

# JONES DAY

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September 15, 2020

## **REDACTED PUBLIC VERSION**

### **BY ELECTRONIC DELIVERY**

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

**Re: Application of Five9, Inc. for Authorization to Obtain  
Numbering Resources  
WC Docket No. 20-\_\_\_\_\_**

Dear Ms. Dortch:

Five9, Inc. (“Five9”), by its counsel and pursuant to Sections 0.457 and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457, 0.459, hereby requests that the attached contracts included in *Exhibits A* and *B* be treated as confidential and withheld from public inspection.

Five9 is filing with the Commission the attached Application for Authorization to Obtain Numbering Resources. As required by Section 52.15(g)(3)(i)(D) of the Commission’s rules and paragraph 37 of the Commission’s Order addressing the provision of numbering resources to interconnected VoIP providers, Five9’s application includes copies of agreements between Five9 and its carrier partners, including with a local exchange carrier for the origination and termination of traffic from Five9’s network.<sup>1</sup> The Commission’s Order on numbering resources acknowledged that applicants for numbering resources may need to file these materials on a confidential basis,<sup>2</sup> which is what Five9 is requesting. In support of this request for confidential treatment, and in accordance with the requirements of Section 0.459(b) of the Commission’s rules, 47 C.F.R. § 0.459(b), Five9 herein provides the following information:

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<sup>1</sup> See *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd. 6839, ¶ 37 (2015).

<sup>2</sup> See *id.*, ¶ 38 n.130.

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**0.459(b)(1) Identification of the specific information for which confidential treatment is sought.** Five9 seek confidential treatment for its Master Service Agreement, including the attached amendment, between Five9 and Level 3 Enhanced Services, LLC, and for its SIP Gateway Outbound Service Agreement between Five9 and Verizon Services Corp., hereinafter referred to together as the “Carrier Agreements.”

**0.459(b)(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** Five9 is filing the Carrier Agreements in support of its Application for Authorization to Obtain Numbering Resources. The submission of the Carrier Agreements is required by Section 52.15(g)(3)(i)(D) of the Commission’s rules and paragraph 37 of the Commission’s Order addressing the provision of numbering resources to interconnected VoIP providers.<sup>3</sup>

**0.459(b)(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The Carrier Agreements include commercial, technical and financial information regarding the contractual arrangements between Five9 and its carrier partners and therefore qualify as information that should be protected from disclosure under the Freedom of Information Act (“FOIA”) as “commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

**0.459(b)(4) Explanation of the degree to which the information concerns a service that is subject to competition.** The market for telecommunications services is highly competitive with numerous carriers providing transport services and competition also existing in the market for local exchange services. As a result, the individual terms of the Carrier Agreements are subject to significant negotiation between the parties.

**0.459(b)(5) Explanation of how disclosure of the information could result in substantial competitive harm.** Five9’s carrier partners are subject to significant competition in the telecommunications industry. The prices and terms for the provision of such services are a substantial differentiator between competing carriers. Therefore, disclosure of the Carrier Agreements would result in significant competitive harm to Five9’s carrier partners.

**0.459(b)(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** Five9 understands that each of its carrier partners maintain

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<sup>3</sup> See *id.*, ¶ 37

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extensive procedures to protect the confidential nature of their commercial agreements. For example, Five9 is prohibited by contract from publicly disclosing the Carrier Agreements, except as expressly authorized by the carriers. Further, Five9 is required by its carrier partners to require the implementation of a non-disclosure agreement or, as in the present case, to request confidential treatment for the Carrier Agreements.

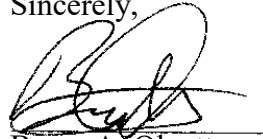
**0.459(b)(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.** Five9 does not believe that the Carrier Agreements, or their substance, is available to the public or that the Carrier Agreements have ever been disclosed to third parties absent the protection of a non-disclosure agreement regarding their contents.

**0.459(b)(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Five9 requests that the Carrier Agreements be withheld from public disclosure indefinitely. Five9 and its carrier partners intend for the Carrier Agreements to remain in effect indefinitely and therefore any disclosure of the Carrier Agreements or their substance would cause competitive harm to Five9's carrier partners regardless of the timing of the disclosure.

For the foregoing reasons, Five9 respectfully request that the Carrier Agreements be granted confidential status and withheld from public inspection. If confidential treatment is not granted for the attached Carrier Agreements, Five9 request that all copies of the Carrier Agreements be returned to Five9.

Please contact the undersigned if you have any questions about this matter.

