

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Numbering Policies for Modern Communications)	WC Docket No. 13-97
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
Telephone Number Requirements for IP-Enabled Services Providers)	WC Docket No. 07-243
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Connect America Fund)	WC Docket No. 10-90
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources)	

ORDER

Adopted: June 17, 2013

Released: June 17, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) addresses proposals to participate in a limited technical trial for certain interconnected VoIP providers to obtain direct access to telephone numbers for their customers. We conclude that the proposals submitted by Vonage Holdings Corp. (Vonage), SmartEdgeNet, LLC (SmartEdgeNet), WilTel Communications, LLC (WilTel), IntelPeer, Inc. (IntelPeer), and Millicorp meet the Commission’s requirements to participate in a limited direct access to numbers trial. We conclude that Fractel, LLC (Fractel) failed to demonstrate that it is entitled to participate in the trial because it does not meet the eligibility requirements set forth in the Commission’s Order. Finally, we decline to extend the start date for the trial as requested by Bandwidth.com, Inc. (Bandwidth.com).

II. BACKGROUND

2. On April 18, 2013, the Commission released a Notice of Proposed Rulemaking, Order and Notice of Inquiry which, *inter alia*, established a six-month technical trial of direct access to telephone numbers by granting a conditional waiver to Vonage and other interconnected VoIP providers

that have pending petitions for waiver of section 52.15(g)(2)(i) of the Commission's rules¹ and that meet the terms and conditions outlined in the *Direct Access Order*.² The Commission explained that it would use this trial to test whether giving interconnected VoIP providers direct access to numbers would raise issues relating to, for example, number exhaust, number porting, VoIP interconnection, or intercarrier compensation, and if so, how those issues might be efficiently addressed.³ The Order requires trial participants to file regular reports throughout the six-month trial, and state commissions and other interested parties will have an opportunity to comment on these reports throughout the trial as they are filed.⁴ The information gathered from the technical trial will inform the Commission's broader rulemaking on direct access to numbering by entities that have not been classified as telecommunications carriers.

3. The *Direct Access Order* specified that entities eligible to participate in the trial had to submit to the Wireline Competition Bureau and each relevant state commission a detailed numbering proposal within 30 days of the release of the Order.⁵ These proposals must (1) include a certification that the trial participant will comply with the terms and conditions of the waiver, (2) identify the rate centers or LATAs in which the participant wishes to have numbers directly assigned to it, noting how many numbers in each rate center or LATA it proposes to receive as new numbers and how many it proposes to port in from existing or new customers, and (3) describe the phase-in process to implement the trial.⁶ The Bureau must approve proposals 30 days after filing unless the Bureau finds that the proposal does not comply with the requirements of the *Direct Access Order*.⁷ A participant may not request or obtain direct access to numbers until its proposal is approved.⁸

4. The deadline to submit proposals for the trial was May 20, 2013. On May 17, 2013, Vonage and SmartEdgeNet submitted their proposals to participate in the trial,⁹ and WilTel and IntelPeer submitted their proposals on May 20, 2013.¹⁰ After the deadline, on May 22, 2013, the Commission received a proposal from Millicorp to participate in the trial.¹¹ In addition, on May 20, 2013,

¹ 47 C.F.R. § 52.15(g)(2)(i).

² See *Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 *et al.*, Notice of Proposed Rulemaking, Order, and Notice of Inquiry, 28 FCC Rcd 5842 (2013) (*Direct Access Order*).

³ *Id.* at 5844, para. 2.

⁴ *Id.*

⁵ *Id.* at 5882, para. 101. The Order was released on April 18, 2013.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-97 *et al.* (filed May 17, 2013) (Vonage Trial Proposal); Letter from Randall B. Lowe, Davis Wright Tremaine LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-97 *et al.* (filed May 17, 2013) (submitting Numbering Plan Proposal of SmartEdgeNet, LLC) (SmartEdgeNet Trial Proposal).

¹⁰ WilTel Trial Proposal, WC Docket No. 13-97 *et al.* (filed May 20, 2013) (WilTel Trial Proposal); Letter from Kristin Manwarren, Corporate Counsel, IntelPeer, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-97 *et al.* (filed May 20, 2013) (IntelPeer Trial Proposal).

¹¹ See Letter from Duane Dyar, Vice President/Operations, Millicorp, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-97 *et al.* (filed May 22, 2013) (Millicorp Trial Proposal). In its letter, Millicorp requests leave to file its proposal out of time and for the Commission to accept its filing as if it had been timely.

