

**Before the  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Proceeding on Motion	)	
of the Commission to Examine	)	
Issues Related to the Transition	)	Case No. 05-C-0616
to Intermodal Competition	)	
in the Provision of	)	
Telecommunications Services	)	

**COMMENTS OF VONAGE HOLDINGS CORP.**

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**INTRODUCTION**

Vonage Holdings Corp., on behalf of its operating subsidiaries (“Vonage”), submits these comments in the above-referenced case. Vonage commends the New York Public Service Commission (“Commission”) for opening this proceeding to consider matters of great importance to New York consumers of communications services. Vonage submits these comments to assist the Commission in its enquiry.

Vonage understands that the intent of this proceeding is to examine the status of intermodal competition throughout the State of New York and to consider what changes to the existing rules and regulations may be necessary. As part of this generic proceeding, the Commission is investigating whether to subject Voice over Internet Protocol (“VoIP”) services to regulation in the form of consumer protection and service quality obligations.

While Vonage supports the efforts of the Commission to examine the communications marketplace, Vonage emphasizes that the service offered by the Company is inherently interstate in nature and subject to the exclusive jurisdiction of the Federal Communications Commission (“FCC”). In its *Vonage Declaratory Ruling*, the FCC preempted individual state telecommunications regulation of Vonage’s inherently interstate service, because state telecommunications regulation would conflict with the development of a unified national

approach for VoIP services.<sup>1</sup> Also, as the Commission is aware, the United States District Court for the Southern District of New York has issued a preliminary injunction enjoining this Commission from regulating Vonage's service.<sup>2</sup>

Notwithstanding the explicit preemption of the New York Public Service Commission's regulation of Vonage's form of VoIP service, this Commission has clear jurisdiction over carriers and the underlying telecommunications networks deployed within this state. As such, this proceeding provides the Commission with a clear opportunity to evaluate how it can assert its jurisdiction over these providers to facilitate the deployment of broadband and advanced Internet applications to consumers throughout the state. Vonage appreciates the opportunity to provide its perspective and shares the Commission's goals in advancing competition and encouraging policies aimed at advancing the deployment of broadband and advanced services.

Vonage hereby provides its responses to the following questions:

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<sup>1</sup> See generally, Memorandum Opinion and Order, *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (FCC Nov. 12, 2004) ("*Declaratory Ruling*").

<sup>2</sup> See *Vonage Holdings Corp. v. New York State Pub. Svc. Comm'n*, Preliminary Injunction, S.D.N.Y., Case No. 04 Civ.4306(DFE) (July 16, 2004).

**A. Consumer Protections**

2. Are there core consumer protections (e.g., slamming, cramming, termination notices, contract disclosures) that should be enforced by the Commission, notwithstanding the existence of competitive choices? Should a set of core consumer protections apply to wireless and VOIP/cable telephony, as well as traditional wireline?

Vonage limits its response to the Company's VoIP service offering. Understanding the differences associated with Vonage's service and traditional telephony is critical when analyzing whether consumer protection regulations are appropriate for VoIP. Certain consumer protection regulations that are important in the wireline telephony market are simply irrelevant to Vonage's service offering. For example, unauthorized carrier changes, referred to as "slamming," are not possible with Vonage's service. Unlike traditional telephony, Vonage customers must have a preexisting broadband Internet service and use either specialized hardware or software to take advantage of Vonage's service. Thus, slamming cannot occur because Vonage customers must actively configure software and purchase hardware to utilize Vonage's service. Likewise, unauthorized charges inserted on telephone bills, termed "cramming," is not an issue because Vonage has specific service plans (i.e., a \$14.99 plan, a \$24.99 plan, etc.) that cover most customer charges, and unlike plans offered by many traditional telecommunications providers, do not contain a host of additional fees. Vonage customers must have a credit card that is billed the relevant charge for the service plan they select each month. Although such situations are rare, in the event a billing dispute does occur, Vonage will issue customers appropriate credits to cover those disputed charges. Further, Vonage customers always have the ability to contest charges through their credit card company.

In general, Vonage submits that competition and existing state consumer protection regulations are most effective methods of dealing with any remaining concerns. VoIP providers, like Vonage, operate in a highly competitive environment. If consumers are unhappy with the service or policies of their VoIP provider they can easily migrate to a new service. Consumers have the choice of many different providers. Vonage offers its VoIP service on a month-to-month basis. Unlike many traditional telecommunications service providers, the Company has no long-term commitments.

3. Does the Commission have a unique role to play in addressing consumer complaints? Should a common forum for the timely handling of consumer complaints be available under the auspices of the Commission? In other words, should the Commission's complaint handling function and the authority to enforce core consumer protections be extended to wireless and VOIP/cable telephony? If so, what should the nature and scope of that function be?

As noted above, Vonage and other VoIP providers are subject to state laws governing false advertising and business conduct generally. These laws and corresponding regulations are sufficient to maintain consumer protections in the event the competitive marketplace does not constrain inappropriate business practices.

**C. Market Power and Regulatory Flexibility**

3. *Are the criteria and assigned weights in the Department's competitive index reasonable? In particular, is the VoIP telephone weight reasonable in light of current carrier policies concerning the availability of stand-alone broadband?*

In recent years, consumers across New York and the nation have increasingly become attracted to alternative options to ILEC voice service. Vonage's VoIP service, for example, offers consumers lower prices and enhanced features. Consumers may also instead prefer a wireless service for its mobility, a CLEC or cable voice service for its price, or, if they are hearing-impaired and have access to IP-Relay, no voice service at all. To try to stem their losses, some ILECs have sought to leverage their strong position in the broadband market to protect their voice services from competition by forcing customers to keep circuit-switched service as a condition of receiving ADSL service. Since the continued viability of independent VoIP applications can easily be undermined by tying, until the Commission secures commitments from an ILEC that it will not engage in such tying practices, the Commission should not count VoIP in its "competitive index" used to assess whether the ILEC's retail services can be deregulated.

Under present market conditions, tying requirements have considerable force because many customers, especially small businesses, do not have the benefit of a choice between DSL and cable. Given only the choice between an incumbent's bundle and no broadband at all, many forgo the opportunities of voice alternatives such as wireless phones or Vonage's VoIP service to avoid being shut out of broadband. Others, by contrast, forgo broadband altogether because they would only value broadband at its existing price if they could obtain the price benefits of VoIP that is effectively denied to them. Vonage's VoIP services offer most customers a substantial savings over circuit-switched services. When consumers are able to factor into the broadband price equation significant savings on voice services, the net price of broadband decreases dramatically. Therefore, tying leads to higher effective broadband prices, which deters adoption. The United States trails much of the industrialized world in broadband penetration, and the countries with the highest adoption rates typically have lower broadband prices.<sup>3</sup> The cost efficiencies

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<sup>3</sup> The countries with the highest penetration rates – South Korea, Hong Kong, Japan and Canada, have long had lower retail broadband prices. The International Telecommunications Union has found that "Prices play perhaps the most important role in promoting broadband demand. Successful broadband economies are characterized by low prices—typically as a result of flourishing competition and innovative pricing schemes that attract a wide variety of customers." See International Telecommunications Union Internet Reports, *Birth of Broadband* (September 2003), Executive Summary at § 6, [http://www.itu.int/osg/spu/publications/sales/birthofbroadband/exec\\_summary.html](http://www.itu.int/osg/spu/publications/sales/birthofbroadband/exec_summary.html) (viewed July 28, 2005).

of VoIP and broadband can reverse this course by fueling demand for each other – but only when allowed.

The ability of VoIP to stimulate broadband adoption is proven. At the beginning of 2001, there were fewer than 10,000 DSL lines in the entire country of Japan.<sup>4</sup> Just four years later, a new market entrant, Softbank, had used VoIP to become the one of largest broadband providers in the world, with more than 5 million DSL customers.<sup>5</sup> Softbank has never been a circuit-switched voice provider and therefore does not force its customers to purchase POTS as a condition of obtaining broadband. Thus, more than 90% of Softbank's customers purchase VoIP service, and for many the attractiveness of VoIP was an important selling point for broadband.<sup>6</sup> Broadband tying denies this option for many New Yorkers, who are unable to drop their circuit-switched voice service in favor of VoIP if they also wish to purchase DSL. Broadband tying therefore perpetuates a vicious cycle in which Americans fall further and further behind in the broadband revolution.

