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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
SBC IP Communications, Inc.)
Petition for Limited Waiver of)
Section 52.15(g)(2)(i) of the)
Commission's Rules Regarding Access to)
Numbering Resources)

WC Docket No. 04-__

CC Docket No. 99-200

PETITION FOR LIMITED WAIVER

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I. INTRODUCTION AND SUMMARY

SBC IP Communications, Inc. (SBCIP), an information service provider affiliate of SBC Communications, Inc., respectfully requests that the Wireline Competition Bureau (Bureau) grant a limited waiver of section 52.15(g)(2)(i) of the Commission's numbering rules to allow SBCIP to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA).¹ SBCIP intends to use these numbering resources in deploying IP-enabled services, including voice over Internet Protocol (VoIP) services, on a commercial basis to residential and business customers.²

As discussed below, good cause exists to grant this limited waiver because it will allow SBCIP to deploy innovative new services using a more efficient means of interconnection between IP networks and the Public Switched Telephone Network (PSTN) -- a goal consistent with the Commission's mission to encourage the "rapid deployment" of "new technologies and new service offerings that benefit American consumers."³ In addition, by requiring SBCIP to comply with the numbering requirements proposed in this petition, the Bureau will ensure that the waiver fosters the

¹ As discussed below in section II.B., section 52.15(g)(2)(i) of the Commission's rules currently requires that numbering resources be assigned only to state-certificated common carriers. 47 C.F.R. § 52.15(g)(2)(i).

² The Bureau recently granted special temporary authority to SBCIP to obtain numbering resources from the PA for the purposes of conducting a limited, non-commercial trial of VoIP services. *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, DA 04-1721 (released June 17, 2004). SBCIP expects favorable results from that trial and, in all likelihood, will be prepared to deploy commercial VoIP services well before the Commission acts on the proposals to permanently modify or eliminate section 52.15(g)(2)(i) that were raised in response to the *IP-Enabled Services NPRM*. See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 ¶ 76 (2004) (*IP-Enabled Services NPRM*). Accordingly, SBCIP has filed the instant waiver request to ensure that it can obtain timely, direct access to numbering resources in order to compete effectively in the rapidly growing market for IP-enabled services.

³ *1998 Biennial Regulatory Review -- Testing New Technology*, CC Docket No. 98-94, Policy Statement, FCC 99-53 ¶¶ 3, 12 (1999) (*New Technology Policy Statement*).

Commission's numbering resource optimization goals. Further, because this waiver is limited in duration -- SBCIP only seeks a waiver of section 52.15(g)(2)(i) until the Commission adopts final numbering rules regarding IP-enabled services -- granting the waiver will not prejudice the Commission's ability to craft whatever numbering rules it deems appropriate in the *IP-Enabled Services* proceeding.⁴ Finally, pursuant to the Commission's commitment to review waiver requests concerning new technologies on an "expedited basis," SBCIP asks the Bureau to accelerate its consideration of the instant petition and to issue an order granting the requested waiver as soon as possible.

II. BACKGROUND

A. The Need for Direct Access to Numbering Resources

Many VoIP services in the market today allow customers on a broadband IP network to call parties served by a carrier operating a time division multiplexed (TDM) network within the PSTN, and vice versa. In order for such calls to be possible, the VoIP provider must be able to assign a NANP telephone number to its customer; otherwise, a customer on the PSTN would have no way of dialing the VoIP customer. VoIP providers, however, are *information service providers*, which, as discussed below, are not eligible for direct assignment of NANP telephone numbers under the Commission's existing rules. Accordingly, in order to obtain NANP telephone numbers that can be assigned to their customers, VoIP providers often purchase a retail product from a competitive LEC (such as a Primary Rate Interface (PRI) ISDN line). Typically, the VoIP provider also uses this retail product to interconnect with the PSTN so it can send

⁴ In its comments on the *IP-Enabled Services NPRM*, SBC urged the Commission to permanently modify its rules so providers of IP-enabled services may obtain direct access to numbering resources from NANPA and/or the PA, subject to compliance with specific requirements designed to ensure the efficient use of those resources. See *SBC IP-Enabled Services Comments*, WC Docket No. 04-36 at 82-94 (May 28, 2004).

