

In the Matter of)
)
Numbering Resource Optimization) CC Docket No. 99-200
)
Petition of the California Public Utilities)
Commission and the People of the State of)
California for Authority to Implement)
Specialized Overlay Area Codes)

COMMENTS OF VONAGE HOLDINGS CORP.

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TABLE OF CONTENTS

SUMMARY ii

I. Introduction..... 1

II. Vonage Supports Nationwide Efforts to Forestall Number Exhaust 4

III. The CPUC Petition Fails the FCC’s Criteria For Establishing Specialized Overlays 5

IV. By Proposing to Implement Permanent Specialized Overlays, the CPUCs’ Proposal is Likely to Strand a Substantial Amount of Numbering Resources 10

V. The CPUC Proposal is Discriminatory Because it Includes Take Backs 11

VI. The CPUC Has Not and Cannot Justify the Costs Associated with Specialized Overlays 13

VII. Conclusion 15

SUMMARY

Vonage offers a Voice over Internet Protocol (“VoIP”) service that facilitates communication between users of broadband Internet connections. The service also facilitates communications between broadband Internet users and users of conventional telephone services. Unlike some other VoIP services, Vonage service does not provide “dial-up” access or, indeed, any form of access to the Internet. Rather, all of Vonage’s customers must provide their own computer equipment and all Vonage customers must utilize their own dedicated, third-party broadband connection to the Internet. Vonage does not perform the transport of communications. Instead, its service performs a net protocol conversion that “bridges” the incompatible formats of the Internet and the Public Switched Telephone Network.

Vonage is not itself a provider of telecommunications services; rather, the Company is an end-user of such services. Vonage recognizes the importance of utilizing North American Number Plan resources efficiently. As an end-user of numbering resources, Vonage’s service is compatible with all forms of numbering conservation and relief, including number pooling, area code overlays, geographic splits, rate center consolidation and any other measure to that extent that the companies Vonage relies on to provide it with telecommunications services have such technical capability. As such, Vonage’s service does not present any special issues in regard to existing and future numbering resource optimization measures.

The CPUC proposes to include telephone numbers used by VoIP providers and their customers, that is, *geographic-based telephone numbers*, in the specialized overlay area codes. The CPUC is also proposing a permanent overlay that would *require* service providers encompassed by the Petition to assign telephone numbers solely from the specialized overlay area codes. Service providers segregated to the new area code overlays would also be excluded from receiving any numbering resources assignments in the existing number plan areas

(“NPAs”). Further, the CPUC is also requesting permission for “take back” authority, which would allow the CPUC to order service providers segregated to the new overlay area codes to return numbering codes already in use in existing NPAs by these service providers and their customers.

Vonage recommends that the Federal Communications Commission (“Commission”) deny the California Public Utilities Commission’s (“CPUC”) Petition to Implement Specialized Overlay Area Codes for a myriad of reasons. The Commission has already evaluated an identical plan for “area code relief” and rejected it. When the Commission lifted its blanket prohibition against specialized overlays, the Commission made clear that it was still concerned about the competitive impact of such overlays. In particular, the Commission recommended that such overlays: not include geographic-based telephone numbers, be transitional in nature, not include take backs, and demonstrate that specialized overlays are in the public interest through a cost/benefit analysis. The CPUC Petition includes *all* of these disfavored features and the CPUC has not conformed its Petition for such authority to the Commission’s prerequisites for implementing specialized overlays. For these reasons alone, the Commission should deny the CPUC Petition.

Existing Commission precedent also demands that the Commission deny the CPUC’s Petition. In the *Ameritech Order*, the Commission rejected a wireless-only area code overlay plan that included all of the same characteristics as the CPUC’s Petition. The Commission found that the plan was discriminatory and rejected it. The CPUC’s Petition impacts VoIP providers in exactly the same manner Ameritech’s discriminatory plan affected wireless providers. Accordingly, the Commission must reject the CPUC’s proposal.