While some providers have tried to suggest that their tying requirements cannot be considered harmful in light of the fact that they have a smaller national market share than the cable broadband providers, that fact is irrelevant to consumers that do not have a choice between the two. If a homeowner has access to DSL but not cable, it is no consolation to him that other people do have a choice between the two services. It is similarly irrelevant to the homeowner that his ILEC may serve fewer broadband customers nationwide than cable; the ILEC still has market power over *him*. The canteen at a prison has market power over its inmates, regardless of whether there is a shopping mall right outside its gates. Similarly, before the introduction of local telephone competition, a hypothetical county might have been split geographically between three different ILECs, each with a “market share” of 33% of the county's total access lines. Such a county would hardly be considered to have a competitive local exchange market, and the three monopoly incumbents could hardly be said to lack market power because of their minority share of the county's customers. Instead, the Department has agreed that the relevant question in defining market power and leverage in broadband is the number of suppliers available to *each potential customer*, not the provider's overall share of the national market. The Department's recent White Paper evaluation of broadband tying explains:

**Broadband is not available everywhere in New York State. DSL has distance limitations, and cable telephony is similarly limited to where cable companies have built out cable systems. Without question customers in certain locations in New York have**

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<sup>4</sup> See [http://www.dsllife.com/newsletter/q1-03/newsletter\\_inthenewsQ1\\_03.html](http://www.dsllife.com/newsletter/q1-03/newsletter_inthenewsQ1_03.html) (viewed July 28, 2005).

<sup>5</sup> See “Softbank BB Shows Power of On-Demand Broadband Bundles,” Cable Digital News (January 1, 2005), <http://www.cabledatcomnews.com/jan05/jan05-8.html> (viewed August 4, 2005).

<sup>6</sup> See “Japan's Softbank Connects as Leader of Internet Calling,” *Investor's Business Daily* (December 31, 2003), [http://biz.yahoo.com/ibd/031231/tech\\_1.html](http://biz.yahoo.com/ibd/031231/tech_1.html) (viewed January 20, 2004).

**competitive options .... In some locations, however, competition does not exist. Thus, the question is not “Is there competition?” but rather, “Where is there competition?”<sup>7</sup>**

**Because there are many places where broadband competition does not exist in New York, tying remains an especially potent tool for denying consumers in these areas the benefits of voice competition.**

**But even customers with a choice between DSL and cable remain vulnerable to harm from broadband tying. In a duopoly market, both the cable and DSL provider could get away with restrictive tying practices. For example, although most cable companies offer stand-alone broadband, some effectively impose backdoor mandatory bundling by charging \$15/month extra to customers that do not purchase their cable television service. If a broadband customer did not wish to purchase cable television, they would have a choice only of which of two unwanted services they would have to swallow to purchase the desired broadband service. The Commission should not relax its guard on the tying practices of ILECs simply because ILEC DSL has a single substantial competitor, cable broadband. Instead, the Commission should remain vigilant against anticompetitive practices of both ILEC and cable broadband providers, both of which have sufficient market power to leverage consumers to purchase unwanted services.**

**Both the FCC and the Department have previously found that a duopoly market cannot be expected to deliver the benefits of innovation and unfettered competition to consumers. Former FCC Chairman Powell, in explaining his vote not to approve the proposed DirecTV-EchoStar merger, reasoned that:**

**At best, this merger would create a duopoly in areas served by cable; at worst it would create a merger to monopoly in unserved areas. Either result would decrease incentives to reduce prices, increase the risk of collusion, and inevitably result in less innovation and fewer benefits to consumers. That is the antithesis of what the public interest demands.<sup>8</sup>**

**Presumably for these same reasons, the Department’s market concentration index has implicitly recognized that duopoly “competition” is insufficient to protect consumers. The Commission Order initiating this proceeding observed the Department’s conclusion that “there should be at least three alternatives to the**

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<sup>7</sup> *Joint Petition of Verizon New York Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction over or in the Alternative for Approval of Agreement and Plan of Merger*, Case 05-C-0237, Department of Public Service Staff White Paper at 54 (July 6, 2005).

<sup>8</sup> *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee*, CS Docket No. 01-348, Hearing Designation and Order, FCC 02-284, Statement of Chairman Michael K. Powell (rel. Oct. 18, 2002).

**ILECs wireline service and at least three different platforms to protect against market concentration.” Order at 9. To demonstrate sufficient competition to relax wholesale regulation, an index value of at least 2.75 is needed under the Department’s formula – a value that can never be reached in today’s consumer broadband market where only ILEC DSL and cable are fully viable competitors.**

**While the Commission, Vonage and consumers everywhere remain eager to see the emergence of a third alternative to cable and ILEC wires, these options today are either technically inferior, available only on a very limited basis, or both. The FCC’s most recent statistics on high-speed lines indicate not only that the market shares of powerline/fiber and satellite/wireless are at less than 2%, but also that they both have *smaller* market shares than five years ago.<sup>9</sup> CLECs, meanwhile, offer only 4% of the ADSL lines nationwide,<sup>10</sup> and now must contend with the loss of the line sharing UNE. Perhaps the emergence of these or other options on a widespread basis will one day reduce the need for regulation of broadband tying that exists today,<sup>11</sup> but until that day arrives, it is clear that the broadband market is not currently sufficiently competitive to protect consumers from anticompetitive tying practices. In particular, the broadband market is not sufficiently competitive to guarantee the continued viability of independent VoIP providers.**

**Accordingly, given the ability of broadband providers to thwart voice competition through broadband tying practices, the Commission’s market concentration index should not count independent VoIP providers such as Vonage at a 0.75 value (or any value) unless and until the specter of broadband tying is eliminated. The Commission should similarly consider whether it would be appropriate to further discount the value of wireless services in the calculation, given the fact that broadband tying is used to deter wireless substitution by consumers.**

**Verizon has already made some progress in the right direction. Verizon recently entered into a stipulated settlement with a competitive cable voice provider and the Attorney General of Florida, approved by the Florida PSC, in which it agreed that “when a Verizon customer with DSL-based services on the line seeks to port his or her telephone number to [the competitor] for use in connection with [the**

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<sup>9</sup> *High-Speed Services for Internet Access: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau (rel. July 7, 2005) at Chart 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Even if other broadband options were available, there are many disincentives for a customer to drop a broadband service they otherwise want for the purpose of obtaining alternative voice services. If a consumer had to change their broadband provider in order to obtain a competitive voice service, they could still (1) lose their current email addresses and web hosting services; (2) have to pay early termination charges to the ILEC; and (3) endure the service termination and reinstallation processes, which can result in downtime; acquisition of new modem equipment; site visits by network technicians; and reconfiguration of software, hardware, LAN and home networking equipment, PC settings, user passwords, etc. Cumulatively, these consequences of changing broadband providers may in the mind of some customers outweigh the advantages of selecting a new voice services provider.

competitor's] facilities-based voice service, Verizon will do so without requiring the customer to terminate DSL service with Verizon.”<sup>12</sup> A copy of this stipulation is attached hereto at Exhibit 1. The settlement noted that this change of policy was “in accordance with” the FCC’s recent ruling that “when an incumbent LEC receives a request for number portability on a line that also provides DSL-service to a customer, ‘it is required to observe the same rules, including provisioning intervals, as any other LEC.’” While Vonage understands that Verizon may be implementing a similar policy in New York, the Commission should not rely on it until Verizon makes a binding commitment. In addition, while Verizon’s policy change is a step in the right direction for consumers who already have Verizon DSL, it offers no relief for consumers who use a competitive voice service and want to add Verizon DSL. Therefore, a firmer and more comprehensive guarantee is still needed before the Commission should count VoIP in the competitive index.

Accordingly, if a carrier wishes to have VoIP and wireless counted in the competitive index, the Commission should require that it commit in writing to offer stand-alone broadband, not conditioned on the purchase of other services such as voice services, and at rates reasonably comparable to the price for the broadband portion of the provider’s bundled service packages. The pricing aspect is important, because the commitment of a stand-alone offering would be hollow if it were only offered at a rate more than most consumers are willing to pay. Real-world evidence makes clear that stand-alone broadband can be priced at only a modest premium. For example, Qwest charges only \$5 more per month for ADSL broadband to customers who do not purchase any voice service compared to those who do. As Qwest’s CEO observed to the *New York Times*, “we’ve had no technical problems; we’ve had no billing problems. If the consumer wants it, why are you stiffing them?”<sup>13</sup>

It is reasonable and proper for the Commission to use every means at its disposal to encourage ILECs to offer stand-alone broadband services. The Kentucky Commission found that BellSouth’s “practice of tying its DSL service to its own voice service to increase its already considerable market power in the voice market has a chilling effect on competition and limits the prerogative of Kentucky customers to choose their own telecommunications carriers.”<sup>14</sup> Intermodal

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<sup>12</sup> See Exhibit 1 attached hereto, *Complaint Against Verizon Florida, Inc. and Request for Declaratory Ruling By Bright House Networks Information Services, LLC (Florida)*, Stipulation of Dismissal, Docket No. 041170-TP (dated July 29, 2005), quoting BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers, WC Docket No. 03-251, Memorandum Opinion and Order and Notice of Inquiry (rel. March 25,2005) at ¶ 36.