and receive certain types of traffic between its network and the carrier networks.⁵ In this arrangement the competitive LEC terminates the VoIP traffic on the PSTN or delivers the traffic to another carrier for termination on the PSTN.⁶

While this form of interconnection may allow the VoIP provider to obtain numbering resources (by purchasing a PRI) and interconnection with the PSTN, in many cases it will not be the most efficient or cost-effective means for a VoIP provider to send originating traffic to the PSTN because it requires separate interconnection, with potentially multiple end office switches, using access products that may be limited in terms of availability and scalability. In particular, a VoIP provider's ability to offer service may be limited by the locations, calling scopes, and installation schedules of the providers and products utilized to gain access to end-offices.⁷

Thus, in many ways, the current situation faced by VoIP providers seeking direct interconnection with the PSTN is analogous to the early days of the commercial wireless industry. Initially, many wireless carriers did not own their switches and instead relied on ILECs to perform switching functions for them. As a result, wireless carriers needed to interconnect with individual ILEC end offices to route traffic. This was known as "Type 1" interconnection.⁸ As the wireless industry matured and wireless carriers began

⁵ Many VoIP providers convert VoIP traffic from IP format to circuit-switched format before delivering that traffic to a LEC.

⁶ When interexchange traffic is delivered to an incumbent LEC for termination on the PSTN, the incumbent LEC is entitled to receive applicable access charges for that traffic under the Commission's current rules -- regardless of whether that traffic originated in IP format on a broadband network. VoIP providers, and the other carriers they partner with, are not permitted to send interexchange traffic to an incumbent LEC using PRI lines.

⁷ For example, PRI lines are not available in all central office serving areas.

⁸ See *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, Declaratory Ruling, 2 FCC Rcd 2910 ¶¶ 27-35 (1987) (*Wireless Declaratory Ruling*); *FCC Policy Statement on Interconnection of Cellular Systems*, attached as Appendix B to *The*

purchasing switches of their own, they sought more efficient means of interconnection with the PSTN, both at ILEC end offices and at ILEC tandem switches, which became known as “Type 2” interconnection.⁹ In facilitating this latter form of interconnection, the Commission recognized that it may offer “superior technical capabilities and greater service quality,”¹⁰ and may help wireless carriers to “minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer.”¹¹ The Commission further observed that Type 2 interconnection allows wireless carriers to design their networks more efficiently and would further the Commission’s “longstanding goal of bringing cellular service to the public as rapidly as possible.”¹² At the same time, the Commission recognized that wireless providers also needed efficient access to numbering resources, which were not “owned” by the ILECs (or CLECs today),¹³ but are instead a “public resource.”¹⁴ The Commission concluded that wireless carriers, just like the ILECs, were “entitled to reasonable accommodation of their numbering requirements.”¹⁵

Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 Rad. Reg. 2d (P&F) 1275, 1986 Lexis 3878 (1986) (Wireless Policy Statement).

⁹ *Id.*

¹⁰ *Wireless Declaratory Ruling* ¶ 27.

¹¹ *Wireless Policy Statement* ¶ 2 (citation omitted).

¹² *Wireless Declaratory Ruling* ¶¶ 29, 33.

¹³ *Wireless Policy Statement* ¶ 4.

¹⁴ *See Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995).*

¹⁵ *Wireless Policy Statement* ¶ 4.

Much like the wireless industry's early efforts to evolve from Type 1 to Type 2 interconnection, SBCIP intends to offer VoIP services that interconnect with the PSTN in a more efficient manner than most providers in the market today. Specifically, by interconnecting with the PSTN on a trunk-side basis, at a centralized switching location, e.g., a tandem switch, SBCIP believes it can more efficiently utilize its softswitch and gateways¹⁶ to offer services that overcome the availability and scalability limitations inherent in the current methods of line-side interconnection to end office switches.

In addition to facilitating more efficient forms of interconnection, SBCIP believes that direct access to numbering resources also will encourage more efficient commercial arrangements for the exchange of traffic between VoIP providers and carriers. Indeed, VoIP providers in today's marketplace typically acquire numbering resources indirectly by partnering with a competitive LEC and purchasing PRI lines, which, as discussed above, have inherent limitations in availability, scalability and cost-effectiveness. By allowing SBCIP to "bring its own numbering resources" to interconnection discussions with carriers, SBCIP believes it will be able to work more effectively with these carriers to negotiate commercial arrangements for the large-scale deployment of VoIP services. This will give SBCIP greater flexibility with respect to the design of its network and the services it offers, which will ultimately lead to greater benefits for its customers.