Sincerely,

  
Bruce A. Olcott

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

<i>In the Matter of</i>	)	
	)	
Five9, Inc.	)	WC Docket No. 20-_____
	)	
For Authorization to Obtain Numbering	)	
Resources Pursuant to Section 52.15(g) of	)	
The Commission's Rules	)	

**APPLICATION OF FIVE9, INC. FOR AUTHORIZATION TO  
OBTAIN NUMBERING RESOURCES**

Five9, Inc. ("Five9"), pursuant to Section 52.15(g)(3)(i) of the Commission's rules, respectfully requests authorization to obtain numbering resources as described below.

As set forth in the Commission's *Numbering Order*,<sup>1</sup> an interconnected VoIP provider may obtain numbering resources from the Numbering Administrator upon a showing that it is authorized to provide service in the area for which the numbering resources are requested. Such authorization may be obtained upon an application to the Commission containing the information detailed in Sections 52.15(g)(3)(i)(A)-(F) of the Commission's Rules. Five9, a VoIP provider, hereby requests the Commission grant it that authorization. In support of this application, Five9 provides the following information.

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<sup>1</sup> *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd. 6839 (2015).

**I. INFORMATION REQUIRED BY SECTION 52.15(g)(3)(i)**

**(A) § 52.15(g)(3)(i)(A)**

**Name:** Five9, Inc.

**Address:** 4000 Executive Parkway  
Suite 400  
San Ramon, CA 94583

**Telephone:** 925-231-2141

**Qualified Personnel:** Melinda Bas  
VP Compliance and Privacy  
Kimberly Lytikainen  
General Counsel, Chief Compliance Officer & Secretary  
Jonathan Rosenberg  
Chief Technology Officer

**Contact for Regulatory Requirements, Compliance, 911, and Law Enforcement:**

**Name:** Melinda Bas

**Address:** 4000 Executive Parkway  
Suite 400  
San Ramon, CA 94583

**Telephone:** 925-231-2141

**Email:** Melinda.Bas@five9.com

**(B) § 52.15(g)(3)(i)(B)**

Five9 hereby acknowledges that authorization to obtain numbering resources under Section 52.15(g) of the Commission's rules is subject to compliance with applicable Commission numbering rules as well as to the numbering authority delegated to the states. Five9 hereby also acknowledges that this authorization is subject to compliance with industry guidelines and practices regarding numbering, as applicable to telecommunications carriers.

**(C) § 52.15(g)(3)(i)(C)**

Five9 hereby acknowledges that it must file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators.

**(D) § 52.15(g)(3)(i)(D)**

Five9 hereby sets forth its capability to provide service within 60 days of the numbering resources activation date.

Five9 already currently provides VoIP services in all fifty states and in a number of foreign countries using its own facilities and those of its wholesale carrier partners that route its traffic to the PSTN. Under its current agreements and established procedures, Five9 will be able to begin placing numbers into service almost immediately and, in any event, within sixty (60) days of the numbering resources activation date. As further proof of its facilities readiness, Five9 has attached to this application, as ***Exhibit A***, a confidential agreement between Five9 and one of its carrier partners providing that the carrier partner provides switching and transport services for traffic associated with Five9's numbers and, in that connection, provides connectivity to the PSTN for inbound calls to and outbound calls from Five9 numbers. Also attached, as ***Exhibit B***, is an agreement for origination and termination of Five9's traffic with an incumbent local exchange carrier serving all fifty states. Five9 has requested confidential treatment under the Commission's rules for ***Exhibits A*** and ***B***.

**(E) § 52.15(g)(3)(i)(E)**

Five9 hereby certifies that it complies with its Universal Service Fund contribution obligations under 47 CFR part 54, subpart H; its Telecommunications Relay Service contribution obligations under 47 CFR § 64.604(c)(5)(iii); its North American Numbering Plan and Local Number Portability Administration contribution obligations under 47 CFR §§ 52.17 and 52.32 its obligations to pay regulatory fees under 47 CFR § 1.1154; and its 911 obligations under 47 CFR part 9.

**(F) § 52.15(g)(3)(i)(F)**

Five9 hereby certifies that it has the financial, managerial, and technical expertise to provide reliable service. It is publicly traded and financially stable, led by a strong, experienced management team with substantial managerial experience in the telecommunications industry, and has sufficient technical expertise and infrastructure in place to continue to provide reliable numbering and related VoIP services.

Five9 has the superior technical qualifications necessary to provide and maintain successful operations within the United States and in other countries. Five9 has the capabilities to efficiently port and place numbers into service and successfully route calls. Additionally, Five9's management team's lengthy experience with number porting enables it, along with its carrier partners, to create routing arrangements that seamlessly deliver calls to numbers directly assigned to Five9.

Furthermore, Five9's personnel have extensive business and network management experience in telecommunications-related businesses and in serving its targeted customer segment, including all types of businesses that require the ability to communicate directly with consumers regarding the order, delivery, and use of their products and/or services. These individuals lead a team that is highly qualified to manage the domestic and international operations of Five9. Five9's key management and technical personnel are listed below. None of the identified personnel is being or has been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.