<sup>13</sup> <http://www.qwest.com/residential/internet/pricing.html> (viewed July 5, 2005). Qwest CEO Richard Notebaert reported to the *New York Times* that Qwest had established its stand-alone DSL service with minimal cost and effort. “Dangling Broadband From the Phone Stick,” N.Y. Times, March 19, 2005, at p. C1 (also available at 2005 WLNR 4264289).

<sup>14</sup> *Petition of Cinergy Communications Company for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*, Case No. 2001-00432, Order at 7 (Kentucky P.S.C. July 12, 2002).

competition will have the best chance of success if Commission policy is guided by a basic principle – consumers should have the freedom to choose their preferred broadband and voice service providers based upon the strength of the service offerings, unfettered by limitations imposed via the strength of a provider’s market power. The elimination of broadband tying is an essential step in putting this power of choice into the hands of consumers, and in ensuring the level of competition that the Commission seeks before further deregulation of local telecommunications services.

**D. Service Quality**

1. How should we adapt our service quality regulation to the marketplace realities?

It is neither necessary nor would it be effective to subject Vonage to service quality regulation. As detailed in response to question A.2., the marketplace for VoIP services is subject to robust competition. Competitive demands require that VoIP service providers deliver a quality product since dissatisfied consumers can easily migrate either to another VoIP provider or back to a provider of traditional telephony services without any difficulty.

It would also be impractical to subject Vonage to service quality regulation. Vonage does not offer and does not control their customer’s broadband Internet connection. In the vast majority of cases, service quality issues arise based on problems with a consumer’s high-speed Internet connection and not with the Internet application being provided over a server. Internet application service providers like Vonage have no control over the underlying Internet connection. Accordingly, subjecting a VoIP provider like Vonage to service quality requirements would be an exercise in futility because Vonage does not control, nor does it possess any information about the quality of, their customers physical broadband Internet connection.

2. Are output-oriented performance measures still valid as a means of informing consumer choices, and, if so, should they be expanded to include all modes (wired and wireless, VoIP and cable telephony)?

Please see Vonage’s response to question D.1.

5. Is our performance-centric approach appropriate in an era of intermodal competition, where other service providers (e.g., wireless, VoIP) are not subjected to our regulation?

Vonage’s service relies on a preexisting high-speed Internet connection. For the vast majority of households, this generally means that a consumer must subscribe to either a DSL or cable modem service. Since Vonage does not offer Internet access services, the Company is not a third source of broadband competition. While some consumers can avail themselves of a broadband provider,

many do not have any broadband access or a choice between broadband providers. Vonage maintains that most consumers have, at most, two choices of a broadband provider. Even in urban areas where consumers may chose between DSL and cable broadband access, a market characterized by a duopoly does not create robust competition such that market forces are able to discipline the behavior of firms that operate in such an environment. Accordingly, Vonage believes it is premature to assume that broadband competition has reached the point where markets alone can be relied upon to ensure service quality in the broadband Internet access marketplace.

6. *If our service quality regulation and reporting were extended to all modalities (wireline and wireless) and all providers (e.g., VoIP and cellular), what, if any, legal constraints apply to extending basic service quality regulation to all modalities?*

As explained in the Introduction to these comments, the FCC's *Vonage Declaratory Order* and the U.S. District Court's Preliminary Injunction Order preempt this Commission from imposing such obligations on Vonage.

11. *Should all carriers be held to a threshold standard for service?*

Vonage notes that it is not a "carrier" but rather an information service provider.

17. *Parts 602 (Consumer Relations and Operations Management) and 603 (Service Standards) were streamlined in 2000 to better reflect the competitive environment; should these regulations be re-examined in light of the changing market? Is additional streamlining needed?*

As previously indicated in response to question D.1, service quality standards cannot be applied to VoIP services such as those provided by Vonage.

#### **E. Level Playing Field**

1. *Recognizing that federal law plays a significant role in numbering administration, should the numbering principles referred to above be equally applicable to new, IP-based numbering solutions?*

Generally, Vonage embraces the numbering principles identified by the Commission. Vonage notes, however, that certain of the principles identified by the Commission transcend number policies and delve into the area of intercarrier compensation. Specifically, principles relating to the exchange of traffic-related information, compensation for local exchange carriers for the costs associated with the services provided by these companies to each other, and cost-based charges are not numbering principles but intercarrier compensation concerns. Vonage recommends that these principles be segregated from numbering policy concerns

and considered independently in the context of intercarrier compensation since number policy and intercarrier compensation are unrelated.

2. *Do we need to implement additional number optimization measures in light of the potential demand for numbers by new competitors?*

Vonage does not believe that it is necessary for the Commission to adopt additional number optimization measures due to demand for VoIP services or other new technologies. Consumers choose Vonage's service for a myriad of reasons including reasonable pricing, superior customer service, a rich feature set, and an innovative service offering. Whether this means that customers use Vonage rather than purchasing additional telecommunications services, or customer's actually migrate to Vonage's service, Vonage submits that the overall impact of its service offering on the numbering pool is neutral. Simply put, telephone numbers used by Vonage's customers would be otherwise utilized by these same customers for traditional telephony or other communications services. Accordingly, VoIP does not increase the demand for telephone numbering resources. Further, since IP-enabled services allow multiple devices to receive communications sent to one telephone number, services such as Vonage eliminate the need for customers to have separate wireline, wireless, and facsimile telephone numbers thus reducing the demand for numbering resources.

3. *Are the numbers and listing information of IP-based subscribers available generally at reasonable terms, or is this a new bottleneck?*

Since Vonage is not a telecommunications carrier, Vonage does not currently have the direct ability to publish directory listings. To the extent permissible, the Commission should promote policies that facilitate directory listings for consumers irrespective of the communications technology they use. Furthermore, to the extent directory publishers own or operate an affiliated VoIP provider (i.e., such as Verizon's VoiceWing offering), those providers should not be allowed to deny or otherwise discriminate against customers of a competing VoIP provider in the publication or placement of directory listings.

5. *Do gaps in the availability of number portability represent an impediment to choice?*

Vonage firmly believes that the wireline-to-wireline porting process is broken and in dire need of reform if VoIP providers are to effectively compete against traditional providers of wireline telephony services. Because Vonage is not a carrier, the Company uses CLECs to obtain PSTN connectivity and numbering resources. Thus, CLECs also assist Vonage in porting customer telephone numbers to and from Vonage's service. Under existing wireline-to-wireline porting industry guidelines, numbers are to be ported between wireline carriers within five business

days. It has been Vonage's experience that it is unusual for numbers to be ported within this timeframe. In fact, Vonage has begun to advise its customers that it will take 20 business days to port telephone numbers due to the continuous problems the Company encounters. Indeed, it is not unusual for ports to take in excess of 30 business days to complete.

There are numerous reasons as to why the wireline porting process fails. The industry guidelines are arguably unenforceable and contain multiple loopholes that allow ILECs to delay porting requests. For example, the five business day timeframe is premised on "simple" ports but it is left to the ILECs to define what constitutes a "simple" versus a "complex" port. Further, the timeframe set out in the industry guidelines only apply to "error free" ports. Regardless of whether the error is due to the ILEC or the requesting carrier, a port will not be subject to the five business day deadline if an error is found in the port request. This provides an incentive for ILECs to engage in poor information management practices. Finally, the system put in place to request ports is needlessly complex, requires the submission of much more data than is required to process a port, and is mostly *manual* allowing for the introduction of human error when port requests are keyed in.