B. Section 52.15(g)(2)(i) of the Commission's Rules

SBCIP's ability to obtain numbering resources directly from NANPA and/or the PA is currently restricted by section 52.15(g)(2)(i) of the Commission's rules, which

¹⁶ A "gateway" or "media gateway" is a device that can receive circuit-switched, TDM traffic and packetize it for delivery to an IP-based network, and vice versa. A media gateway can be combined with, or separate from, a softswitch, which routes packetized traffic on the IP-based network.

provides that an applicant seeking NANP numbering resources must be “authorized to provide service in the area for which the numbering resources are being requested.”¹⁷

The Commission has interpreted this rule as requiring “carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s].”¹⁸

Thus, to obtain numbering resources directly from NANPA and/or the PA under current Commission rules, an applicant must be a state-certificated common carrier.

SBCIP, however, is an information service provider. SBCIP provides only interstate information services and is not a common carrier. But to obtain direct access to numbering resources for its VoIP services, section 52.15(g)(2)(i) would require SBCIP to subject itself to state common carrier regulation -- a result that appears in direct conflict with the Commission’s pronouncement that IP-enabled services exist in “an environment largely free of government regulation, and the great majority, we expect, should remain unregulated.”¹⁹ Accordingly, for the reasons discussed below, SBCIP requests that the Bureau grant a limited waiver of section 52.15(g)(2)(i) to enable SBCIP to obtain numbering resources directly from NANPA and/or the PA without the need to become a state-certificated common carrier.

¹⁷ 47 C.F.R. § 52.15(g)(2)(i).

¹⁸ *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7613 ¶ 97 (2000).

¹⁹ *IP-Enabled Services NPRM* ¶ 35.

III. DISCUSSION

A. There is “Good Cause” to Grant SBCIP’s Request for a Limited Waiver.

Pursuant to section 1.3 of the Commission’s rules, the Bureau may waive a rule upon a showing of “good cause.”²⁰ Under this good cause standard, the Bureau may exercise its discretion to waive a rule where the particular facts before it make strict compliance inconsistent with the public interest.²¹ In doing so, the Bureau may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.²² Thus, waiver of the Commission’s rules is appropriate when special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.²³

Here, the Bureau is presented with special circumstances that warrant deviation from the general rule limiting the assignment of numbering resources to state-certificated carriers. As the Commission observed in the *IP-Enabled Services NPRM*, service providers are beginning to offer a “revolutionary” new breed of communications services that facilitate communications between IP networks and the PSTN.²⁴ But as the Commission recognized in issuing that rulemaking, the Commission’s legacy regulations have not yet been updated for the realities of this new IP environment. Enforcement of

²⁰ 47 C.F.R. § 1.3.

²¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Midwest Wireless Iowa, LLC Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, Order, DA-1688 ¶ 3 (released June 14, 2004)

²² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ See *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *IP-Enabled Services NPRM* ¶ 5.

section 52.15(g)(2)(i) during this unique regulatory inflection point puts SBCIP in an untenable position: expend substantial time and incur significant costs deploying inefficiently configured networks and services because of rules that restrict its direct access to numbering resources; or subject itself to the burdens of state common carrier regulation for the sole purpose of obtaining direct access to numbering resources.

By contrast, granting a limited waiver of section 52.15(g)(2)(i) would enable the more effective implementation of a key public interest goal identified in the Communications Act -- fostering the deployment of new services and technologies to American consumers with minimal regulation. Indeed, Congress described the fundamental purpose of the 1996 Act as providing “a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans”²⁵ In section 7 of the Act, Congress further declared that “[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public.” In fact, Congress found this policy to be so important that it placed the burden of proof on parties opposed to the introduction of new technology to demonstrate that the proposal for such technology is “*inconsistent* with the public interest.”²⁶

Congress expressed a similarly strong desire for the deployment of advanced services in section 706 of the 1996 Act, where it authorized the Commission to take “immediate action” to encourage the deployment of advanced services by “removing

²⁵ See Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104th Congress, 2d Sess. 1, 113 (1996).