Finally, it is entirely unclear as to whether the CPUC Petition would conserve numbering resources or use such resources efficiently. The CPUC provides no projections as to how many numbers would be conserved in existing NPAs if the proposed specialized overlays were implemented. Also, there is a substantial risk that many numbering resources would be stranded in the overlay codes as demand for numbering resources would be split between existing NPAs and the overlays. Since numbering resources cannot be assigned in blocks fewer than thousands-blocks, if there is not strong demand for the services in the specialized overlays, there is a very real possibility that many numbering resources will lay fallow.

**Before the
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Washington, D.C. 20554**

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Vonage Holdings Corp. (“Vonage”), by undersigned counsel, submits these comments in response to the Federal Communications Commission’s (“Commission”) October 16, 2003, Public Notice¹ concerning the California Public Utilities Commission (“CPUC”) Petition to implement specialized overlay codes.² For the reasons detailed herein, Vonage opposes the CPUC’s Petition.

I. Introduction

Vonage provides a form of Voice Over Internet Protocol (“VoIP”) service, enabling customers with broadband Internet connections and specialized Customer Premises Equipment (“CPE”) to communicate without using a telephone line. Vonage’s service permits intercommunication between the incompatible protocols used on the Internet and on the Public Switched Telephone Network (“PSTN”).

¹ See *Wireline Competition Bureau Seeks Comment on the California Pub. Utils. Comms’n and the People of the State of California for Authority to Implement Specialized Overlay Area Codes*, Public Notice, CC Docket No. 99-200 (rel. Oct. 19, 2003).

² See *Petition of the California Pub. Utils. Comms’n and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes*, CC Docket No. 99-200 (filed Oct. 6, 2003) (“*CPUC Petition*”).

Vonage's Digital VoiceSM service is an innovative Internet offering that, like e-mail, instant messaging, Internet conferencing, and other as yet undreamed of services, permits customers to communicate over the Internet. Although it resembles traditional telephone service in some respects, it has crucial technical and functional differences.

First, unlike some other services that rely on Internet Protocol transmission, Vonage customers *cannot* access Digital VoiceSM service by "dialing in" over the PSTN. Vonage customers can *only* access the service over a high-speed Internet connection provided by a third-party telecommunications carrier, satellite or cable company. Because the Vonage service is accessed over the Internet, it can be used anywhere a broadband Internet connection is available. Thus, Vonage's customers may use their service in any State, or virtually anywhere in the world so long as they have access to a broadband Internet connection.³ Further, the physical location of users on the Internet cannot be accurately determined, as a technical matter, so it is impossible for Vonage to identify the point of origin or termination of a customer's transmission.

Second, to use Vonage's service, customers must possess special CPE, namely, a computer. Vonage customers must subscribe to a broadband Internet access service, and then install compatible computer equipment that encodes audio signals as digital packets (or vice versa) and transmits and receives those packets over an Ethernet connection. Most Vonage customers use a specialized computer called a Multimedia Terminal Adapter ("MTA"), which contains a digital signal processing unit that performs digital-to-audio and audio-to-digital conversions, and has a standard telephone jack connection. Although a customer can connect conventional analog telephone sets to the MTA computer for use with Vonage's service, a

³ In a recent article in *PC Magazine*, one Vonage customer describes how he used Vonage's service with a California telephone number while staying at a hotel in New York City. John C. Dvorak, "Free Phone Calls," *PC Magazine* vol. 22, no. 14 at 57 (August 19, 2003).

receives are destined to a station on the PSTN, Vonage servers convert the information received in the packets to a TDM digital signal, and obtains a connection to the PSTN station using the services of an unaffiliated common carrier.⁵ Vonage performs a net protocol conversion from IP to TDM on Vonage to PSTN communications and from TDM to IP on PSTN to Vonage communications.⁶

Fourth, Vonage is an end-user of telecommunications services. Vonage purchases local telephone service from carriers in 100 metropolitan statistical areas in 37 states nationwide to enable access to its network from the PSTN, and also purchases service from interexchange carriers for termination of traffic from its network to the PSTN. When Vonage purchases local exchange service as an end-user, it is assigned telephone numbers (like any other end-user), which it uses in providing its information service to its customers. Because Vonage customers may receive calls from users on the PSTN, Vonage associates each of its customers with telephone numbers. The telephone number associated with the Vonage customer is not tied to the customer's physical location. Rather, the telephone number is mapped to the digital signal processor contained in the customer's computer, enabling Vonage to identify and serve that customer over any Internet connection.