Fractal filed a petition for reconsideration of the *Direct Access Order*, which includes a proposal for it to participate in the trial.¹²

5. On May 21, 2013, Bandwidth.com, Inc. filed an opposition to the request for confidential treatment of the Vonage and IntelPeer proposals and asked the Commission to clarify that the 30-day period for Bureau approval does not begin until participants file their plans publicly.¹³ On May 24 and May 30, 2013, Vonage and IntelPeer, respectively, withdrew their requests for confidential treatment and publicly filed their plans in unredacted form.¹⁴

III. DISCUSSION

6. We conclude that the trial proposals submitted by Vonage, SmartEdgeNet, IntelPeer, WilTel and Millicorp should be approved. First, each proposal was submitted by an interconnected VoIP provider that has a pending petition for waiver of section 52.15(g)(2)(i) of the Commission's Rules.¹⁵ Second, the proposals satisfy the substantive requirements of the *Direct Access Order*. Each proposal: (1) includes a certification that the participant will comply with the terms and conditions of the waiver; and (2) identifies the rate centers or LATAs in which the participant wishes to obtain numbers directly, noting how many numbers it proposes to receive as new and how many it proposes to port in from existing or new customers. Specifically, Vonage identifies 3 LATAs – Atlanta, Georgia; Eastern Massachusetts; and Phoenix, Arizona – in which it proposes to obtain a total of 9 blocks of numbers for new customers and port 120,000 numbers of existing customers.¹⁶ SmartEdgeNet identifies 3 LATAs – Celebration, Florida; Keys, Florida; and Dallas, Texas – and proposes to obtain 1 block in each LATA and port up to 450 numbers of existing customers.¹⁷ WilTel identifies 7 Rate Centers – Eastern Massachusetts; Charlotte, North Carolina; Concord, North Carolina; Dallas, Texas; Denver, Colorado; Los Angeles, California; Rochester, New York – and proposes to obtain a total of 25 blocks for new customers and port 200,000 numbers of existing customers.¹⁸ IntelPeer identifies 1 LATA in Los Angeles, California (or alternatively, Miami, Florida) in which it proposes to obtain 1 block of numbers.¹⁹ Millicorp identifies 3 LATAs – Fort Myers, Florida; Fort Lauderdale, Florida; and Southwest Georgia – and proposes to obtain 1 block in each LATA and port up to 7,500 numbers of existing customers.²⁰ Finally, each proposal describes the phase-in process to implement the trial.

¹² See Fractal, LLC Petition for Reconsideration, WC Docket No. 13-97 *et al.* (filed May 20, 2013) (Fractal Petition for Reconsideration).

¹³ Letter from James C. Falvey, Counsel for Bandwidth.com, Inc. to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200 (filed May 21, 2013) (Bandwidth.com Opposition).

¹⁴ Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp. to Marlene H. Dortch, Secretary, Federal Communications, WC Docket No. 13-97 *et al.* (filed May 24, 2013); Letter from Kristin Manwarren, Corporate Counsel, IntelPeer, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-97 *et al.* (filed May 30, 2013).

¹⁵ *Direct Access Order*, 28 FCC Rcd at 5849 n.35.

¹⁶ Vonage Trial Proposal at 2-3.

¹⁷ SmartEdgeNet Trial Proposal at 1.

¹⁸ WilTel Trial Proposal at Attachment 2. WilTel indicates that it intends to include both wholesale and enterprise lines in the trial. See Letter from Joseph C. Cavender, Vice President, Federal Regulatory Affairs, Level 3 to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-97 *et al.* (filed May 28, 2013).

¹⁹ IntelPeer Trial Proposal at 4.

²⁰ Millicorp Trial Proposal at 4.

7. Millicorp's proposal was submitted two days after the 30-day deadline established in the *Direct Access Order* with a request to accept it as timely filed. Millicorp indicates that it has limited experience with numbering matters and was unable to complete certain research in a timely manner. Although we note that the most appropriate action would have been to contact the Commission and request an extension of the time in which to file,²¹ we agree with Millicorp that its participation will increase the diversity of trial participants. Of the 15 participants that potentially were eligible to participate in the trial, only four others applied to participate. Millicorp's participation will increase the number of participants. Moreover, Millicorp proposes to test direct access to numbers in less populous areas, relative to other trial participants. That may provide the Commission unique information from the trial. Moreover, the brief delay in filing does not have any impact on the Commission's ability to conduct the limited trial, nor does it force the Commission to modify the time frames set forth in the *Direct Access Order*. We also conclude that no party will be adversely affected by the acceptance of Millicorp's proposal. We also note that no other party meeting all the other criteria submitted a late proposal. We find that special circumstances exist for waiving the 30-day deadline as it applies to Millicorp and that the public interest would be better served by a waiver than by strict adherence to the deadline. Thus, we construe Millicorp's request to accept its proposal as timely filed and waive the requirement that its proposal be submitted by May 20.