²⁶ 47 U.S.C. § 157(a) (emphasis added).

barriers to infrastructure investment.”²⁷ Just as important, Congress also expressed a clear preference in section 230 of the Act that the deployment of such services occur in a deregulatory environment, when it proclaimed that “[i]t is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”²⁸

Accordingly, consistent with the public interest of promoting the deployment of new services and technologies, the Bureau should expeditiously grant SBCIP’s request for limited waiver, which will allow SBCIP to efficiently and cost-effectively deploy innovative IP-enabled services, including VoIP, to American consumers and businesses.

B. Granting the Requested Waiver Is Consistent with the Commission’s Numbering Resource Optimization Goals.

One of the Commission’s primary numbering administration goals is to “ensure that the limited numbering resources of the NANP are used efficiently.”²⁹ The waiver requested by SBCIP is fully consistent with that goal.³⁰ Aside from the state certification

²⁷ See Section 706(b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in the notes under 47 U.S.C. § 157.

²⁸ 47 U.S.C. § 230(b)(2).

²⁹ *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104 ¶ 1 (2000).

³⁰ As an initial matter, there is no reason to believe that *direct* assignment of numbering resources to VoIP providers will result in any greater demand for those resources than the methods of *indirect* assignment of numbering resources currently available to VoIP providers in the marketplace today. Indeed, demand for numbering resources would appear to be correlated to the popularity of a provider’s service, not the method by which that provider acquires its numbering resources. In any event, SBCIP is sensitive to concerns expressed by some states about the problems caused by inefficient use of numbering resources and we have structured this waiver request to ensure that any numbers assigned to SBCIP will be used in an efficient manner consistent with the Commission’s numbering resource optimization policies. See, e.g., Comments of the California Public Utilities Commission and the People of the State of California, CC Docket No. 99-200 at 3-4 (filed July 30, 1999) (discussing state concerns about the “public cost of area code relief”).

requirement from which SBCIP seeks a waiver, SBCIP will fully comply with all existing Commission numbering resource requirements, including the following:

- Compliance with Thousand-Block Number Pooling Requirements.
- Number Resource Utilization/Forecast Reporting Requirements.
- Local Number Portability Requirements.
- Contribution to Numbering Administration Costs.

In addition, SBCIP also intends to meet the “facilities readiness” requirement of section 52.15(g)(2)(ii). This requirement, which is an important indicator of a numbering applicant’s intention and ability to use the numbers it receives, requires an applicant to “be capable of providing service within sixty (60) days of the numbering resources activation date”³¹ To show this facilities readiness, SBCIP is willing and able to meet the following criteria: (1) ownership or control of one or more softswitches connected to the PSTN via tandem interconnection; (2) provision of connectivity to the PSTN using traditional TDM signaling and SS-7 functionality; and (3) provision of location routing number (“LRN”) functionality for implementation of local number portability.³²

In light of SBC’s willingness to make these commitments, there is no basis for concern that granting SBCIP’s limited waiver will detract from the Commission’s numbering resource optimization efforts. If anything, granting the waiver will give SBCIP an opportunity to demonstrate that information service providers, just like common carriers, can be responsible stewards of numbering resources.

³¹ 47 C.F.R. § 52.15(g)(2)(ii).

³² See SBC IP-Enabled Services Comments, WC Docket No. 04-36 at 87-88.

C. Granting the Waiver Will Not Prejudge the Outcome of the *IP-Enabled Services NPRM*.

In the *IP-Enabled Services NPRM*, the Commission is seeking comment on, among other things, “whether any action relating to numbering resources is desirable to facilitate or at least not impede the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan.”³³ Granting SBCIP’s waiver request will in no way prejudge the outcome of that proceeding. Indeed SBCIP is requesting a *limited* waiver, lasting only until the Commission adopts any final rules. If the Commission ultimately determines that IP-enabled services are, in fact, information services and modifies or eliminates section 52.15(g)(2)(i), then SBCIP will already be in compliance with the Commission’s new rules. If, on the other hand, the Commission ultimately determines that some or all IP-enabled services are telecommunications services and decides to retain 52.15(g)(2)(i), then SBCIP will take appropriate steps to comply with that determination. In either event, the Commission will have complete flexibility to take whatever action it deems warranted in the *IP-Enabled Services* rulemaking.³⁴

³³ *IP-Enabled Services NPRM* ¶ 76.