II. Vonage Supports Nationwide Efforts to Forestall Number Exhaust

⁵ If, however, the transmission is to be connected to another Vonage user, then it is not converted to a TDM signal, and instead the Vonage server routes a new set of IP packets to the second user. Vonage-to-Vonage "calls" never travel over the PSTN, and thus constitute purely "computer-to-computer" communications as discussed by the FCC in its *Universal Service Report. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, FCC 98-67 (rel. April 10, 1998)* ("Universal Service Report").

⁶ Modern telephone networks rarely use analog transmission except on all or part of the local loop connection between a "plain old telephone service" user and the central office. Typically, the user's communication is converted into a synchronous digital format ("Time Division Multiplexed" or TDM) at the switch line port, or at an intermediate digital loop carrier terminal. All intermediate switching and routing of the communication ordinarily occurs in the TDM digital format. Thus, Vonage does not perform any digital-to-analog conversions in its network, but only converts from asynchronous IP packets to TDM or vice versa.

As an end-user of North American Numbering Plan resources, Vonage recognizes the importance and value of utilizing numbering resources efficiently. As described above, Vonage is an end-user of telecommunications services and receives such services from CLECs in various states, including California. Vonage purchases PRI and DID lines from local exchange carriers. Since Vonage is reliant on telecommunication service providers in provisioning the Company's information service product, Vonage's service is completely compatible with number pooling, area code overlays, geographic splits, rate center consolidation and any other numbering resource optimization measures to the extent that its underlying telecommunications provider has such technical capability. The telecommunications carriers Vonage utilizes to provide its information service are subject to the jurisdiction of both the Commission and state commissions. Accordingly, Vonage's use of numbering resources does not raise any unique issues in regard to existing and future numbering resource optimization measures.

III. The CPUC Petition Fails the FCC's Criteria For Establishing Specialized Overlays

In evaluating the CPUC's Petition, the Commission must remain cognizant that the Petition includes geographic-based telephone numbers in the proposed specialized overlays.⁷ VoIP providers, like Vonage, provide service to residential and business customers. VoIP customers use their service to receive personal and business calls. Such use of telephone numbers is not in any way similar to services that use telephone numbers such as On-Star, automatic teller machines, and point-of-sale devices where the end-user does not care what the actual telephone number is since the device is not used to place or receive telephone calls to family, friends, customers and business associates.

⁷ See *CPUC Petition*, at 3. ("The CPUC proposes to include . . . Internet telephony/[VoIP] services . . .").

The Commission has long recognized the importance of allowing new technologies to access the same numbering resources as incumbent services. In considering whether to allow state commission to apply for authority to implement specialized overlays, the Commission stated “consumers may be dissuaded from signing up for wireless services if they do not have access to telephone numbers in the ‘incumbent’ area code.”⁸ The same is true for VoIP service providers that are competing for customers of wireline and wireless services. Many VoIP customers port their telephone numbers from their existing service provider to the VoIP provider. If carriers providing telecommunications services to VoIP providers were limited to assigning VoIP providers numbers from the proposed specialized overlays, VoIP providers would be placed at a tremendous competitive disadvantage as potential customers would have to change their telephone numbers in order to use the VoIP service.

The Commission has also recognized the competitive implications of segregating new technologies whose customers require geographic-based telephone numbers into overlays. The Commission highlighted such concerns when discussing the use of service-specific overlays: “[The Commission] specifically favor[s] service-specific overlays that would include and retain non-geographic based services as a means to further reduce demand in the underlying area code.”⁹ Since the CPUC Petition includes geographic-based telephone numbers in the proposed specialized overlays, it is disfavored under Commission precedent.

