June 6, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554


Dear Ms. Dortch:

Bandwidth.com, Inc., Level 3 Communications, LLC, HyperCube Telecom, LLC, and COMPTTEL (collectively “CLEC Coalition”) submit this ex parte responding to the May 21, 2012 letter filed by AT&T Services, Inc.1 relating to the ostensible impact on IP-to-IP interconnection of the petitions of Vonage and other non-carriers for limited waiver of Section 52.15(g)(2)(i) of the Commission’s rules regarding access to number resources.

AT&T makes the unsupported claim that granting Vonage “and other interconnected VoIP providers direct access to number resources would greatly facilitate their ability to engage in just the sort of ‘good faith negotiations’ for commercial IP-to-IP interconnection arrangements that the Commission sought to encourage in the ICC/USF Order.”2 Yet Vonage’s petition offers no resolution of the critical issues being raised and considered by the

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2 AT&T Ex Parte, at 3.
Commission in its comprehensive Further Notice of Proposed Rulemaking\(^3\) ("FNPRM"). Indeed, Vonage’s previous statement, that it “has already negotiated technical and commercial terms for such agreements with several tier 1 carriers,”\(^4\) says nothing, for example, as to whether it has reached an agreement with an ILEC or a CLEC, or if it is truly for the interconnection of networks or merely the purchasing of capacity or some other service.

Carrier status is not a barrier to IP Interconnection. Competitive carriers have been able to reach IP interconnection agreements with other competitive carriers.\(^5\) As the record in the FNPRM demonstrates, it is the major ILECs, such as AT&T, that have posed the greatest barrier to IP interconnection. AT&T’s pleas for the Commission to rely upon “market forces” and “commercial arrangements,” ignores both the dictates of the Act and AT&T’s dominance in the market.

But AT&T’s ex parte highlights a very important point: critical questions relating to IP interconnection (e.g., how such arrangements should be treated under the Act) are being considered in a comprehensive manner in the FNPRM. The Commission should take no action here that could add further complexity to those issues until the basic questions presented in the FNPRM are addressed.

AT&T works from the mistaken assumption that CLECs somehow have “gatekeeper control” over number resources and that CLECs “hold their VoIP provider customers captive . . . .”\(^6\) This is simply inaccurate. Like AT&T, CLECs have no control over the issuing of number resources.\(^7\) Moreover, there is nothing stopping Vonage from becoming a carrier and obtaining numbers like any other carrier. If it chooses to remain a non-carrier, Vonage is not “captive” to any carrier. If it chose to do so, it could even buy services from AT&T.\(^8\)

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\(^5\) In the Matter of Petition for Declaratory Ruling That tw telecom Inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-In-The-Middle Voice Services, Petition For Declaratory Ruling of tw telecom Inc., WC Docket No. 11-119, Att. A, ¶ 10 (July 14, 2011).

\(^6\) AT&T Ex Parte, at 1, 4.

\(^7\) The FCC has, of course, delegated responsibility for administering number resources to the North American Administrator ("NANPA") and the National Pooling Administrator ("PA"). The National Association of Regulatory Utility Commissioners, which coordinates with the NANPA and the PA, has stated that neither “the NANPA nor the PA has a mechanism to directly monitor utilization of numbers by unlicensed and non-certificated VoIP and other IP-enabled service providers.” Ex Parte Letter from James Bradford Ramsay, General Counsel, NARUC General Counsel, to Chairman Genachowski, Commissioner McDowell, and Commissioner Clyburn, at 4 (March 30, 2012).

\(^8\) AT&T makes a convoluted claim that, if Vonage cannot obtain direct access to numbers, it would need to develop an entirely new and parallel routing database “outside of existing databases” if it wanted to route traffic independent of its wholesale carrier partners. AT&T Ex Parte at 2. But this misses the point: if Vonage wants to participate in the one seamless and integrated routing system, it should become a carrier, and not obtain by
AT&T claims that the alleged lack of “calamitous results” from AT&T-IS’s waiver is a sound basis for granting additional waivers.⁹ In fact, the Commission faces a “heavy burden” to justify granting a waiver.¹⁰ As the CLEC Commenters have noted in the past, AT&T is itself a “carrier,” and arguably has access to more resources than any other carrier in the country. Because Vonage is not affiliated with a carrier, and has in fact shown itself to be sorely lacking in numbering expertise,¹¹ AT&T-IS’s experience—even if, per below, it did not evidence serious concerns—has no bearing on whether Vonage is qualified to handle the direct assignment of number resources. Moreover, even as AT&T encourages the Commission to grant the pending petitions, AT&T distances itself from the alleged “call diversion schemes” of still another petitioner.¹² AT&T’s ex parte, in calling for differing results and unique conditions for different carriers, points to the need for a clear federal certification rule if the Commission were to conclude that it is necessary and advisable to grant non-carriers direct access to numbers.¹³

The record also reflects that granting AT&T-IS direct access to numbering resources has in fact exacerbated the problem of number exhaust, which is one of the principal concerns repeatedly voiced by the CLEC Coalition, among others, with granting such waivers. According to the California Commission:

As an example of the types of inefficiencies extant in the current numbering rules, in monitoring AT&T-IS’ use of numbers, the CPUC has found that AT&T-IS has been engaging in a practice which, while not a violation of the FCC’s rules, has led to inefficiencies in the allocation of thousands of number in California . . . AT&T-IS obtains a location routing number (LRN) in many rate centers where acquisition of an LRN is not necessary, given that AT&T-IS is not a geographically-based service provider. The assignment of numerous LRNs requires concomitant assignment of thousands of numbers that remain unused, simply to support the allocation of the LRN. . . .

California is concerned that allowing an unlicensed service provider, which maintains that it is not a telecommunications service provider and therefore

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⁹ AT&T Ex Parte, at 4.
¹² AT&T Ex Parte, at 4 & fn.17.
¹³ See CLEC Ex Parte, at 8-10.
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.14

As such, the AT&T-IS experience supports the Joint CLECs’ concern that granting number resources to new non-carrier VoIP providers will accelerate number exhaust.

Seven years after the AT&T waiver was granted,15 AT&T laments that the Commission has yet to grant additional waivers.16 But what AT&T should be focused on is the need, after seven years, to address these IP enabled issues in a comprehensive and nondiscriminatory rulemaking proceeding. Where the Commission is already addressing critical IP enabled issues in the FNPRM, the waiver petitions would only lead to additional disputes, complaints, uncertainty, and confusion throughout the industry. The Commission should deny the Petitions, and complete current and any necessary additional NPRMs to establish clear and uniform rules for IP enabled services.

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

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cc: Michael Steffen
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15 SBCIS Waiver Order, ¶ 3.
16 AT&T Ex Parte, at 4.