In light of all of the problems associated with the wireline-to-wireline porting process, the Commission should (and can) simplify and streamline the porting process. Additionally, the Commission must adopt enforceable deadlines and not allow ILECs to escape such deadlines by classifying a port as either "simple," "complex," or "error free" – designations that under the current industry guidelines arguably allow ILECs to delay ports without restriction. Accordingly, Vonage advocates that the Commission: (1) require carriers to electronically submit and process Local Service Requests ("LSRs") forms; (2) mandate standardized forms utilized for change requests; (3) examine the procedures and timeframes for processing port requests that are rejected and reevaluate what constitutes a valid port request; (4) reduce the timeframe associated with the activation process after a LSR has been accepted by the porting out carrier; and (5) require carriers to presume port requests are valid regardless of the features installed on a line.

Further, ILEC information management practices also introduce substantial delay into the porting process. These carriers cause needless delays and costs due to inaccurate data. Vonage has noticed that many back office systems are not updated to match changes in customer services. Specifically, many ILECs will not honor porting requests if a customer has not first cancelled their tied DSL service. However, when ILEC customers cancel DSL service and/or multiple line service, many ILECs fail to account for this service change in all related databases. When those customers attempt to port numbers, some ILECs reject the request because their back office systems show that those numbers are still tied to DSL or multiple line service. When the CLEC working with Vonage requests the relevant customer service record ("CSR") as part of the porting process, the record wrongly indicates

that the customer has either a DSL or multiple line service associated with the line, thereby resulting in a rejected port.

Vonage notes that Exhibit 1 to this filing contains a stipulation entered into by Verizon in Florida.<sup>15</sup> In this agreement between Verizon, the Attorney General of Florida, and Bright House Networks, Verizon states it will not require termination of a customer's DSL service when that customer ports a telephone number away from Verizon's service. Vonage supports this agreement, and encourages a similar policy be created that covers New York consumers.

Vonage has also submitted comments to the FCC on these very issues. In order to provide the Commission with additional information about the gaps in the number portability process, Vonage attaches as Exhibit 2 to this filing comments filed with the FCC concerning porting problems. Vonage requests that the Commission incorporate the Company's FCC comments into the record of this proceeding.

9. Where market dominance persists or emerges for bottleneck facilities or functions that are critical for fair competition, active government oversight must exist. Are the Commission's processes adequate to remedy potential bottleneck issues?

The market dominance of certain carriers presents concerns about their ability to discriminate in the quality of the broadband connection they offer end-users. Broadband is widely viewed as an open pipe over which any end-user can access competitive applications such as Vonage's, thus increasing competition in retail markets. Unfortunately, this is not always true. In fact, the FCC has recently adopted several net neutrality principles aimed in part at preventing "broadband discrimination" and other anti-competitive practices by facilities based service providers. Specifically, the FCC adopted the following four principles:

- (1) Consumers are entitled to access the lawful Internet content of their choice.
- (2) Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement.
- (3) Consumers are entitled to connect the choice of legal devices that do not harm the network.
- (4) Consumers are entitled to competition among network providers, application and service providers, and content providers.<sup>16</sup>

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<sup>15</sup> *Complaint Against Verizon Florida, Inc. and Request for Declaratory Ruling By Bright House Networks Information Services, LLC (Florida)*, Stipulation of Dismissal, Docket No. 041170-TP (dated July 29, 2005).

<sup>16</sup> See Press Release, Federal Communications Commission, FCC Adopts Policy Statement New Principles Preserve and Promote the Open and Interconnected Nature of Public Internet (Aug. 5, 2005).

In addition to promoting broadband deployment, these principles are aimed at preventing broadband discrimination by facilities-based service providers. Broadband discrimination can take three different forms. First, an entity that either owns or controls a broadband Internet connection could prioritize packets associated with the application it provides to its end-users over the packets generated by a third-party provider like Vonage. In this instance, Vonage would be placed at a significant disadvantage as compared to the network provider because the network provider would provide superior quality service by allowing its packets to supersede those transmitted by third-party Internet application providers. Second, an entity that either owns or controls a high-speed Internet connection could inject latency or otherwise degrade the packets sent by a third-party Internet application provider. In this way, the network provider would discourage their users from taking advantage of a service like Vonage's because of performance related concerns that are caused entirely by the actions of the network provider. Finally, the most blatant form of broadband discrimination occurs when entities that either own or control broadband Internet access facilities block certain transmissions. The industry has established certain standards that define what pathways a certain Internet application will use when it is provided to an end user. VoIP services are assigned to a specific route or port. By blocking the port associated with VoIP services, a broadband Internet access provider can prevent VoIP providers from providing their service.

If carriers were allowed to engage in any one of these three forms of anticompetitive conduct, they would stifle the very competition on which they rely to support deregulation of their services. In a recent case, Vonage's customers had their services disrupted when the Madison River Companies' affiliated ILECs ("Madison River")<sup>17</sup> purposely blocked the ports of communications destined for Vonage. In November 2004, Vonage received complaints from three of its customers that their Vonage service was not functioning. All three customers subscribed to Madison River's tariffed DSL service, and all had Vonage's service up and working before losing service. Vonage assigned engineers to work on the problem but, despite their multiple efforts, was unable to restore the service. Over a more than two week period, Vonage's customers spent hundreds of hours speaking repeatedly with Madison River and Vonage customer service about the problem, and spent thousands of dollars buying and returning unnecessary replacement equipment, only to learn later from Madison River that Madison River management had made the decision to not support competing services, and for that reason the ports that support VoIP were blocked on their system.

Thus, it was incontrovertible that Madison River was seeking to impair Vonage's service. Vonage brought Madison River's port blocking activities to the attention of the FCC, and demonstrated that VoIP port blocking practice is an unjust and unreasonable practice in violation of section 201(b) of the Act, and is in

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<sup>17</sup> See *Madison River Communications, LLC and affiliated companies*, Order, File No. EB-05-IH-0110, Acct. No. 200532080126, FRN: 0004334082 (rel. Mar. 3, 2005).

conflict with policies enunciated by Congress in, *inter alia*, Sections 1, 230 and 706 of the Act. In particular, Vonage demonstrated that port blocking threatens at least four of the FCC's paramount statutory responsibilities: (1) "promoting safety of life and property through the use of wire and radio communication;" (2) promoting the availability of "a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reason-able charges;" (3) encouraging "the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans;" and (4) "promot[ing] competition and reduc[ing] regulation in order to secure lower prices and higher quality services for American telecommunications consumers." In addition, the 1996 Act states that "[i]t is the policy of the United States ... to promote the continued development of the Internet and other interactive computer services...."

As this case demonstrates, while it may be possible to determine whether a VoIP service has been purposely degraded, the determination process can often be time-consuming and expensive. Vonage brought the issue to the attention of the FCC in the case of Madison River's behavior, and raised all of the above arguments as to why broadband discrimination should not be allowed. Ultimately, the FCC did not rule on all of the issues raised by Vonage. Instead, while admitting no wrong doing, Madison River agreed to pay \$15,000 to the United States Treasury.<sup>18</sup>

The Madison River Order clearly showed, however, that broadband access providers have the means and the motive to engage in packet-discrimination, blocking certain communications. But the FCC has not been clear in what actions it will take to prevent broadband discrimination in the future. The recent broadband deregulation by the FCC gives incumbent LECs both the motive and ability to engage in this type of anticompetitive behavior. Vonage has already been victimized by this practice and even in the face of FCC action against Madison River, some other providers continue the practice.

In order to develop alternative platforms and technologies to stimulate the competition envisioned by the 1996 Act, this Commission must prohibit incumbent carriers and other vertically-integrated broadband providers from blocking the ports needed by third-party VoIP providers. To ensure a competitive VoIP market, the Commission must adopt enforceable rules that prevent packet-discrimination in favor of VoIP provider affiliates. While the FCC action is supportive of net neutrality, it does not go far enough. Vonage hopes that this Commission will continue to be the champion of opening markets to competition and adopt enforceable net neutrality rules. These rules should guarantee that ILECs may not discriminate, block or provide inferior access to VoIP or other IP-enabled services their competitors might provide their broadband customers.

Market dominance over broadband also enables providers to suppress competition from independent voice and application providers through

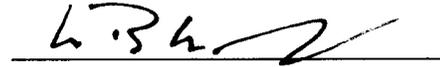
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<sup>18</sup>

*See id.*

**anticompetitive broadband tying practices. See Vonage's response to question C.3. above.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W.B. Wilhelm, Jr.", is written over a horizontal line.

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Counsel for Vonage Holdings Corp.