Vonage is well aware of the numbering conservation efforts that California has endured over the last decade as well as the implementation of numerous area code overlays. Vonage has no objection to the CPUC attempting to forestall exhaust in a non-discriminatory manner.

⁸ Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252, 284-285 (“*Third R&O*”).

⁹ *Third R&O*, 17 FCC Rcd at 288.

However, the CPUC Petition fails to establish that there are exigent reasons for engaging in its planned specialized overlay, nor does it limit the Petition to services that do not need numbering resources from a particular geographic area. In order to effectively compete with incumbent services, because of the current geographic architecture of the PSTN numbering system, Vonage *requires* numbering resources from particular geographic areas. While its service *functions* using non-native area codes—as do wireline and wireless services – the relevant inquiry is the ability of VoIP providers to offer a viable competitive alternative to existing services. Segregating VoIP providers to a specialized overlay, while wireless and wireline providers are still able to assign numbers from the existing Number Plan Areas (“NPAs”) is discriminatory and cannot be countenanced by the Commission.

The Commission has already evaluated an overlay plan identical to the CPUC’s plan and rejected it. In the *Ameritech Order*,¹⁰ the Commission considered a proposal by Ameritech to implement a wireless-only overlay plan in order to preserve numbering resources in the 708 NPA. In rejecting the plan, the Commission was concerned about a number of different aspects of Ameritech’s proposal. Specifically, the Commission found it discriminatory that number assignments would continue in the 708 NPA for wireline carriers only, but paging and cellular carriers would be excluded from such assignments.¹¹ The Commission also took issue with the fact that only paging and cellular carriers would be required to take back numbers previously assigned to their subscribers, while wireline carriers would not be required to do so.¹² Finally, the Commission found it objectionable that wireline carriers would continue to receive numbers

¹⁰ See generally *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1996) (“*Ameritech Order*”).

¹¹ See *Ameritech Order*, 10 FCC Rcd at 4605.

¹² See *id.*

from the 708 NPA, while paging and cellular carriers would be excluded from obtaining numbering resources in the 708 NPA.¹³ Incredibly, the CPUC's specialized overlay plan for VoIP providers includes the same characteristics, all previously rejected by this Commission.

In rejecting Ameritech's overlay plan, the Commission found that the plan would place paging and cellular carriers at a distinct competitive disadvantage because their customers would suffer the cost and inconvenience of having to surrender existing numbers and go through all the inconvenience associated with changing telephone numbers, while wireline carrier customers would not be subject to the same problems.¹⁴ The Commission also found that any numbering resource optimization benefits gained by the plan were outweighed by the disproportionate burden that the plan would place on paging and cellular carriers.¹⁵ In short, the Commission rejected Ameritech's plan because it both excluded and segregated wireless carriers from the existing NPA and it also subjected wireless carrier customers to take backs.¹⁶ There is no basis on which the CPUC can distinguish its plan from the rejected Ameritech overlay plan and thus the Commission must reject the CPUC's Petition in accordance with Commission precedent.

When the Commission lifted its blanket prohibition on specialized overlays established in the *Ameritech Order*, the Commission did not suggest that the concerns that informed the *Ameritech Order* would no longer be relevant. To the contrary, the Commission specifically noted that it continued to "believe that service-specific or technology-specific overlays raise

¹³ See *Ameritech Order*, 10 FCC Rcd at 4605, 4607-09, 4610-12; see also *Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322, 10430-10431 (rel. June 2, 1999) ("*Numbering NPRM*").

¹⁴ See *Ameritech Order*, 10 FCC Rcd at 4608.

¹⁵ See *Ameritech Order*, 10 FCC Rcd at 4608.

