

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Numbering Resources Optimization

CC Docket No. 99-200

COMMENTS OF VONAGE HOLDINGS CORP.

Brendan Kasper
Senior Regulatory Counsel
Vonage Holdings Corp.
23 Main Street
Holmdel, NJ 07733
(732) 444-2216

Brita D. Strandberg
Rachel W. Petty
Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, D.C. 20036
(202) 730-1300

Counsel to Vonage Holdings Corp.

January 25, 2012

Table of Contents

Introduction and Summary 1

I. Vonage Has Shown Good Cause for its Requested Waiver..... 3

 A. Commission Precedent Supports Grant of Vonage’s Waiver..... 4

 B. Vonage’s Waiver Will Serve the Public Interest. 5

 C. Vonage’s Conditions Will Further the Public Interest..... 7

II. CompTel and Level 3’s Objections are Without Merit. 8

 A. CompTel Distorts the Standard for Waiver. 8

 B. There Are No Routing Issues for Level 3 to Solve..... 10

 C. The Commission Should Reject Any Additional CLEC Objections. 11

Conclusion 12

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Numbering Resources Optimization

CC Docket No. 99-200

COMMENTS OF VONAGE HOLDINGS CORP.

Introduction and Summary

In 2005, Vonage Holdings Corp. (“Vonage”) filed a petition for a limited waiver of Section 52.1(g)(2)(i) of the Commission’s Rules to allow Vonage to directly access numbering resources. As the Commission had not yet acted on its petition, in March 2011, Vonage renewed its waiver request to the Commission.

In its prior submissions to the Commission, Vonage has demonstrated that grant of the waiver would be fully consistent with the Commission’s general precedent on waivers and the Commission’s specific *SBCIS Order* by which it granted another VoIP provider a waiver to allow it direct access to numbering resources. Vonage also has demonstrated that grant of the waiver would serve the public interest in several important ways, including by: (1) promoting the deployment of new and innovative products, (2) leading to lower prices for VoIP services, (3) improving the quality of Vonage’s services to consumers, and (4) promoting the Commission’s goal of moving towards an all-IP network. Finally, Vonage has supported the imposition of conditions on the grant of its waiver that go beyond those in the *SBCIS Order* and are designed

to ensure efficient number utilization and facilitate Commission oversight. For all these reasons, the Commission should expeditiously grant Vonage's requested waiver.

Several parties have raised objections to Vonage's waiver request. None of these objections warrant denial of Vonage's request. First, CompTel has claimed that a waiver is not the proper procedural mechanism for granting Vonage's requested relief because, in its view, waivers must present "unique" individualized circumstances to justify grant. Vonage has previously demonstrated that CompTel's argument would impose a new condition on the grant of a waiver that is contrary to Commission waiver precedent. Moreover, CompTel's argument would impair the Commission's ability to discharge its responsibilities by denying the Commission the ability to provide relief where strict compliance with its rules could result in hardship, inequity, or harm to the public interest. Further, even under CompTel's flawed reading of Commission waiver precedent, Vonage has demonstrated "unique" individualized circumstances sufficient to warrant grant of its waiver.

More recently, Level 3 has raised concerns relating to the routing of PSTN traffic to Vonage as a reason to deny the waiver. However, existing services available from CLECs, including services offered by Level 3, can resolve any concern with routing PSTN traffic to Vonage. Because existing routing solutions already enable the routing of PSTN traffic to Vonage, Level 3's concerns should not delay grant of Vonage's requested waiver.

Vonage anticipates that in this round of comments, CLECs may offer additional objections to Vonage's requested waiver. Of course, CLECs have a strong economic incentive to derail Vonage's request because, as long as Vonage's request is delayed, Vonage must continue to pay CLECs for telephone numbers. Further, as long as Vonage's attempts to connect on an IP-to-IP basis are hindered by its reliance on CLECs for numbering resources, almost all

traffic bound to Vonage customers will be carried over CLEC networks, enabling CLECs to assess intercarrier compensation charges on the originating provider. The Commission has already found that transitioning to IP networks to provide services and to bill-and-keep for intercarrier compensation promotes the public interest and provides significant consumer benefits. The Commission should not allow CLEC efforts to protect an outdated business model to further delay the consumer benefits that will follow from Vonage's requested waiver.

