service providers; and be it further

RESOLVED, That should the FCC decide ultimately to permit unlicensed and non-certificated VoIP and IP-enabled service providers direct access to telephone numbers at some future point, it not do so unless it first proceeds with a Notice of Proposed Rulemaking and at least requires such service providers to comply with:

1. The FCC’s Part 52 numbering rules; and
2. The same conditions the FCC previously imposed on SBCIS; and
3. Any additional routing, interconnection, and compensation conditions that will mandate the seamless flow of traffic and efficient number utilization; and be it further

RESOLVED, That should the FCC decide ultimately to permit unlicensed and non-certificated VoIP and IP-enabled service providers direct access to numbering resources, it should also grant
States the authority to determine which rate centers in the respective State are available for assignment to such service providers; *and* be it further

**RESOLVED,** That NARUC specifically stresses the importance of requiring all service providers (licensed and unlicensed, certificated and non-certificated, over-the-top and embedded alike) to comply with numbering utilization and optimization requirements, as well as the obligation to comply with all industry guidelines and practices approved by the FCC and all numbering authority delegated by the FCC to the States.

_Sponsored by the Committee on Telecommunications_

_Adopted by the NARUC Board of Directors February 8, 2012_