¹⁶ See *Ameritech Order*, 10 FCC Rcd at 4605-4609.

serious competitive issues that must be carefully considered... .”¹⁷ However, the Commission determined that it would lift the blanket prohibition on such overlays based on the changed circumstances of: (i) exigent numbering shortages; and (ii) the proliferation of new telecommunications services that do not require vast amounts of numbering resources but do not necessarily need numbering resources from a particular geographic area.¹⁸ The CPUC Petition includes geographic-based numbers. Accordingly, the Commission should reject the CPUC Petition as the CPUC has made no attempt to mitigate the competitive impact of its specialized overlay proposal, nor has it attempted to address the Commission’s grave concerns regarding discriminatory overlays identified by the Commission in the *Ameritech Order*.

Aside from the competitive concerns associated with segregating VoIP services into overlays, the Commission must also consider the negative impact the CPUC proposal will have on both broadband deployment and on the widespread adoption of new technologies by users. VoIP is shaping up to be the “killer app” that drives broadband deployment. The features, functionality and services promised by this technology could easily be extinguished by the construction of artificial barriers to competition. Commission Chairman Michael K. Powell recently recognized the importance that VoIP has in the telecommunications marketplace:

Although still in the early stages of commercial development and deployment, the proliferation of broadband Internet connections is turning yesterday’s VoIP dreams into today’s realities. Entrepreneurs are tapping into the Internet’s potential to provide low-cost voice services to Americans throughout the country . . . In addition, investment in broadband Internet access and VoIP services are creating small business jobs. U.S. businesses, small and large alike, are increasingly using these Internet services to increase productivity and contribute to our Nation’s economic growth. In short, the creative forces that have fueled the Internet’s growth for the last decade are doing the very thing government regulators have tried to

¹⁷ *Numbering NPRM*, 14 FCC Rcd at, 10431-10432.

¹⁸ *See Third R&O*, 17 FCC Rcd at 285, ¶ 72.

accomplish since the 1996 Telecommunications Act – bring competitive, cheaper and more innovative voice services to the public.¹⁹

Requiring customers of such services to utilize telephone numbers from a specialized overlay will slow the deployment of VoIP services as well as impede the propagation of broadband services. The Commission must not allow a discriminatory regulatory initiative with dubious public benefits to inhibit the growth of VoIP services.

IV. By Proposing to Implement Permanent Specialized Overlays, the CPUCs' Proposal is Likely to Strand a Substantial Amount of Numbering Resources

The Commission made clear that in evaluating state commission petitions to implement specialized overlays, it would prefer overlays that either preserve geographic identity of numbering resources or that efficiently use numbering resources.²⁰ Further, the Commission explicitly found that when state commission proposed to implement either a permanent or transitional overlay, certain attributes of the overlay would impact the Commission's decision to grant such petition. If a commission's proposal would have the effect of preserving geographic-based telephone numbers, then a permanent overlay would be more appropriate.²¹ However, where a state commission proposed an overlay that included geographic-based telephone numbers, an all-services, transitional overlay would be preferred.²² The Commission must reject the CPUC Petition as it proposes to implement a permanent overly that would discriminate against the geographic-based telephone numbers used by VoIP providers and their customers.

¹⁹ See *FCC to Begin Internet Telephony Proceedings*, Public Notice (rel. Nov. 6, 2003); Letter from Michel K. Powell, Commission Chairman, Federal Communications Comms'n, to The Honorable Ron Wyden, Senator, United States Senate (Nov. 5, 2003).

²⁰ *Third R&O*, 17 FCC Rcd at 285-86.

²¹ See *Third R&O*, 17 FCC Rcd at 285-86.

²² *Third R&O*, 17 FCC Rcd at 285-86.

Separately, the CPUC has not made clear in its Petition how the proposed permanent specialized-overlays would use numbering resources more efficiently than the current system. By segregating certain services into the specialized overlays, customer demand for numbering resources will now be split between existing NPAs and the overlays. Since numbering resources cannot be assigned in less than thousands-blocks, carriers will need to obtain two thousands-blocks of numbers (one in the existing NPA and one in the overlay NPA) simply to continue to provide service to their existing customers. Without demonstrating how the permanent overlay would preserve numbering resources in existing NPAs and how the numbering resources in the overlay NPA will be utilized efficiently in conjunction with the existing NPAs, it is unclear how the CPUC's proposal qualifies as a numbering resource optimization measure.

