

June 9, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

**Re: Notice of Ex Parte Communications, WC Docket Nos. 13-97, 07-243, 07-149, 09-109, 04-36, 10-90
CC Docket Nos. 01-92, 99-200, 95-116**

Dear Ms. Dortch:

On June 8, 2015, Harold Feld, Senior Vice President of Public Knowledge, and Kate Forscey, Associate Counsel for Government Affairs, Public Knowledge, met with Randy Clarke, Division Chief of the Competition Policy Division of the Wireline Bureau; Ann Stevens, Deputy Division Chief of the Competition Policy Division of the Wireline Bureau; Melissa Kirkel, Acting Assistant Division Chief of the Competition Policy Division of the Wireline Bureau; Marilyn Jones, Attorney Advisor to the Competition Policy Division of the Wireline Bureau; and John Visclosky, Attorney Advisory to the Competition Policy Division of the Wireline Bureau with regard to the above captioned proceedings.

Public Knowledge argued the Commission should not grant NANP numbers to non-Title II entities. Given potential concerns over the ability of the Commission to regulate VOIP providers under ancillary authority, the Commission cannot properly ensure that non-Title II entities will behave in a responsible manner with the numbering resource, or that the Commission can require VOIP providers to adequately serve the public interest and convenience.

Public Knowledge also expressed concern that providing direct access to VOIP numbers may have cybersecurity consequences. Telephone numbers are the proverbial “key to the kingdom” for the traditional international telephone system. Currently, they are distributed only to ILECs and CLECs - “trusted entities” certified at both the state and federal level. VOIP providers currently have no credentialing requirement or requirement to maintain any physical assets in the United States. Direct allocation of numbers to VOIP providers has the potential to hand authorized phone number blocks to entities outside the jurisdiction of United States law enforcement.

Public Knowledge argued that there are several avenues to address this. Traditionally, VOIP has been addressed using the Commission’s ancillary authority. While concern has been raised by recent cases with regard to the breadth of the FCC’s ancillary authority, ancillary authority in the instant case appears well grounded. The Commission has responsibility for the execution of the North American Numbering Plan under both Section 251(e) and Section 303(r).¹ The Commission cannot delegate numbers to non-Title II entities without retaining sufficient authority to ensure that those delegated numbering blocks do not jeopardize these responsibilities. As a consequence, certification requirements, or other steps taken necessary to prevent entities delegated phone numbers from destabilizing the phone numbering system (either by accident or design), fall well within the well established zone of ancillary

¹ 47 U.S.C. §303(r) requires the Commission to make such rules as are necessary “to carry out the provisions of . . . any international radio or wire Treaty or Convention.” The North American Numbering Plan (NANP) and the 1988 ITRs, as well as general participation in the global phone numbering system administered via the ITU, certainly qualifies.

authority.²

Public Knowledge cautioned, however, that authority under Section 251(e) is significantly limited as a source of direct authority and that the power to administer the NANP in the United States (and thus to determine who is eligible for phone numbers and matters related to their method of allocation) cannot substitute for the Commission's general power under either Title II or Title III licensing power to regulate broadly in the public interest.³ Further, while the Commission can impose neutrality requirements on the administration of numbers, it is doubtful that the Commission could impose full common carrier obligations on VOIP providers as a condition of receiving phone numbers would violate the common carrier prohibition.⁴

Public Knowledge also noted that any changes in the numbering allocation may require changes in the requirements for the LNP database, and therefore may have impact on the ongoing transition of the LNPA contract.

Finally, Public Knowledge wants to ensure the Commission emphasize that nothing in the item will interfere in the Commission's obligations to the international community to maintain number standards under the North American Number Plan and the 1988 ITRs.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

cc: Randy Clarke
John Visclosky
Marilyn Jones
Ann Stevens
Melissa Kirkel

² See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 168 (1968) (failure to impose broadcast "blackout rule" on cable would render broadcast blackout rule a nullity).

³ See *Oregon v. Gonzales*, 546 U.S. 243 (2006) (expressly contrasting power of DEA to "administer" prescription drug licensing of doctors with FCC's obligation to issue licenses "in the public interest").

⁴ See, e.g., Rural Call Completion, WC Docket No. 13-39, Order On Reconsideration, Concurring Statement of Commissioner O'Reilly (rel. Nov. 13, 2014) (questioning use of ancillary authority to impose rural call completion obligations on VOIP entities).