I. Vonage Has Shown Good Cause for its Requested Waiver.

The Commission has the authority to waive its rules when a petitioner shows “good cause,”¹ and will exercise this discretion “where the particular facts make strict compliance inconsistent with the public interest.”² The D.C. Circuit has explained that the waiver process is an essential tool in the Commission's regulatory arsenal enabling it to “discharge . . . its assigned responsibilities.”³ Vonage has shown good cause for its requested waiver by demonstrating that its waiver (1) is consistent with Commission precedent, (2) will serve the public interest by promoting deployment of new and innovative products and the transition to an IP network, and (3) will facilitate efficient number utilization, IP interconnection, and effective Commission oversight.

¹ 47 C.F.R. § 1.3.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 26 FCC Rcd. 9449, ¶ 7 (2011) (citing *Ne. Cellular Tel. Co. v. Fed. Commc'ns Comm'n*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*TRS Waiver Order*”).

³ *WAIT Radio v. Fed. Commc'ns Comm'n*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd* 459 F.2d 1203 (1972), *cert. denied* 409 U.S. 1027 (1972). *See also Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

A. Commission Precedent Supports Grant of Vonage’s Waiver.

The FCC’s own precedent demonstrates that there is good cause for Vonage’s requested waiver. Vonage’s waiver is modeled on the earlier waiver the Commission granted to SBCIS.⁴ In granting that waiver, the Commission found that “direct access to telephone numbers is in the public interest because it will facilitate SBCIS’ ability to efficiently interconnect to the PSTN, and thereby help to achieve the Commission’s goals of fostering innovation and speeding the delivery of advanced services to consumers.”⁵ As the Commission explained, granting a “waiver in order to facilitate new interconnection arrangements is consistent with Commission precedent.”⁶ Moreover, the Commission expressly contemplated that the public interest would require a similar waiver for other parties—like Vonage—when it explained that “[t]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order.”⁷ Because Vonage seeks the same relief sought by SBCIS and is willing to adopt all of the conditions imposed on SBCIS, along with additional conditions that will further safeguard numbering resources and the public interest, there is, undoubtedly, good cause for Vonage’s requested waiver.

⁴ *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd. 2957 (2005) (“SBCIS Order”). In its order granting the waiver, the Commission stated that “[t]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order.” *Id.* ¶ 11.

⁵ *Id.* ¶ 6.

⁶ *Id.*

⁷ *Id.* ¶ 11.

B. Vonage's Waiver Will Serve the Public Interest.

The continued evolution of communications networks and the increased reliance on IP only heightens the public interest benefits that will follow from Vonage's waiver. The case for Vonage's waiver is therefore even stronger than the case for the SBCIS waiver.⁸

Numbering rights will enable Vonage to eliminate cumbersome barriers to the deployment of new and innovative services.⁹ Today, Vonage acquires telephone numbers through CLEC partners by purchasing Primary Rate Interface ("PRI") or Direct Inward Dialing ("DID") services.¹⁰ To offer certain advanced services such as SMS or caller ID, which require the population of particular signaling fields associated with the telephone numbers it acquires, Vonage also must obtain the agreement and cooperation of its CLEC partners.¹¹ Further, each time Vonage changes one of these services or seeks to provide a service that utilizes numbers, it must again obtain cooperation from its CLEC partners. This unnecessary process consumes time and resources and can delay deployment, inefficiencies that will be eliminated by a grant of Vonage's requested waiver.

⁸ Ex Parte Letter from Brita D. Strandberg, Wiltshire & Grannis, on behalf of Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 at 4-5 (filed Nov. 11, 2011) ("Vonage 11/11/11 Ex Parte"); *See also* Ex Parte Letter from Brita D. Strandberg, Wiltshire & Grannis, on behalf of Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, 1-2 (filed Dec. 6, 2011) ("Vonage 12/6/11 Ex Parte").

⁹ *Id.*

¹⁰ Vonage 11/11/11 Ex Parte at 4.

¹¹ Ex Parte Letter from Brita D. Strandberg, Wiltshire & Grannis, on behalf of Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 at 1-2 (filed March 8, 2011).