³⁴ Bureaus have routinely granted waivers of Commission rules pending the outcome of rulemaking proceedings when doing so would serve the public interest. *See, e.g., Southwestern Bell Telephone Company Petition for Waiver of Part 69 of the Commission’s Rules*, Memorandum Opinion and Order, DA 91-1258 (released Oct. 4, 1991) (waiving Part 69 of the Commission’s rules to allow Southwestern Bell to establish new rate elements, pending the outcome of multiple pricing-related rulemakings); *Pacific Telesis Petition for Exemption from Customer Proprietary Network information Notification Requirements*, Order, DA 96-1878 (released Nov. 13, 1996) (waiving annual customer proprietary network information (CPNI) notification requirements, pending Commission action on a CPNI rulemaking); *LoJack Corporation Request for Waiver of Section 90.20(e)(6) of the Commission’s Rules*, Order, DA 00-1987 (released Aug. 31, 2000) (waiving technical criteria associated with use of wireless tracking device, pending outcome of LoJack’s petition for rulemaking).

D. The Bureau Should Grant SBCIP's Requested Waiver on an Expedited Basis.

In the *New Technology Policy Statement*, the Commission observed that “one of [its] primary responsibilities under the Telecommunications Act of 1996 is to encourage the rapid deployment of new telecommunications services and technologies to benefit all Americans.”³⁵ The Commission stated that “it is vitally important . . . to ensure that our regulations do not create unnecessary hurdles for firms that are engaged in developing new technologies and the derivative services made possible by these new technologies.”³⁶ To facilitate the deployment of these new technologies and services, the Commission committed to review waiver requests concerning technical and market trials on an “expedited basis.”³⁷ The Commission noted that such trials typically would be of limited scope and duration, but declined to impose any specific restrictions on the nature of those trials. Instead, the Commission opined that “developers of new technology should have the flexibility to design appropriate experiments based on the unique circumstances posed by their various and different cases.”³⁸ The only limit the Commission imposed on this flexibility was that such experiments not “be used as a vehicle by applicants to implement permanent service offerings without review, as such, by this Commission.”³⁹

Although SBCIP seeks a waiver of section 52.15(g)(2)(i) to deploy permanent IP-enabled service offerings, rather than conduct trials, the same rationale for expedited

³⁵ *New Technology Policy Statement* ¶ 3.

³⁶ *New Technology Policy Statement* ¶ 11.

³⁷ *New Technology Policy Statement* ¶¶ 4, 20, 23-24.

³⁸ *New Technology Policy Statement* ¶ 24.

³⁹ *New Technology Policy Statement* ¶ 24.

review described in the *New Technology Policy Statement* is equally applicable here. The Commission has already recognized the tremendous benefits to be gained from the timely deployment of IP-enabled services, noting that these services are “expected to reduce the cost of communication and to spur innovation and individualization . . . provid[ing] each end user a highly customized, low-cost suite of services delivered in the manner of his or her choosing.”⁴⁰ Moreover, as discussed above, SBCIP is seeking a limited waiver of section 52.12(g)(2)(i), lasting only until the Commission adopts final numbering rules pursuant to the *IP-Enabled Services NPRM*. Thus, consistent with the Commission’s desire to monitor the development of new technologies before they become permanent service offerings,⁴¹ the Commission will have the opportunity for further review of the manner in which numbering resources are assigned to providers of IP-enabled services when it acts on the *IP-Enabled Services NPRM*.⁴² Accordingly, in furtherance of the Commission’s mission to encourage the rapid deployment of new technologies and services, the Bureau should grant SBCIP’s waiver on an expedited basis.

⁴⁰ *IP-Enabled Services NPRM* ¶ 5.

⁴¹ *New Technology Policy Statement* ¶ 24.

⁴² As discussed above, SBCIP will, of course, comply with whatever final rules the Commission adopts.

III. CONCLUSION

For all of the foregoing reasons, SBCIP respectfully requests that the Bureau expeditiously grant a waiver of section 52.15(g)(2)(i) of its rules to allow SBCIP to obtain numbering resources directly from NANPA and/or the PA for use in the provision of IP-enabled services.

Respectfully Submitted,

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