

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
SBC IP Communications, Inc.)	
Petition for Limited Waiver of)	CC Docket No. 99-200
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding Access to)	
Numbering Resources)	

REPLY COMMENTS OF SBC IP COMMUNICATIONS, INC.

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I. INTRODUCTION AND SUMMARY

SBC IP Communications, Inc. (SBCIP), an information service provider affiliate of SBC Communications, Inc., respectfully submits the following reply comments in support of its petition for a limited waiver of the state certification requirement derived from section 52.15(g)(2)(i) of the Commission's numbering rules.¹ This waiver will allow SBCIP to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA), which SBCIP plans to use in developing a new, more efficient form of interconnection between IP networks and the Public Switched Telephone Network (PSTN) to facilitate the deployment of innovative Voice over Internet Protocol (VoIP) services to customers.

As SBCIP explained in its petition and several commenters recognize in their comments, granting the limited waiver proposed by SBCIP will enable the Bureau to accomplish two of the Commission's key responsibilities under the Act: promoting the deployment of competitive, new communications technologies and services, and ensuring the efficient use of this nation's numbering resources. Many commenters acknowledge the technological and competitive benefits to be gained from allowing SBCIP direct access to numbering resources so that it can develop advanced methods of IP-to-PSTN interconnection. In addition, recognizing that SBCIP's waiver request will not hinder state number conservation efforts, a prominent state commission affirmatively declares that it does not object to SBCIP obtaining direct access to

¹ *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*, CC Docket No. 99-200 (filed July 7, 2004) (Petition for Limited Waiver). Section 52.15(g)(2)(i) of the Commission's rules currently requires that an applicant for numbering resources demonstrate that it is authorized to provide service in the area for which the numbering resources are being requested. 47 C.F.R. § 52.15(g)(2)(i). In the wireline context, the Commission has interpreted this rule as requiring state certification. *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7613 ¶ 97 (2000).

numbering resources without state certification.² It asks only that SBCIP comply with existing federal and state requirements for the use of numbering resources, which SBCIP has always been willing to do. Indeed, for purposes of obtaining numbering resources through this waiver request, SBCIP is seeking to be treated akin to commercial mobile radio service (CMRS) providers, who are not state-certificated carriers but are nonetheless required to comply with federal numbering requirements and state numbering requirements promulgated under federally-delegated authority.

While a handful of commenters oppose SBCIP's petition, that opposition appears to be based either on a misunderstanding of the relief that SBCIP seeks or, in a few predictable cases, on a disingenuous attempt to impede competition in the market for IP-enabled services. Notwithstanding the misguided assertions of these commenters, SBCIP, as discussed below, has thoroughly demonstrated the following: (1) SBCIP's petition fully satisfies the standard for granting a waiver of the Commission's rules; (2) there is no basis to defer action on SBC's request for limited relief pending the outcome of the *IP-Enabled Services NPRM*;³ (3) granting SBCIP's waiver request will improve, not impede, state number conservation efforts; and (4) granting SBCIP's waiver request will foster increased competition and consumer choice in the market for IP-enabled services. Accordingly, the Bureau should grant SBCIP's request for limited waiver as expeditiously as possible.

² See New York Comments at 2.

³ See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (2004) (*IP-Enabled Services NPRM*).

II. DISCUSSION

A. SBCIP Has Satisfied the Standard for Granting a Waiver of Section 52.15(g)(2)(i) of the Commission's Rules.

As SBCIP explained in its petition, under section 1.3 of the Commission's rules the Bureau may waive a rule upon a showing of "good cause."⁴ As interpreted by the Commission and the courts, the good cause standard requires a petitioner to show that special circumstances necessitate a deviation from Commission rules and that such a deviation will serve the public interest.⁵ In its petition, SBCIP provided a detailed explanation of the special circumstances it faces in attempting to develop a new, more efficient form of interconnection between IP networks and the PSTN, as well as the public interest benefits to be gained from granting a limited waiver of section 52.15(g)(2)(i) and allowing SBCIP to obtain the direct access to the numbering resources needed to facilitate this new form of interconnection.⁶

Not surprisingly, several parties agree that SBCIP has met the good cause standard and that its petition for limited waiver should be granted. PointOne "agrees with SBC IP that good cause exists to grant this limited waiver" because it will allow the deployment of "innovative new services using a more efficient means of interconnection."⁷ Sprint "agree[s] that VoIP service providers should be allowed to obtain numbering resources directly from the NANPA or the PA because "[d]irect access to numbering resources will encourage the deployment of VoIP technology" and "[t]he public will benefit from a greater array of calling options, and carriers

⁴ See 47 C.F.R. § 1.3; Petition for Limited Waiver at 7-9.