Dated: August 15, 2005

## **Exhibit 1**

*Complaint Against Verizon Florida, Inc. and Request for Declaratory Ruling By Bright House Networks Information Services, LLC (Florida), Stipulation of Dismissal, Docket No. 041170-TP (dated July 29, 2005).*

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August 1, 2005

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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Re: Docket No. 041170-TP  
Complaint Against Verizon Florida Inc. and Request for Declaratory Ruling  
By Bright House Networks Information Services, LLC (Florida)

Dear Ms. Bayó:

Enclosed are an original and 15 copies of a Stipulation of Dismissal for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

*Leigh A. Hyer* RW

Leigh A. Hyer

LAH:tas  
Enclosures

DOCUMENT NUMBER-DATE

07409 AUG-1 2005

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the Stipulation of Dismissal in Docket No. 041170-TP were sent via U.S. mail on August 1, 2005 to the parties on the attached list.

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\_\_\_\_\_  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Verizon Florida Inc. and request for declaratory ruling by Bright House Networks Information Systems, LLC (Florida)

Docket No. 041170-TP

STIPULATION OF DISMISSAL

Bright House Networks Information Services, LLC (Florida) ("BHN"), Verizon Florida, Inc. ("Verizon") and the Attorney General of the State of Florida (the "Attorney General") stipulate as follows:

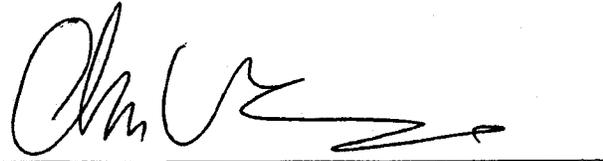
1. In March 2005, the FCC clarified that when an incumbent LEC receives a request for number portability on a line that also provides DSL-service to a customer, "it is required to observe the same rules, including provisioning intervals, as any other LEC." In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers, WC Docket No. 03-251, *Memorandum Opinion And Order And Notice Of Inquiry* (released March 25, 2005) at ¶ 36. .
2. In accordance with this FCC ruling, when a Verizon customer with DSL-based services on the line seeks to port his or her telephone number to BHN for use in connection with BHN's facilities-based voice service, Verizon will do so without requiring the customer to terminate DSL service with Verizon..
3. In these circumstances, BHN, Verizon, and the Attorney General agree that BHN's complaint may be dismissed and this proceeding terminated. As a plaintiff, BHN has an absolute right to take a voluntary dismissal. *Fears v. Lundsford*, 314 So. 2d 578, 579 (Fla. 1975). This dismissal is without prejudice to any party's position on any legal and/or regulatory issue raised or potentially raised by the pleadings in this case.

For these reasons, BHN, Verizon and the Attorney General respectfully request that the Commission acknowledge this dismissal and administratively close this docket.



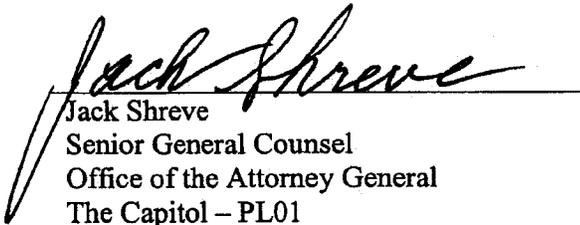
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Fax: (850) 410-2672

*Counsel for:* Charles J. Crist, Jr.,  
Attorney General, State of Florida

Dated: July 29, 2005

## **Exhibit 2**

1. *Telephone Number Portability*, Reply Comments of Vonage Holdings Corp., CC Docket No. 99-200 (FCC, filed Dec. 17, 2004).
2. Letter from William B. Wilhelm, Jr. and Ronald W. Del Sesto, Jr., Attorneys for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 95-116, 99-200 and WC Docket Nos. 04-36, 03-251 (FCC, filed Mar. 28, 2005).



## **Executive Summary**

Vonage Holdings Corp. (“Vonage”) submits these reply comments in support of reducing the timeframes associated with intermodal porting and applying those same reforms to the wireline-to-wireline porting process. Vonage provides an innovative Voice over Internet Protocol (“VoIP”) service to its customers that allow users to leverage the power of the Internet. While Vonage’s service transcends traditional telecommunications services, certain components of the circuit-switched network are essential to the Company’s business. Accordingly, as new technologies and services like Vonage’s proliferate, it is important for the Commission to understand how these services intersect with the existing telecommunications infrastructure. The efficient and timely porting of telephone numbers is critical to consumers and thus to Vonage. Delays and errors in the porting process slow the adoption of new technologies by customers and thwart competition.

In these comments, Vonage provides evidence that the porting system as a whole is in need of reform. Specifically, Vonage includes a spreadsheet detailing the timeframes for completing ports on a particular day in December, 2004. The ports involved customers porting their numbers from a variety of RBOCs to a single CLEC in order to utilize Vonage’s service. Of the 132 “simple port” requests, 28 (or approximately 21%) took six days to complete as measured from the time of the CLEC’s receipt of the Firm Order Commitment (“FOC”). This exceeds the industry guidelines by 100%. As poor as this result is, it is relatively prompt for the 18 (or approximately 14%) customers that had to wait 15 or more business days for their numbers to port, which is at least 500% more than the timeframe adopted by the Commission for wireline-to-wireline

ports. With the exception of one port that took 5 business days, the remaining 85 customers (or approximately 65%) of the total for this day in December waited between 7 and 14 business days to port from the receipt of a FOC.

In these comments, Vonage makes the following recommendations to the Commission: (1) carriers should be required to electronically submit and process Local Service Requests (“LSRs”) forms; (2) carriers should standardize forms utilized for change requests; (3) the Commission should examine the procedures and timeframes for processing port requests that are rejected and reevaluate what constitutes a valid port reject; (4) the Commission should reduce the timeframe associated with the activation process after a LSR has been accepted by the porting out carrier; (5) carriers should presume port requests are valid regardless of the features installed on a line; (6) the Commission should clarify that providers should not be required to obtain social security numbers when porting a wireless customer to their service; and (7) the Commission should extend any modifications made to the wireless-to-wireline porting process to the wireline-to-wireline porting process.

Vonage maintains that requiring the electronic submission of Local Service Requests (“LSRs”) and reducing the timeframe for activation after an LSR has been accepted by the porting out carrier would improve both the intermodal and the wireline-to-wireline porting process. But Vonage believes that other important parts of the porting process are also in need of reform. Specifically, standardization is needed among all of the carriers concerning the forms utilized to process porting requests. The use of multiple forms leads to mistakes and adds needless complexity to the process.

Another major area in need of reform is when incumbents reject port requests. Currently, all the timeframes developed by the industry and adopted by the Commission are based on an “error free” port. Incumbents are able to double the time it takes to process a port simply by rejecting it for any number of reasons. Reevaluation of what constitutes a valid port reject is required and timeframes should be established for processing port requests that have been rejected. Preferred carrier freezes and rejecting ports in order to confirm that a customer is aware that certain functionalities will be lost during the porting process are not valid reasons for rejecting a port when a customer is transitioning to a provider of VoIP services. Carriers should presume port requests are valid regardless of the features associated with a particular line.

The Commission should also make clear that when customers are porting telephone numbers from a wireless carrier to a wireline carrier, the wireline carrier does not have to provide the customer’s social security number to effectuate the port. Social security numbers are not collected by wireline carriers and there is no reason for requiring wireline carriers to collect such information for the sole purpose of processing ports from wireline carriers. Similarly, to the extent that the Commission does not adopt standardized forms for all carriers to use, the Commission should require consistency in the information required from customers in order to process all ports, whether they be intermodal or wireline-to-wireline.

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In order for all types of intermodal competition to flourish, it is critical that the Commission reform both the intermodal and the wireline-to-wireline porting processes. Currently, “pure” Voice over Internet Protocol (“VoIP”) providers cannot obtain telephone numbers directly from either the North American Numbering Plan Administrator or the Pooling Administrator, nor can they submit porting requests to carriers. VoIP providers like Vonage must work with certified carriers both to obtain telephone numbers and to port telephone numbers for use with their offering.

While ports between wireline carriers are classified as wireline-to-wireline ports, VoIP services like Vonage’s provide intermodal competition. Vonage’s service requires customers to use their broadband connections in order to make use of Vonage’s Internet application. Vonage customers can use their broadband connection as a communications service that is similar to the functionality provided legacy providers of telecommunications services.