8. *Fractel Proposal*. In the *Direct Access Order*, the Commission limited participation in the trial to those entities with pending petitions for waiver of the Commission's rules regarding access to numbers.²² Fractel did not have such a petition pending. Rather, Fractel filed a petition for reconsideration of the Commission's decision to permit only those entities with pending petitions for waiver to apply to participate in the trial, and also filed a proposal to participate.

9. We do not accept Fractel's proposal to participate in the trial.²³ The Commission determined only to accept proposals from entities with pending petitions on file at the time of the *Direct Access Order*.²⁴ Fractel did not have a pending petition for waiver on file at the time the *Direct Access Order* was adopted and, therefore, does not meet this basic eligibility requirement of the waiver granted in the *Direct Access Order*.

10. *Bandwidth.com Opposition*. Bandwidth.com argued that participants should be required to file their plans publicly. It further asserted that the Commission should clarify that the 30-day period for Bureau approval would not begin until the participants make public filings.²⁵ Vonage and IntelePeer promptly withdrew their requests for confidential treatment and filed unredacted copies of their proposals. We thus find that there has been sufficient opportunity for public inspection of all of the proposals.²⁶ We further find that it is in the public interest and provides for better administration to begin the trials of all participants at the same time, as the trial is likely to provide useful input for the important issues in the Direct Access to Numbers rulemaking. Thus, the trial for all participants will commence on June 17, 2013. We therefore dismiss as moot Bandwidth's request to require public filings of the proposals, and deny its request to delay the start of the trial until such public filings are made.

²¹ 47 C.F.R. § 1.46.

²² *Direct Access Order*, 28 FCC Red at 5878, para. 87.

²³ We will address Fractel's Petition for Reconsideration in a separate order.

²⁴ *Direct Access Order*, 28 FCC Red at 5878, para. 89.

²⁵ Bandwidth.com Opposition at 3.

²⁶ *Direct Access Order*, 28 FCC Red at 5882, para. 101. We note that Bandwidth has signed a protective order in this docket and thus there is no reason to believe that it experienced any significant delay in access to unredacted proposals prior to the prompt withdrawal of requests for confidentiality. See Letter from Justin L. Faulb, Counsel to Level 3 Communications, LLC and Bandwidth.com, Inc. to Marlene H. Dortch, Secretary, Federal Communications

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11. Finally, we remind any participant that requires additional resources as the trial proceeds that it must comply with the requirement set forth in the *SBCIS Waiver Order*²⁷ to file requests for numbers with the Commission and the relevant state commissions at least 30 days prior to requesting numbers from the number administrators.²⁸

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 3, 4, 201-205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 303(r), and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the proposals to participate in the Direct Access to Numbers Trial submitted by Vonage Holdings Corp., SmartEdgeNet, LLC, WilTel Communications, LLC, IntelPeer, Inc. and Millicorp ARE HEREBY APPROVED.

13. IT IS FURTHER ORDERED that, pursuant to Sections 1, 3, 4, 201-205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 303(r), and Sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, Millicorp's request for a waiver of the filing deadline IS HEREBY GRANTED.

14. IT IS FURTHER ORDERED that, pursuant to Sections 1, 3, 4, 201-205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 303(r), and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the proposal to participate in the Direct Access to Numbers Trial submitted by Fractal, LLC IS DISMISSED.

15. IT IS FURTHER ORDERED that, pursuant Sections 4(i)-(j) and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 251, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the Opposition to the Request for Confidential Treatment filed by Bandwidth.com IS DISMISSED IN PART and otherwise IS DENIED.

16. IT IS FURTHER ORDERED, pursuant to the authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, that this Order IS EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

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Commission, CC Docket No. 99-200 (filed Oct. 19, 2012) (providing signed acknowledgements of confidentiality forms for two attorneys representing Bandwidth in the proceeding).

²⁷ *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, 20 FCC Rcd 2957 (2005) (*SBCIS Waiver Order*).

²⁸ *Direct Access Order*, 28 FCC Rcd at 5883 n.256.