⁵ See Petition for Limited Waiver at 7.

⁶ See Petition for Limited Waiver at 2-5, 7-9.

⁷ PointOne Comments at 2.

can benefit from deployment of advanced technologies.”⁸ Even Time Warner Telecom (TWT), who generally opposes SBCIP’s petition, forthrightly admits that “SBCIP has proffered a public interest case for allowing VoIP providers to directly access numbering resources from the NANPA.”⁹

Notwithstanding this admission, however, TWT asserts SBCIP has not shown that its waiver request is based on special circumstances. According to TWT, SBCIP “is hardly the only VoIP provider that would want to take advantage of the efficiencies of obtaining numbers directly from NANPA.”¹⁰ But TWT’s argument misses the point of SBCIP’s petition. SBCIP is not merely pursuing an abstract desire for a more efficient means of acquiring numbering resources from NANPA. Rather, the increased efficiency that SBCIP seeks is in the method of *interconnection* between IP networks and the PSTN.¹¹ Indeed, many VoIP providers in the market today are satisfied with relying on line-side interconnection through PRI lines purchased from CLECs,¹² which come with numbering resources but have inherent limitations in availability, scalability and cost-effectiveness. By contrast, SBCIP is devoting substantial time and resources to pursuing a unique, new trunk-side form of IP-PSTN interconnection (*e.g.*, at a tandem switch), which will allow SBCIP to more efficiently utilize its network in conjunction

⁸ Sprint Comments at 2-3. Both PointOne and Sprint suggest that the Bureau should grant a blanket waiver allowing all VoIP providers to obtain direct access to numbering resources. PointOne Comments at 2-3; Sprint Comments at 2-3. To the extent these parties seek such broader relief, they are free to file petitions of their own. SBCIP, however, confines its waiver request to the facts and arguments presented in its petition.

⁹ TWT Comments at 4.

¹⁰ TWT Comments at 4. *See also* AT&T Comments at 3; Pennsylvania Comments at 1.

¹¹ *See* Petition for Limited Waiver at 2-5.

¹² *See* Vonage Comments at 2-3 (expressing satisfaction with PRI lines). *See also* AT&T Comments at 3.

with the PSTN to deliver innovative new services to residential and business customers across the country.¹³

Unlike PRI lines, however, the trunk-side IP-PSTN interconnection contemplated by SBCIP has no inherent source of numbering resources. Thus, in order for SBCIP to engage in efforts to develop this new form of IP-PSTN interconnection and offer commercial service to customers, it must have direct access to numbering resources, which has been limited to state-certificated carriers under the Commission's interpretation of section 52.15(g)(2)(i) of its rules in the wireline context.¹⁴ Thus, this situation -- in which SBCIP has undertaken a unique effort to advance IP-PSTN interconnection but is being thwarted by an anachronistic rule that never contemplated IP-based technology -- is precisely the type of special circumstance that warrants a limited deviation from that rule.¹⁵

¹³ See SBCIP Petition for Limited Waiver at 2-5. Where SBCIP seeks to deliver traffic directly to an ILEC network, trunk-side interconnection holds the potential for significant efficiency gains over line-side interconnection. A typical ILEC network is far more hierarchical than a typical CLEC network. See, e.g., *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, 17 FCC Rcd 27039 ¶ 307 (2002) (summarizing WorldCom's assertion that a fiber-intensive CLEC network architecture allows a single switch to access a much larger geographic area than that served by the numerous switches of ILEC copper-based, hierarchical networks). Thus, interconnecting directly with an ILEC network on a line-side basis would require provisioning a significant number of lines to reach multiple end offices in the ILEC's service area. By contrast, trunk-side interconnection (e.g., at a tandem switch) requires far less provisioning, resulting in greater efficiencies.

¹⁴ See SBCIP Petition for Limited Waiver at 5-6.

¹⁵ See *Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element*, Order, 11 FCC Rcd 5342 ¶ 24 (1996) (*Ameritech/SWBT Payphone Technology Waiver Order*) (finding that efforts by Ameritech and Southwestern Bell Telephone Company to develop new payphone call-tracking technology constituted "special circumstances" warranting a waiver of Part 69 pricing rules to allow the carriers to implement a new per-call rate element). See also *1998 Biennial Regulatory Review -- Testing New Technology*, CC Docket No. 98-94, Policy Statement, 14 FCC Rcd 6065 ¶¶ 11, 23-24 (1999) (discussing the need to expeditiously grant waivers "to ensure that [Commission] 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.").