VoIP services are rapidly becoming the “killer application” that is spurring demand for broadband services that, in turn, is resulting in added deployment of high-speed data networks. The importance of increasing broadband take rates in the United States cannot be overstated when there are a number of nations that have surpassed the United States in broadband penetration. Asia is rapidly emerging as the center of innovation for broadband services and devices.<sup>2</sup> In order to close the gap with other nations, it is essential for the Commission to enable customers to easily integrate broadband applications into their day-to-day life. An efficient number portability system is a key element in encouraging customers to adopt new technologies. Users are much

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<sup>2</sup> Louis Trager, *Asia is Where It’s Happening in Service, Device Advances, Intel Executive Says*, COMM. DAILY, Dec. 9, 2004, at 7-8.

more eager to switch to a competitive VoIP provider if they can keep their numbers, avoiding added costs and inconvenience when switching. The porting system for intermodal and wireline-to-wireline ports must be reformed to account for today's market realities as well as to ensure that a streamlined, efficient system is in place should the Commission allow pure VoIP providers to port telephone numbers.

#### **I. VONAGE'S RELIANCE ON THE PORTING PROCESS**

Vonage's broadband communications service is used by nearly 400,000 customers in the United States and Canada. Vonage's customer base consists largely of residential and small business users. Vonage's service empowers users to individualize their communications services, reduce their monthly communications-related expenses, and receive superior customer support. One major attraction of Vonage's offering is that customers can continue to use their existing telephone number. It is Vonage's experience that when the porting process requires customers to wait an inordinate period of time potential users of Vonage's application may elect not to utilize the service at all. For these customers, efficient porting is a critical component of the service they receive from Vonage.

When a customer chooses to use Vonage's service and to retain their existing telephone number, Vonage must work with a carrier, *i.e.*, a competitive local exchange carrier ("CLEC"), to arrange for porting the number from the customer's existing carrier, which typically is a RBOC. After the new Vonage customer provides the appropriate authorization, Vonage works with the CLEC to transition the customer to Vonage's service. In most instances, Vonage is wholly reliant on the wireline-to-wireline porting

process in order to provide its VoIP service, although, in some cases, Vonage is converting a wireless customer to the Vonage service.

## **II. THE WIRELINE PORTING PROCESS IS BROKEN**

In focusing on the problems associated with intermodal porting, the Commission does not analyze the weaknesses inherent in the wireline-to-wireline porting process. Specifically, the Commission assumes that there is a four-business-day porting interval for wireline ports;<sup>3</sup> however, Vonage’s experience demonstrates that this simply is not the case. In some instances, Vonage customers have waited four to six months to port their wireline telephone numbers to Vonage’s service. But even a process that lasts “just” a month—not an uncommon timeframe—should be unacceptable for the industry and is clearly not in the best interest of consumers.

### *A. The Confirmation Process*

The wireline-to-wireline porting process consists of confirmation and activation procedures. The first step of the confirmation procedure highlights a major problem with the porting process: facsimiles. In most cases, CLECs fax the LSRs to RBOCs. By utilizing facsimiles instead of an electronic interface, the LSR must be re-keyed into the recipient carrier’s system for processing. Aside from the delay, the process is prone to typographical errors and other human errors that would not persist in an electronic system.

The NANC’s analysis of the intermodal porting process illustrates the benefits associated with implementing a mechanized process for handling LSRs. The NANC estimates that a new service provider could reduce the Firm Order Confirmation (“FOC”)

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<sup>3</sup> See *Second Notice*, ¶2. The wireline-to-wireline porting process was established by the North American Numbering Council (“NANC”) and adopted by the Commission. See 47 CF.R. § 52.26.

interval from twenty-four hours to five hours.<sup>4</sup> The *NANC Report* indicates that by not requiring the re-typing of the entry, the FOC interval would be reduced by nineteen hours.<sup>5</sup> Other benefits would include making the system less susceptible to error. By implementing this one change, 45% of the time-savings associated with the NANC's recommendations for modifications to the intermodal porting process would be achieved. There is no reason for the Commission not to mandate the implementation of this modification to the wireline-to-wireline porting process.<sup>6</sup>

The activation process is further mired by the use of inconsistent forms among carriers. CLECs must maintain multiple forms that may require different information and require the submission of data in a format unique to each RBOC. Prior to submitting a LSR, CLECs must determine the appropriate form and submit it to the appropriate carrier. Data fields are often different from carrier to carrier. This introduces needless complexities and can be the cause for delay or port rejections. The use of standardized forms would simplify and reduce errors in the porting process.

Another element of transitioning a customer to a new provider that slows down customer change requests is errors. All the timeframes for wireline-to-wireline ports are based on an "error free" port. RBOCs recognize that if a port is rejected for errors, there is no longer any timeframe that governs the process, or, at the very least, the timeframe begins anew with the *minimum result* of doubling the timeframe for a port. This provides the RBOCs with a powerful incentive to find errors in the port request, as well as an

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<sup>4</sup> See *NANC Report & Recommendation on Intermodal Porting Intervals*, Prepared by the Intermodal Porting Interval Issue Management Group at 16 (dated May 3, 2004) ("*NANC Report*").

<sup>5</sup> See *id.*

<sup>6</sup> To the extent that a carrier operates outside of the top 100 Metropolitan Statistical Areas ("MSAs") and does not receive a significant amount of porting requests, the Commission's rules allow for waiver of any rule including the ones proposed by NANC and Vonage.

incentive to require more complicated forms that have a greater likelihood of errors. The longer it takes a customer to obtain a new service provider, the more money the RBOC collects from the customer and lengthy timeframes weaken the resolve of the customer porting out their number.

The vast majority of customers blame the new service provider for any delays associated with porting and begin to question their decision to change companies. This becomes an unfortunate first instance of customers interacting with Vonage, and although Vonage may not be the source of the problem, this is not transparent to customers. Problems with porting mean that customers begin their service with a highly negative experience and are accordingly less likely to retain service.

In many cases, forms are rejected as erroneous when in reality the discrepancy is due to a minor misspelling of a name (either in the file maintained by the RBOC or in the form submitted by the CLEC), differences in abbreviations used for addresses (*e.g.*, the CLEC form may indicate “ST” while the RBOC record spells out “Street”) and other minor inconsistencies. The Commission needs to develop a process that would establish appropriate reasons for rejecting a port request and mandate timeframes for error correction. Currently, incumbents have unfettered discretion to reject port requests and this is a major impediment to the porting process.

Additionally, in many instances, an incumbent carrier will reject the port request upon finding a single error and cease processing the form. The port request bounces back to the CLEC and to Vonage; the CLEC will resubmit the port request only to have it rejected again if another error is found further down the form. The Commission must

require carriers receiving porting requests to scan the entire form and identify all errors so as to minimize the number of times customers need to be contacted and minimize delays.

Ports are rejected for a wide variety of other reasons. For instance, if a customer has Distinctive Ring/Ring Master services associated with the line and requests porting, the incumbent will reject the port. The customer will then have to call their provider and remove this feature from their account. Incumbents have developed this policy ostensibly to confirm that the customer realizes that they will no longer have use of this feature. Customers who select Vonage's service are well aware that their phone service is going to transform upon that election. Vonage provides customers with the ability to turn on and off features that far exceed those available from legacy providers through the use of a simple web interface. No telephone calls are required and customers receive most features for free. In many cases, this type of functionality provided by Vonage is a major reason for the customer in choosing Vonage's service and the incumbent provider should not be able to impede the port because this feature was not first cancelled—this type of problem causes at minimum a doubling of the time for a port to occur. In order to avoid this type of port rejection, the Commission should require carriers to presume that it is improper to reject a port. The carrier porting out the telephone number has no liability under the Commission's unauthorized carrier change rules. Accordingly, there is no reason for the carrier to delay or interfere in any way with the port in any way.

Another problem area involves the tying of DSL service to basic service by incumbents resulting with the inability to port a number attached to an existing DSL line. Most monopoly providers of legacy telecommunications services require customers to

keep at least a basic service associated with the DSL line. Vonage has previously submitted comments concerning the anticompetitive nature of these practices.<sup>7</sup> Prior to porting a telephone number with DSL activated, the customer that desires Vonage's service must order a *second* telephone line and number so as to transition the DSL service to that second telephone line. The port request for the customer's first telephone number can then be processed. The customer must then pay for the Vonage service, the basic service and the DSL service making the economics of the choice much less attractive. DSL tying is anticompetitive, interferes with customer choice, and requires customers to utilize two telephone numbers.