Direct access to numbers will reduce Vonage's costs of obtaining numbering resources.¹² The highly competitive nature of the market for voice services ensures that any savings will be passed on to consumers in the form of lower prices or improved service.¹³

Direct access to numbers will reduce Vonage's reliance on third-party providers, enabling it to improve service quality and network redundancy. By facilitating IP interconnection, direct access will improve service quality by eliminating protocol conversions necessary for using PSTN interconnections. Another example of how direct access to numbers will improve service quality is a simplified number porting process. Without direct access to numbers, both Vonage and its third-party numbering provider must follow a series of carefully coordinated steps to successfully complete a number port. While Vonage and its partners have worked hard to perfect this complex process, providing Vonage with direct access to numbers will streamline the process and reduce the opportunity for error. Direct access to numbers will allow Vonage to improve the redundancy of its network by adding many new direct IP interconnections in addition to existing CLEC inbound trunks, thereby reducing Vonage's reliance on particular CLEC trunks to handle inbound traffic and reducing the risk that traffic will be affected by CLEC trunk outages.

Finally, direct access to numbers will remove an obstacle to the implementation of IP-to-IP interconnection and promote the transition to an all-IP network, both of which are key Commission policy goals.¹⁴ Vonage is already pursuing IP interconnection with other providers, but has found that its lack of direct access to numbers is a roadblock to implementing these arrangements. This is because some providers are reluctant to route traffic directly to Vonage

¹² Vonage 11/11/11 Ex Parte at 5.

¹³ *Id.*

¹⁴ *See CAF Order ¶ 1010.*

over an IP-to-IP interconnection arrangement, rather than through Vonage's numbering partners using PSTN trunks, because industry routing databases indicate that a given Vonage customer's number is "owned" by CLEC X and traffic to this number should be routed to CLEC X's switch. Further, without a waiver and direct access to numbers, Vonage and its IP interconnection partners would need to develop routing databases outside of existing industry databases to separate, on one hand, telephone numbers owned by CLEC X and used by Vonage that should be routed over the IP interconnection and, on the other hand, numbers owned by CLEC X and not used by Vonage that should be routed as specified in the industry routing databases. Creating these databases would increase the cost and difficulty of implementing IP-to-IP interconnection for potential partners and introduce additional opportunity for routing errors. Vonage's requested waiver will remove these unnecessary obstacles.

C. Vonage's Conditions Will Further the Public Interest.

In addition to complying with all of the conditions in the SBCIS Order, Vonage has voluntarily offered to comply with additional conditions that ensure efficient number utilization, facilitate IP interconnection, and enable Commission oversight.¹⁵

- *First*, Vonage has volunteered to maintain a high utilization rate (far higher than industry average) and return numbers if it falls below that rate.
- *Second*, Vonage will commit to offer IP interconnection to other carriers and providers.
- *Third*, Vonage has volunteered to provide the FCC with a migration plan and ongoing reporting on its transition.¹⁶

¹⁵ See Vonage 11/11/11 Ex Parte at 5-6; Vonage 12/6/11 Ex Parte at 2.

¹⁶ See, e.g., Vonage 11/11/11 Ex Parte; Vonage 12/6/11 Ex Parte.

These Vonage-specific conditions further enhance the public interest benefits that result from granting Vonage's waiver.

II. CompTel and Level 3's Objections are Without Merit.

CompTel and Level 3 each have raised concerns regarding Vonage's requested relief. As explained below, these concerns are without merit and provide no basis to deny Vonage its requested waiver.

A. CompTel Distorts the Standard for Waiver.

CompTel claims that a waiver is not the proper procedural mechanism for granting Vonage's requested relief because, it asserts, petitions for waiver must demonstrate "unique circumstances" that are inapplicable to other potential applicants¹⁷ unless they are temporary or concern a deadline.¹⁸ This is false.¹⁹ In fact, CompTel's suggestion that the Commission should require "unique circumstances" effectively creates a new legal standard for Vonage to satisfy. This new standard would impair the Commission's ability to discharge its responsibilities by denying the Commission the ability to provide relief where strict compliance with its rules could

¹⁷ Ex Parte Letter from Karen Reidy, CompTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (filed Jun. 20, 2011) (citing *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, Order, 26 FCC Rcd. 7798, ¶ 4 (2011)) ("CompTel Letter").

¹⁸ Ex Parte Letter from Karen Reidy, CompTel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (filed Nov. 29, 2011).