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**Key Personnel:**<sup>2</sup> Melinda Bas  
VP Compliance and Privacy  
Kimberly Lytikainen  
General Counsel, Chief Compliance Officer & Secretary  
Jonathan Rosenberg  
Chief Technology Officer

**(G) § 52.15(g)(3)(i)(G)**

Five9 hereby certifies that no party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

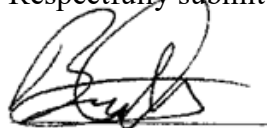
**II. ACKNOWLEDGEMENT OF CONDITIONS IN SECTION 52.15(g)(3)(iv)**

As required by Section 52.15(g)(3)(iv), Five9 will maintain the accuracy of all contact information and certifications in this application, and will file a correction with the Commission and each applicable state within 30 days of any changes. Five9 will also furnish accurate regulatory and numbering contact information to each state commission when requesting numbers in that state.

**III. CONCLUSION**

Pursuant to Section 52.15(g)(3)(i) of the Commission's Rules, Five9 respectfully requests the Commission grant this application for authorization to obtain numbering resources.

Respectfully submitted,



Bruce A. Olcott  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
(202) 879-3630

*Counsel to Five9, Inc.*

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<sup>2</sup> Attached hereto, as **Exhibit C**, are the names, titles, biographies, and contact information of Five9's key management and technical personnel.



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**EXHIBIT A**

**CONFIDENTIAL MATERIALS OMITTED**

**AGREEMENT BETWEEN FIVE9, LLC, AND CARRIER PARTNER**

**SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT –  
NOT FOR PUBLIC INSPECTION**

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**EXHIBIT B**

**CONFIDENTIAL MATERIALS OMITTED**

**CARRIER PARTNER-LOCAL EXCHANGE CARRIER AGREEMENT**

**SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT –  
NOT FOR PUBLIC INSPECTION**

## EXHIBIT C

### **KEY MANAGEMENT AND TECHNICAL PERSONNEL**

The following are the names, titles, biographies, and contact information of Five9's key management and technical personnel:

Kimberly Lytikainen General Counsel, Chief Compliance Officer & Secretary  
[Kimberly.Lytikainen@Five9.com](mailto:Kimberly.Lytikainen@Five9.com)

Kimberly Lytikainen is the General Counsel and Chief Compliance Officer at Five9, responsible for all legal affairs and compliance matters for the company. Kimberly brings over 25 years of legal and leadership experience to help the Five9 organization scale globally with balanced risk.

Prior to Five9, she was the Chief Legal Officer and Corporate Secretary at Poshmark, a next gen consumer marketplace company, and, prior to that, led MINDBODY, a SaaS company, through an IPO, several strategic acquisitions, and their sale to Vista Equity Partners as Chief Legal and Compliance Officer, and Corporate Secretary. She has also held Vice President positions at Pivotal and NVIDIA, where she enabled many key customer relationships, effectively resolved high stakes litigation and stewarded NVIDIA through several large international transactions. Kimberly began her in-house career at Sun Microsystems, after seven years as a trial attorney handling complex IP cases.

Jonathan Rosenberg, Chief Technology Officer, [Jonathan.Rosenberg@Five9.com](mailto:Jonathan.Rosenberg@Five9.com)

Jonathan Rosenberg is the Chief Technology Officer and head of AI at Five9. Jonathan has dedicated his career to transforming the telecommunications industry and joins Five9 from Cisco where he was CTO for the Collaboration Technology Group (CTG). Jonathan is also well known for his authorship of the SIP protocol, which is the foundation for modern IP-based telecommunications. Prior to Cisco, Rosenberg was the Chief Technology Strategist at Skype, where he guided the company's technology strategy. He received his bachelor's and master's degrees from MIT and holds a PhD in electrical engineering from Columbia University.

In 2002 he was named one of the most innovative young technologists in the world by Technology Review magazine. He also was named a "Top Supergeek" by CRN and won a Pulver Von Pioneer award for contributions to the VoIP industry. In 2015 he was presented with the Ohio University Strowger Award for transformational innovation in the Telecommunications industry.

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Melinda Bas, VP Compliance and Privacy, [Melinda.Bas@five9.com](mailto:Melinda.Bas@five9.com)

Melinda Bas is the VP of Compliance and Privacy and is responsible for compliance audits and privacy compliance. Melinda brings over 30 years of technology experience and supports the Chief Compliance Officer in her responsibility to manage compliance matters for the company.

Prior to Five9, she was a senior leader specializing in technology compliance at Oracle Corporation, Salesforce and Sun Microsystems.