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February 5, 2021

BY ELECTRONIC DELIVERY

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

**Re: Supplement to Application of Five9, Inc. for
Authorization to Obtain Numbering Resources
WC Docket No. _____**

Dear Ms. Dortch:

Five9, Inc. (“Five9”), by its counsel, hereby provides additional information to support its Application for Authority to Obtain Numbering Resources, dated September 15, 2020 (“Application”). Five9 is qualified to receive authority for numbering resources because it satisfies the Commission’s definition of a provider of interconnected Voice over Internet Protocol (“VoIP”) services. Five9 is also qualified to receive numbering resources because it operates in compliance with all Commission regulations that are relevant to its services.

Inbound and Outbound Interconnected VoIP

Five9’s interconnected VoIP services are used by more than 3,500 companies, including such well-known enterprises as BlueCross/BlueShield, Lululemon, Under Armour, DHL, Athenahealth and Siemens to enable their customers to contact them and to reach out to customers with information and to respond to inquiries. Most Five9 customers use Five9’s service to place both inbound and outbound calls from the numbers they obtain from Five9. Five9 has assigned to its enterprise clients approximately 600,000 direct inward dialing (“DID”) numbers and another 250,000 toll free telephone numbers for use in initiating and receiving calls. Five9’s outbound VoIP services include more than 200 million minutes of traffic per month generated by customer service agents that work directly for the enterprise companies that use Five9’s services. Five9’s inbound VoIP services involve about 130 million minutes of traffic per month and another 335 million minutes of inbound traffic per month using toll free numbers. The customer service agents that are initiating and receiving these calls are all employees of the businesses that use Five9’s services, they do not work for Five9.

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The significant quantity of both outbound and inbound traffic that is carried on Five9's interconnected VoIP network is evidenced by the significant number of carrier relationships that Five9 has with other telecommunications service providers. Five9 reported to the Commission in a separate communication (see email dated December 15, 2020) that Five9 has contractual agreements with about 24 carriers covering the interconnection or peering of Five9's interconnected VoIP traffic to the PSTN. In most cases, these carriers provide both inbound and outbound services to the PSTN to support for Five9's customers.

The carrier contracts that Five9 previously filed with its Application provide specific examples of Five9's inbound and outbound carrier relationships. Additional examples of Five9's carrier relationships were provided to the Commission in a separate filing that was submitted by Five9 concurrent with this letter. For example, Five9's Application included as Exhibit A its contract with Level 3 Communications, LLC, which includes pricing and terms for Local Inbound Service (pages 12-16 of the pdf), outbound Voice Termination Service (pages 17-18 of the pdf), and inbound Toll Free Service (pages 19-21 of the pdf). Five9's Application also included as Exhibit B its contract with Verizon Services Corporation, which covers the termination of Session Initiation Protocol ("SIP") Gateway Outbound Service originating from Five9's customers (pages 23-28 of the pdf).

As further evidence of Five9's inbound and outbound VoIP traffic, Five9 has separately filed with the Commission on this date its contract with Teliax, Inc. covering its provision to Five9 of both inbound (originating) and outbound (terminating) services to the PSTN. Five9 also provided a copy of its contract with Bandwidth Inc. covering its provision of inbound voice services to Five9. Therefore, substantial evidence exists that Five9 provides both inbound and outbound VoIP traffic to support its enterprise customers.

Regulatory Compliance

Five9 is fully compliant with all applicable rules applicable to those Five9 services that constitute telecommunications and interconnected VoIP services. Five9 approached the Commission in 2013 to complete a thorough review of its regulatory compliance, which culminated in the joint execution of a Consent Decree in June 2015 addressing Five9's compliance efforts and the steps that Five9 was required to undertake to complete and maintain its regulatory compliance.¹ Among the regulatory issues that are relevant to Five9's compliance are adherence to the Communications Assistance for Law Enforcement Act ("CALEA") and the Commission's 911 calling requirements, both discussed below.

¹ See In the Matter of Five9, Inc., *Order*, DA 15-686 (June 15, 2015).

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CALEA Compliance

Five9 is fully compliant with the Commission's CALEA rules. On August 3, 2015, Five9 entered into a CALEA compliance contract with Yanna Technologies for the use of its NetDiscovery Compliance Cloud service. The implementation of these CALEA compliance capabilities was completed in January 2016. Since then, Five9 has received requests from law enforcement for assistance and Five9 cooperated and assisted in each of these law enforcement efforts.

911 Compliance

Five9 is in the process of making its service fully compliant with the most recent 911 call processing requirements. As background, Five9 worked with its outside legal counsel and had informal discussions with Commission staff in September 2015 to determine whether Five9 was subject to 911 requirements as they existed at that time. It was concluded that Five9's VoIP-based virtual contact center service was most analogous to a virtual multi-line telephone system ("MLTS") or an Internet Protocol-Public Branch Exchange ("IP-PBX") system, each of which had been deemed to be outside the scope of the Commission's 911 rules.² This was consistent with the Commission's longstanding approach of determining whether its E911 rules should be applied to a particular service using four criteria:

- (1) whether the entity offers real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services;
- (2) whether customers using the service or device have a reasonable expectation of access to 911 and E911 services;
- (3) whether the service competes with traditional CMRS or wireline local exchange service; and
- (4) whether it is technically and operationally feasible for the service or device to support E911.³

² Implementing Kari's Law and Section 506 of RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules, PS Docket No. 18-261 *et al.*, *Report and Order*, FCC 19-76, ¶ 4 (Aug. 2, 2019) (explaining that "to date, the Commission's E911 rules have not applied to MLTS") ("Kari's Law Order"); IP-Enabled Services, WC Docket No. 04-36, E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05-196, *First Report and Order*, FCC 05-116, ¶ 24, n.78 (2005) (indicating that the 911 rules do not apply to IP-PBX systems).

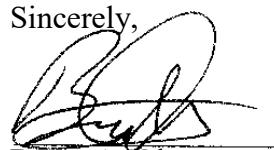
³ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, ¶¶ 80-

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Although Five9's service met the first criterion, it probably did not meet the second criterion and it definitely did not meet the third criterion.

In 2019, however, the Commission concluded that MLTS systems are exempt from 911 requirements only if they do not interconnect with the PSTN.⁴ The Commission therefore imposed 911 requirements on all new MLTS systems interconnecting with the PSTN that are sold or installed after February 16, 2020.⁵ Five9's services and installations for nearly all of its customers predate this deadline, but Five9 nevertheless is in the process of implementing E911 capabilities for all of its U.S. customers using technology that it intends to secure from Redsky Technologies, with an expectation of completing the implementation during the second quarter of 2021. Five9 therefore fully qualifies for Commission authority to obtain numbering resources to support its enterprise customers.

Thank you for your attention to this matter. Please contact the undersigned if you have any questions.

Sincerely,

Bruce A. Olcott

⁴ 84 (1996); Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems. CC Docket No. 94-102, Report and Order, FCC 03-290 ¶ 18-19 (2003).

⁵ *Kari's Law Order*, ¶ 56 (explaining that “[i]f an internal communications system or conferencing service connects to the public switched telephone network either on its own or through a third party and can establish calls to the public switched telephone network, including by dialing a prefix such as “9,” then it is within the definition of MLTS under [the FCC's] interpretation for purposes of the 911 Statutes.”).

⁵ See *id.*, ¶ 100.