V. The CPUC Proposal is Discriminatory Because it Includes Take Backs

The Commission should also deny the CPUC Petition as it includes a request for authority to take back assigned numbering resources.²³ The Commission has previously recognized the inconvenience and economic hardship take-backs impose on carriers and customers “[T]ake backs have significant drawbacks and costs which need to be considered in determining whether a [specialized overlay] should include take backs.”²⁴ In light of the negative impacts associated with take backs, the Commission determined “[W]e will require state commissions proposing to use take-backs include a *strong showing* that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs.”²⁵ The Commission identified three factors that it would look to in evaluating state

²³ *CPUC Petition*, at 6.

²⁴ *Third R&O*, 17 FCC Rcd at 291.

²⁵ *Third R&O*, at 17 FCC Rcd at 292 (emphasis supplied).

commission requests for authority to take back assigned numbering resources: (i) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure; (ii) that the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (iii) a phased-in approach, which would ease the burden on customers and service providers.²⁶

The CPUC Petition makes no attempt to even address the factors set out by the Commission, let alone a “strong showing.” While the CPUC notes that significant costs would be imposed on carriers that have to return assigned numbering resources,²⁷ the CPUC makes no attempt to quantify such costs. Moreover, the CPUC makes no mention of the costs that will be imposed on users of VoIP services. Customers of VoIP providers will be required to change telephone number on business cards, stationary and in directory listings. Additionally, the CPUC does not refer to any potential loss of business that these customers may suffer as a result of a take-back, nor does it mention the marketing-related costs that business will incur in an effort not to lose customers. Since the CPUC petition is completely devoid of these issues, there is no attempt to quantify the costs associated with these activities that would be imposed on VoIP customers.

Recognizing that its Petition lacks the necessary details for evaluating its request on the merits, the CPUC states: “Given these challenges, if granted authority, the CPUC plans to work closely with the industry to determine *if* and *how* take-backs should be implemented in California.”²⁸ Vonage respectfully submits that, the CPUC’s Petition lacks any reasonably basis

²⁶ *Third R&O*, at 17 FCC Rcd at 292.

²⁷ *CPUC Petition*, at 6.

²⁸ *CPUC Petition*, at 6 (emphasis in original).

for approval at this time. The Commission should not grant take-back authority prior to the CPUC making the requisite strong showing that it has evaluated the factors clearly identified by the Commission and considered the costs and impacts of the proposal. If the Commission were to grant such authority to the CPUC, it would create a dangerous precedent whereby state commissions could assert vague needs to initiate take-backs without considering the economic costs and inconvenience imposed on carriers, VoIP provider end-users and customers alike.

VI. The CPUC Has Not and Cannot Justify the Costs Associated with Specialized Overlays

An essential element of any petition to implement a specialized overlay is the costs associated with the implementation measured against the numbering resource optimization benefits realized by the overlay “[S]tates seeking to implement a [service overlay] must also demonstrate that the benefits outweigh the costs of implementing the [service overlay].”²⁹ The CPUC’s Petition does not address the costs or the benefits associated with implementing its proposed discriminatory specialized overlay. It is clear that the costs would be enormous. The industry does not currently track the types of services to be included in the proposed specialized overlay.³⁰ As a result, while VoIP providers do not receive numbers directly from the North American Numbering Plan Administrator and are not responsible for reporting utilization and forecast data for such resources, a substantial burden would be placed upon the carriers that serve end-user VoIP providers as every carrier will have to survey existing customers, modify billing and provisioning and ordering databases and systems in order to track the services subject to the overlay.³¹ Further, carriers and customers will incur costs for reprogramming existing equipment

²⁹ *Third R&O*, 17 FCC Rcd at 288.