Preferred provider freezes can also result in the rejection of a port request. Carriers require customers to remove the freeze prior to porting the telephone number. When the ultimate provider of the communications service is a VoIP provider like Vonage, preferred provider freezes should not lead to a port rejection. Vonage customers must utilize broadband connections and specialized hardware to make use of the service. Unauthorized carrier changes cannot occur when the customer must purchase and install specialized customer premises equipment in order to make use of the service. The Commission should not allow incumbents to impede the adoption of new technologies by allowing the application of irrelevant rules to innovative service offerings.

#### *B. The Activation Process*

The activation portion of the porting process is also in need of reform. After a carrier receives and processes an error free port request, the carrier porting out provides the new carrier with a FOC. Within three-business day of receipt of the FOC, the

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<sup>7</sup> See WC Docket No. 03-251, Comments of Vonage Holdings Corp., (dated Jan. 30, 2004).

telephone number is supposed to be ported to the new carrier.<sup>8</sup> The Commission states that certain factors can extend this timeframe such as the quantity of numbers being ported, the type of service impacted, use of UNEs, loop facilities or the involvement of resellers.<sup>9</sup> Attached as Exhibit 1 is detail concerning 132 ports that were in process] on a single day in December. The ports involve a single CLEC with port requests pending with a number of RBOCs. The list includes only the “simple ports” in process.<sup>10</sup> The customers were porting a single telephone number, with no additional services or features associated with the line, and were either residential or small business users. In order to obtain a FOC, a minimum of two and as many as ten business days have already transpired. As indicated by the spreadsheet, not one of these ports were completed within three business days of receipt of the FOC as established by industry standards. Of the 132 port requests, 28 (or approximately 21%) took six days to complete. This exceeds the industry guidelines by 100%. As poor as this result is, it was relatively prompt for the 18 (or approximately 14%) customers that had to wait 15 or more business days for their numbers to port, which is at least 500% more than the timeframe adopted by the Commission for wireline-to-wireline ports. With the exception of one port that took 5 business days, the remaining 85 customers (or approximately 65% of the total for this day in December) waited between 7 and 14 business days to port from the receipt of a FOC.

As demonstrated by the data assembled by Vonage, it is clear that the wireline-to-wireline porting process is broken and in need of reform. In order for effective intermodal competition, *i.e.*, VoIP, wireline, and wireless competition, the porting

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<sup>8</sup> See *Second Notice*, ¶5, n.16.

<sup>9</sup> See *id.*

<sup>10</sup> By a “simple port” we mean a single telephone number with no additional features associated with the line.

process must be streamlined so that the vast majority of porting requests are completed within five business days regardless of the services associated with a particular line.

The Commission is also seeking comment relating to the increase in inadvertent ports that may accompany a reduced porting interval.<sup>11</sup> Significantly, the *NANC Report* did not indicate why there would be an increase in inadvertent ports as a result of a reduced timeframe. Vonage questions why streamlining and making the porting process more efficient would result in increasing inadvertent ports. In any case, the Commission's unauthorized carrier change rules adequately address this issue. Liability for such changes rests squarely on the requesting carrier.<sup>12</sup> The solution to concerns associated with inadvertent ports lies with enforcing the existing rules and not in allowing an inefficient system to remain in place. Further, with regard to Vonage's service and other similar VoIP services, customers must install specialized equipment to make use of the service. Inadvertent ports are not an issue for VoIP services.

### **III. INTERMODAL PORTING ISSUES**

Vonage has also experienced difficulties in transitioning telephone numbers from wireless providers. The most common problem Vonage encounters is insistence on supplying a social security number in order to port a telephone number. Many wireless carriers require their customers to provide social security numbers when signing up for service. Some of these carriers claim that the social security number also serves as verification that their customer desires the requested carrier change. Perhaps when a wireless customer is switching to a new wireless carrier, providing a social security number is not a problem. Typically, both carriers have a system for tracking and

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<sup>11</sup> See *Second Notice*, at ¶12.

<sup>12</sup> See 47 C.F.R. § 64.1100 *et seq.*

protecting social security numbers and customers are accustomed to the requirement associated with wireless services; however, when porting from a wireless provider to a wireline provider, requiring the submission of a customer's social security number is neither practical nor desirable as a policy. Many customers, with good reason, are reluctant to provide their social security numbers because of privacy-related concerns. VoIP and wireline carriers should not have to track such information solely for purposes of ports to and from wireless carriers. The Commission should not require customers to surrender personal data unless absolutely necessary, which it is not.

Vonage is unable to assess the veracity of the claims by those wireless carriers that claim a social security number is required to confirm a porting request. A number of wireless carriers do not require Vonage to provide social security numbers when processing porting requests. Neither Vonage nor the CLECs that work with Vonage require social security numbers as part of the porting process. It is not asked of customers when they sign up for Vonage's service.

Earlier in these reply comments, Vonage advocated that the Commission adopt a standard LSR form that would be used by all carriers. To the extent that the Commission adopts this proposal, the social security number issue would be resolved – either all carriers will require it or none will. If the Commission chooses not to require the use of standardized forms by all carriers, the Commission must, at the very least, make clear that for wireless-to-wireline ports, social security numbers are not required. Wireline and wireless carriers should be required, at a minimum, to develop standardized information requirements that would eliminate the need for wireless carriers to receive a social security number in order to validate a wireless customer's request to port their number.

Regardless of the reforms adopted by the Commission for wireless-to-wireline porting, any reforms that improve the process should also be applied to wireline-to-wireline ports. Wireline porting is incredibly inefficient. It simply makes no sense for carriers in the wireline world to be subject to an inferior porting process when the same systems put in place for wireless-to-wireline ports could also be utilized by wireline carriers to improve a desperately inefficient system.

#### **IV. CONCLUSION**

Vonage believes that it is essential for the Commission to encourage intermodal competition through streamlining both the wireless-to-wireline and wireline-to-wireline porting processes. The current state of the industry requires pure VoIP providers like Vonage to rely on the wireline-to-wireline porting process which is inefficient, prone to error, and liable to be used more often to reject or delay ports. Accordingly, reform of the porting process is crucial if the Commission is to continue to encourage the development and deployment of broadband services and networks.

For these reasons, Vonage advocates that the Commission mandate the electronic submission of LSRs between all carriers. The Commission should require the industry to develop and utilize a standardized form for porting requests. Specific timeframes and guidelines should be established for rejecting ports and the Commission should reevaluate what constitutes a valid rejection of a port request. Carriers should presume that port requests are valid and not interfere with the porting process. The Commission should also reduce the activation timeframe after the port has been accepted by the carrier porting out the telephone number.



CC Docket No. 99-200

Reply Comments of Vonage Holdings Corp.

**EXHIBIT 1**







## VIA ELECTRONIC FILING

March 28, 2005

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: CC Docket Nos. 95-116, 99-200 and WC Docket Nos. 04-36, 03-251**

Dear Ms. Dortch:

Vonage Holdings Corp. (“Vonage”) submits this letter to provide the Commission additional information on problems Vonage faces concerning telephone number porting from many incumbent local exchange carriers (“ILECs”).<sup>1</sup> As recently as Friday, March 25, 2005, the Commission reaffirmed that the 1996 Telecommunications Act requires ILECs to port telephone numbers in a non-discriminatory manner and that “carriers may not impose not porting related restrictions on the porting out process.”<sup>2</sup> Specifically, certain parties had highlighted to the Commission that ILECs will delay porting when a competing voice provider wins a customer that also subscribes to an ILEC voice service.<sup>3</sup> While Vonage has also experienced similar discriminatory treatment in the same circumstances, this filing pertains to Vonage’s experience concerning ILECs’ information management practices that are producing unwarranted costs and delays. This is creating a systemic slowdown of the entire porting process to the detriment of customers and the public interest. In delaying porting through poor information management practices these carriers are frustrating federal law, damaging the reputation of requesting

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<sup>1</sup> Vonage’s broadband communications service is used by over 500,000 customers in the United States and Canada. When a customer chooses to use Vonage’s service and to retain their existing telephone number, Vonage works with a carrier, *i.e.*, a competitive local exchange carrier (“CLEC”), to arrange for the port of the customer’s number from their existing carrier, typically a RBOC. In most cases, Vonage (and CLECs) must use the wireline-to-wireline porting process in order to obtain the customer’s telephone number. However, in some cases, Vonage converts a wireless customer to the Vonage service, thereby using the intermodal porting process.

<sup>2</sup> See *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, Memorandum Opinion and Order and Notice of Inquiry, WC Docket No. 03-251, at ¶ 36.