¹⁹ See, e.g., *Fox Television Stations Inc. Licensee of Television Station WNYW, New York, New York*, 8 FCC Rcd. 5341 (1993) (granting a waiver of the NBCO rules); *New York Tel. Co. & New England Tel. & Tel. Co., Nonrecurring Charges for Reconfiguration of Circuits*, 13 FCC Rcd. 8324, ¶ 3 (1998) (noting that waiver of the nondiscriminatory NRC requirement is available for any "LEC [that] could demonstrate that any differential treatment would not undermine competition or otherwise violate the Communications Act of 1934, as amended") ("NYNEX Waiver Order"); *Shareholders of Tribune Company, Transferors and Sam Zell, et al. Transferees For Consent to the Transfer of Control of The Tribune Company*, 22 FCC Rcd. 21266, ¶ 34 (2007) (granting a permanent waiver of the NBCO rules to the Chicago Tribune Company in order to advance the broader goals of the rules at issue and noting that similar waivers had been granted to other petitioners in the same market and in other, similar markets) ("Tribune Waiver Order").

result in hardship, inequity, or harm to the public interest. Of course, the actual legal standard is well-settled, and it does not require “unique” individualized circumstances.²⁰ Instead, Vonage must show good cause for its requested waiver. As explained in detail above, Vonage has done so.²¹ The D.C. Circuit has explained that agency “discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”²² CompTel’s cramped reading of the Commission’s precedents would deny the Commission this critical safety valve and require the Commission to justify its departure from its own SBCIS precedent.

In any event, Vonage has demonstrated the special circumstances CompTel claims are necessary for relief by detailing the Vonage-specific benefits that will result from a waiver. Vonage has shown that, for Vonage, the waiver will facilitate IP interconnection, reduce costs, facilitate deployment of new and innovative services, enable improved network redundancy and resiliency, and enable greater direct control over quality of service. Vonage has likewise offered

²⁰ See *id.*, NYNEX Waiver Order; Tribune Waiver Order (granting waiver due to the Tribune Company’s “unique circumstances,” and noting that “Commission has granted a *permanent* waiver of the [NCBO] [sic] rule for common ownership of a newspaper and a television station in the *very market* at issue here--the third largest market in the country--as well as in a similar market” and had therefore found that other parties had unique or special circumstances entitling them to waiver of the same rules). Also, as Vonage noted in its November 11, 2011 *ex parte*, the Commission has granted either blanket waivers or waivers common under many other rules to as many as hundreds of individual parties outside of the rulemaking process. See, e.g., SBCIS Order; *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 643 (2010); *Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service*, Memorandum Opinion and Order, 23 FCC Rcd. 5894 (2008); TRS Waiver Order.

²¹ See *supra* Section I.

²² *WAIT Radio v. Fed. Comm’n Comm’n*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d* 459 F.2d 1203 (1972), *cert. denied* 409 U.S. 1027 (1972). See also Vonage 11/11/11 Ex Parte; Vonage 12/6/11 Ex Parte.

Vonage-specific conditions. In addition, Vonage has proven itself a responsible steward of the numbering resources it obtains indirectly by maintaining a high number utilization rate.²³

Finally, contrary to CompTel's assertion, the Commission's *VoIP LNP Order* did not resolve or moot Vonage's long-standing request. The Commission there explained that it was not prejudging, much less dismissing or denying, Vonage's waiver request.²⁴ For all of these reasons, CompTel's objections should not further delay Vonage's requested waiver.

B. There Are No Routing Issues for Level 3 to Solve.

Level 3 has claimed that "it and other carriers like it, would need to determine an alternative way to route calls to and from interconnected VoIP provider phone numbers."²⁵ The marketplace, fortunately, already provides services that will enable Vonage to route calls originated by providers that do not have an IP interconnection arrangement with Vonage ("PSTN Originated Calls") if Vonage is granted direct access to numbering resources.²⁶ Vonage plans to use these tools to continue to route PSTN-Originated Calls through CLEC partners in the same manner as most existing inbound Vonage traffic.

For example, to handle routing of PSTN Originated Calls, Vonage can designate the switch of a carrier partner in the Local Exchange Routing Guide ("LERG") and Number

²³ See Ex Parte Letter from Brita D. Strandberg, Wiltshire & Grannis, on behalf of Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 06-122 at 1-2 (filed Sept. 22, 2010) ("Vonage 9/22/10 Ex Parte"); Vonage 11/11/11 Ex Parte at 5-6.

²⁴ See Vonage 12/6/11 Ex Parte (citing *Local Number Portability Porting Interval and Validation Requirements*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531, ¶ 20 n.59 (2007)) (internal citations omitted).