³⁰ *See CPUC Petition*, at 3.

³¹ *See CPUC Petition*, at 3.

to operate with the new overlay code. As detailed above, take backs would impose costs on VoIP providers' customers in the form of reprinting existing business cards and stationary, updating directory listings, marketing efforts to reduce customer loss, lost revenue due to customer loss, and the time involved in all these activities.

Also unaddressed by the CPUC is the customer confusion that would ensue by implementing an overlay that includes geographic-based telephone numbers. Parties placing calls between the existing area code and the overlay code would think that such calls were toll since 10-digit dialing would be required. The CPUC has proposed no method that would allow end-users to determine whether the call they were placing was a local or toll call. Accordingly, customer education efforts would be costly and may not be effective.

Left completely unaddressed by the CPUC Petition are the benefits associated with implementing this discriminatory overlay. In the face of the enormous costs, coupled with the use of over 15.2 million telephone numbering resources, the CPUC cannot justify implementation of the specialized overlay by extolling its benefits. The CPUC has not provided a projection of how many of the 15.2 million numbering codes that would be assigned to California would be used by the services that would be segregated into the overlay. It is entirely unclear as to whether the growth of the services that would be part of the overlay is significant enough to forestall area code exhaust in the existing NPAs. No attempt is made to compare the benefits of the specialized overlays to the costs incurred by VoIP providers and their customers. In short, the Commission must reject the CPUC's proposed overlay as the CPUC plainly cannot justify its plan through cost/benefit analysis.

VII. Conclusion

Vonage urges the Commission to deny the CPUC's Petition to implement specialized overlays in California. The CPUC's proposal includes geographic-based telephone numbers used by VoIP providers and their customers as part of its proposal. If the Commission were to grant the Petition, any potential customer of a VoIP service provider would have to change telephone numbers in order to use the service and would not allow telecommunications carriers serving VoIP providers to allow VoIP customers to port telephone numbers. This would place VoIP providers at substantial competitive disadvantage.

The CPUC Petition does not address the competitive concerns set out by the Commission in the *Ameritech Order*. In fact, if the Commission were to grant the CPUC Petition, it would allow the CPUC to do to VoIP providers what the Commission prohibited Ameritech from doing to wireless and paging carriers. The CPUC's proposed overlay is identical to that evaluated by the Commission in the *Ameritech Order* except that the CPUC's proposal would impact VoIP providers. As such, the Commission should reject the CPUC Petition for the reasons espoused in the *Ameritech Order*.

The Commission must also recognize that anything that slows the deployment and use of VoIP services has a similar impact on the deployment and adoption of broadband services. As Commission Chairman Michael K. Powell recently recognized, VoIP is fueling customer demand for broadband services and reinvigorating the telecommunications marketplace. The Commission must not allow artificial and discriminatory barriers to impede competition.

The CPUC Petition must also be rejected as it proposes to implement permanent specialized overlays for geographic-based codes. Under this proposal, users of VoIP services

will be forever segregated to disfavored overlay codes. By including geographic-based codes in its overlay plan, the CPUC failed to conform its plan to Commission standards.

Aside from including geographic-based codes in its permanent overlay plan, the CPUC has also requested authority to implement a discriminatory take-back program. While the CPUC Petition does not propose a specific plan, the only customers that would be subject to take backs would be customers of VoIP providers. The CPUC made no attempt to comply with the Commission's criteria for take-backs and, as such, the Petition must be denied.

Finally, it is clear that the CPUC cannot justify the costs as compared to the benefits of its proposed overlay plan. Not only has the CPUC failed to provide any credible evidence concerning the benefits of the proposal—the costs would be extraordinary based on the simple fact that carriers do not currently track the use of telephone numbering resources in the manner proposed by the overlay plan. It imposes technologically discriminatory costs and inconvenience on one set of end-uses, VoIP providers and their customers. Additionally, the benefits of the overlay plan are not at all clear.

For these reasons, the Commission must reject the CPUC's Petition.

Respectfully submitted,

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