<sup>3</sup> See *id.*

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competitive local exchange carriers (“CLECs”) and companies that rely on the services of such carriers like Vonage, and increasing the costs associated with finalizing number ports for CLECs and Voice over Internet Protocol (“VoIP”) providers. Further, as the Commission allows VoIP providers to become directly involved in the porting process, the existing problems with porting will only increase. Ultimately, porting benefits consumers in allowing them to maintain their telephone numbers regardless of service provider and ILECs must conform their systems and practices to give effect to the decisions made by consumers.

As detailed in Vonage’s reply comments filed in the intermodal porting docket, the wireline-to-wireline porting process is broken.<sup>4</sup> Vonage confronts numerous obstacles in completing customer requested number ports with ILECs. Another issue impeding the wireline porting process and causing customers significant delay is the pervasive mismanagement in ILEC back office systems. ILECs are causing needless delays and costs due to inaccurate data. Vonage has noticed that many ILEC back office systems are not updated to match changes in customer services. Specifically, ILECs will not honor porting requests if a customer has not first cancelled their tied DSL service. However, when ILEC customers cancel DSL service and/or multiple line service, many ILECs fail to account for this service change in all related databases.<sup>5</sup> When those customers attempt to port numbers, some ILECs reject the request because their back office systems show that those numbers are tied to DSL or multiple line service. When the CLEC working with Vonage requests the relevant customer service record (“CSR”) as part of the porting process, it wrongly indicates that customer has either a DSL or multiple line service associated with the line.

The inaccurate and mismanaged data in ILEC back office systems is a great cause of concern for the Company because no matter how good Vonage’s pre-order process is, the Company has no way of knowing about discrepancies in the ILEC databases that may delay a port. Such ILEC-caused inaccuracies delay porting and require customers to become involved in the porting process, an extremely technical and inherently confusing process, since the ILECs will not allow either the carrier or the VoIP provider to remove the phantom features from the account.<sup>6</sup> This, in turn, places unjustified costs on the requesting carrier or VoIP provider as a result of forcing such companies to manually contact the ILEC to explain the circumstances

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<sup>4</sup> See generally *Telephone Number Portability*, Reply Comments of Vonage Holdings Corp., CC Docket No. 95-116 (filed Dec. 17, 2004) (“*Vonage Reply Comments*”).

<sup>5</sup> Customer are unaware of the erroneous information associated with their account because the ILECs cease billing customers for the service but fail to update other databases pertaining to the customer’s account and service.

<sup>6</sup> Furthermore, when Vonage begins to specifically instruct customers on how to remove restrictions from their line, the customer will have an expectation that the port will go through smoothly; however, due to ILEC mismanagement, this is not the case. Numerous other issues may arise even after the customer “removes” the non-existent services from their account. For further details concerning other issues that arise, please see *infra* note 8 and Vonage’s reply comments filed in CC Docket No. 95-116.

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surrounding the rejected port. Vonage and the CLECs involved in the porting process have to pay various fees and overhead associated with the porting. Rejections result in a double (or even higher multiples) of the single port cost.

These inconsistencies are derived solely from the internal practices of the ILECs and are acutely manifested when customers request a number port. In many instances, customers have canceled DSL and/or multiple line service months in advance of the requested port. However, when such a customer requests a port through their new carrier, their old carrier (the ILEC) rejects the port request, claiming that either the DSL line or multiple line service must first be removed from the line, regardless of the fact that the affected customer does not have such services, and in many cases has not had such services for several months preceding the port request.

When a port request is rejected because the ILEC incorrectly claims the number is tied to DSL or multiple line service, the customer is automatically faced with a significant delay in finalizing the port. Further, the ILECs claim that the port is no longer governed by the Commission's rules because it is rejected by the ILEC as an erroneous port request. As detailed in Vonage's reply comments, the wireline-to-wireline industry standards that establish deadlines for the porting of telephone numbers are arguably applicable only if the carrier porting out a number receives an "error-free port request." Despite the fact the port is rejected because of faulty ILEC information, ILECs argue that they are able to reject the port and are not subject to otherwise applicable federal rules. When these situations arise, Vonage and the CLEC must initiate a conference call with the RBOC to clarify that the number in question is not associated with DSL or multiple line service. Many times, Vonage and the CLEC must wait on the line to ensure the problem is fixed while they wait on the call. When Vonage encounters such difficulties, customer requests for porting can be delayed days if not weeks. The ability of ILECs to self-determine what constitutes an "error free" port allows ILECs to reject any and all orders. The Commission should implement a rule that allows an error-related rejection only if the submitting carrier submits an order that contains an error. Otherwise, the carrier receiving the port request must comply with the existing timeframes established by the industry and adopted by the Commission.

To remedy these problems, the Commission must address the larger concern of "error free orders." The situation described in this letter is a subset of a much larger problem that Vonage addressed in its reply comments and other parties have also raised.<sup>7</sup> The timeframes associated with wireline porting are measured from the receipt of an "error free order." ILECs are able to abuse the porting process by classifying port requests as erroneous even if the "errors" are caused by their own internal databases (as detailed in this letter). Port requests rejected for any number of other validation errors require supplemental port requests that introduce

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<sup>7</sup> See *Telephone Number Portability*, Comments of CTIA – The Wireless Association, CC Docket No. 95-116, at 6 (filed Nov. 17, 2004).

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substantial delays into the porting process (as detailed in Vonage's reply comments).<sup>8</sup> Once a customer has provided a Letter of Authorization, the acquiring carrier (or VoIP provider) should be able to work directly with the ILEC to remove the non-existent features that are causing the port to be rejected. This would greatly streamline the porting process from the customer perspective and allow further automation to be developed to handle these cases in order to serve and give effect to the customers' intent.

It is also necessary for the Commission to overhaul holistically the wireline porting process. Many of the problems identified by Vonage in this filing, as well as in its reply comments filed in the intermodal porting docket, would be resolved if the Commission were to: (1) standardize the fields that require validation; and (2) greatly reduce the number of fields required to validate a port. The purpose of validation edits and the continued usefulness of this practice must be reevaluated to reflect the communications marketplace as it exists today and in the foreseeable future. The only purpose such edits serve is to minimize inadvertent ports to ensure the carrier is porting the correct number and the correct customer. Certainly this is a legitimate goal, however, much has changed in the telecommunications marketplace since 1997 when this process was established. Significantly, the Commission has made clear that liability for inadvertent ports rests completely on the company that submits the carrier change request and has adopted rules for obtaining customer consent.<sup>9</sup> The company requesting the porting of a telephone number has a powerful incentive to ensure that they are acting consistent with the wishes of a customer. Accordingly, validation edits should be streamlined to the most basic information required to port a telephone number to a new service provider so the practice cannot be used to frustrate customer choice.

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<sup>8</sup> See *Telephone Number Portability*, Reply Comments of Vonage Holdings Corp., CC Docket No. 95-116, at 5-7 (filed Dec. 17, 2004).

<sup>9</sup> See, e.g., 47 C.F.R. § 64.1140 ("Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170."); see also *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, First Order on Reconsideration, CC Docket No. 94-129 (rel. May 3, 2000).

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Vonage is not suggesting that wireline carriers engage in no validation of data but Vonage does advocate for both a standardized the fields that require validation and reduce the number of fields subject to such a requirement. The Commission should work with the industry to require the validation of only two or three fields. This would enormously simplify the porting process, reduce the delays associated with rejected port requests since there would be less data to process, and restrict the ability of ILECs to use the validation process as a means to delay porting request so as to maintain their market share.<sup>10</sup>

Respectfully submitted,

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/s/

William B. Wilhelm, Jr.  
Ronald W. Del Sesto, Jr.

Attorneys for Vonage Holdings Corp.

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<sup>10</sup> Aside from the reforms set out in this letter, Vonage has recommended other improvements to the wireline-to-wireline porting process that would greatly improve the system in its reply comments. Specifically, Vonage submits that the Commission should: (1) require carriers to electronically submit and process Local Service Requests (“LSRs”) forms; (2) mandate standardized forms utilized for change requests; (3) examine the procedures and timeframes for processing port requests that are rejected and reevaluate what constitutes a valid port reject; (4) reduce the timeframe associated with the activation process after a LSR has been accepted by the porting out carrier; (5) require carriers to presume port requests are valid regardless of the features installed on a line; (6) clarify that providers should not be required to obtain social security numbers when porting a wireless customer to their service; and (7) extend any modifications made to the wireless-to-wireline porting process to the wireline-to-wireline porting process. *See Vonage Reply Comments*, at 1.