²⁵ Ex Parte Letter from Erin Boone, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (filed Dec. 20, 2011) ("Level 3 Ex Parte").

²⁶ We discuss only routing of PSTN Originated Calls because routing for IP interconnections will be agreed upon by Vonage and its IP interconnection partner.

Portability Administration Center (“NPAC”) as the default routing location for traffic bound for telephone numbers assigned to Vonage. It is a common practice for the LERG to reference the serving switch of one carrier while the numbering resources are assigned to a different carrier. Such arrangements allow providers that obtain numbering resources in areas where they are not interconnected with all local carriers to successfully route their calls. In fact, Level 3 currently offers services that perform these very functions, providing “transit service for inbound long-distance and outbound toll-free (8YY) calls between IXCs and the telephone numbers (TNs) homed behind the Level 3 FGD Access Tandems.”²⁷ These products demonstrate that Vonage’s direct access to numbers will not create novel or difficult routing issues and that the marketplace already provides routing mechanisms that will enable Vonage to route PSTN Originated Calls.

C. The Commission Should Reject Any Additional CLEC Objections.

It is possible that in this round of comments, CLECs may attempt to inject additional issues and erect additional hurdles to delay action on Vonage’s waiver and protect their own revenues.²⁸ CLECs currently sell telephone numbers to Vonage and collect intercarrier compensation on calls bound to Vonage customers. Vonage’s request to obtain direct access to telephone numbers threatens the ability of CLECs to sell telephone numbers to Vonage. And, if Vonage establishes direct IP interconnection on a bill-and-keep basis, CLECs like Level 3 will

²⁷ Level 3 Communications, Tandem Service Brochure (2011), *available at* <http://www.level3.com/en/resource-library/brochure/tandem-service/> (“Level 3 Tandem Service Brochure”).

²⁸ Level 3’s recent *ex parte*, which argues that acting by waiver will “create[] uncertainty,” “particularly for the interconnected VoIP provider carrier partners,” suggests that Level 3’s concern may be the lost profits when VoIP providers can gain direct access to numbering resources. Level 3 Ex Parte at 2. RNK Communications made a similar plea to protect CLEC revenues in its recent *ex parte*, arguing that the Commission should not grant the waiver because wholesale numbers may be obtained on “reasonable terms by Interconnected VoIP Providers by using wholesale partners.” Ex Parte Letter from Michael S. Tenore, RNK Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (filed Dec. 22, 2011).

no longer be able to collect intercarrier compensation for calls to Vonage's customers. Because it is difficult to argue that protecting their intercarrier compensation revenues serves the public interest, CLECs may raise other issues to distract the Commission from granting Vonage's request and furthering the public interest.

The Commission should ignore these efforts to protect the profits of individual companies at the expense of competition, innovation, and the public interest. Following lengthy discussion and debate, the Commission has found that moving to IP networks to provide services and to bill-and-keep for intercarrier compensation furthers these important goals.²⁹ Vonage is seeking to move forward as quickly as possible to establish direct IP interconnection on a bill-and-keep basis. Delaying Vonage's requested relief by opening a broader rulemaking, rather than granting Vonage's long-pending, well supported waiver request,—relief which the Commission has already granted to SBCIS—will merely delay the demonstrated consumer benefits that will follow from Vonage's waiver. The Commission should reject any self-serving effort to deny consumers the benefits of IP interconnection and instead expeditiously grant Vonage's requested waiver.

Conclusion

Vonage thanks the Commission for the opportunity to refresh the record on its request for direct access to numbering resources. Vonage's request has now been before the Commission for almost seven years. During that time, Vonage's need for direct access to numbering resources and the public benefits that will result from direct access have only increased. Vonage has demonstrated that its waiver request is consistent with Commission waiver precedent and serves the public interest and that objections to its waiver request are unpersuasive. Accordingly,

²⁹ CAF Order ¶¶ 741-59; 1009-11.

Vonage respectfully requests that the Commission expeditiously grant Vonage's petition for limited waiver of Section 52.1(g)(2)(i) to allow Vonage to directly access numbering resources.

Respectfully submitted,



Brendan Kasper
Senior Regulatory Counsel
Vonage Holdings Corp.
23 Main Street
Holmdel, NJ 07733
(732) 444-2216

Brita D. Strandberg
Rachel W. Petty
Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, D.C. 20036
(202) 730-1300

Counsel to Vonage Holdings Corp.