B. The Bureau Should Reject Arguments Seeking to Defer Action on SBCIP's Petition for Limited Waiver.

As SBCIP explained in its petition, granting a limited waiver of section 52.15(g)(2)(i) will in no way prejudice the outcome of the numbering-related questions raised in the *IP-Enabled Services NPRM*.¹⁶ Indeed, SBCIP is seeking a *limited* waiver, lasting only until the Commission adopts any final rules stemming from that *NPRM*. Further, notwithstanding any decision to grant its limited waiver request for this temporary duration, SBCIP will, of course, take whatever appropriate steps are necessary to comply with those final rules.

Nonetheless, some commenters claim that the issues raised by SBCIP in its petition for limited waiver can only be addressed as part of the larger *IP-Enabled Services NPRM*. These commenters urge the Bureau not to rule on SBCIP's petition "in a vacuum"¹⁷ because doing so may impose "a vestigial and impermanent tier of numbering regulation."¹⁸ Instead, they claim that the issues raised in SBCIP's petition for limited waiver must be addressed in lockstep with the other rulemaking issues raised in the *IP-Enabled Services NPRM*, such as "access to 911 service," "interconnection for the exchange of traffic," "contributing to universal service," and "the payment of applicable interstate access charges."¹⁹

But again, these commenters misconstrue the nature of the relief sought by SBCIP in its waiver petition. SBCIP is not asking for a permanent rule change, but rather a limited waiver that expires after the Commission adopts final numbering rules. Thus, despite some

¹⁶ SBCIP Petition for Limited Waiver at 11.

¹⁷ BellSouth Comments at 4.

¹⁸ AT&T Comments at 7.

¹⁹ BellSouth Comments at 7-8. *See also* TWT Comments at 9-10 (acknowledging that SBCIP has committed to provide local number portability, but suggesting that SBCIP's petition should be denied because "[t]he Commission's local number portability rules may also need to be adjusted to account for the unique qualities of VoIP.").

commenters' overblown rhetoric, no "vestigial" rules would, or could, result from granting the petition. And contrary to the claim of one commenter, the Bureau would certainly not be acting "in a vacuum" when it rules on SBCIP's petition. The Bureau put the petition out for public comment, gave commenters ample time to file, and has received comments from a diverse collection of stakeholders, including ILECs, CLECs, VoIP providers, and state commissions.²⁰

Moreover, it borders on the absurd to suggest that granting SBCIP a limited waiver of section 52.15(g)(2)(i) to obtain direct access to numbering resources must await the Commission's consideration of a host of completely unrelated policy issues raised in the *IP-Enabled Services NPRM*. Broad policy issues, like universal service or intercarrier compensation, affect *all* providers of IP-enabled services, regardless of the method by which they obtain numbering resources. SBCIP *agrees* that these issues should be thoroughly addressed in the *NPRM*. But there is no basis whatsoever to suggest that the Commission must resolve those broad policy issues before the Bureau can grant the limited waiver requested by SBCIP. Indeed, as SBCIP pointed out in its petition, Bureaus have routinely granted waivers of Commission rules pending the outcome of rulemaking proceedings,²¹ and the public interest requires that the Wireline Competition Bureau do so again here.²²

²⁰ See *Comment Sought on 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*, CC Docket No. 99-200, Public Notice, DA 04-2144 (released July 16, 2004).

²¹ See *Petition for Limited Waiver* at 11 n.34. See also *Ameritech/SWBT Payphone Technology Order*, 11 FCC Rcd 5342 ¶ 24 (rejecting arguments that the relief sought by Ameritech and SWBT should await a comprehensive rulemaking; observing the public interest benefits from allowing Ameritech and SWBT to promptly implement their technology). In addition, the Bureau has previously granted waivers of related aspects of the rules governing applications for numbering resources where a petitioner has demonstrated good cause for doing so. See, e.g., *ALLTEL Communications, Inc. Emergency Request for Waiver of MTE Rules*, CC Docket No. 99-200, Order, 16 FCC Rcd 19,197 (2001) (waiving months-to-exhaust requirement to allow ALLTEL to obtain growth numbering resources from NANPA). None of the commenters even address, let alone dispute, the Bureau's authority to grant waivers in any of these circumstances.

²² In a bizarre argument, PointOne asserts that if the Bureau denies SBCIP's waiver petition it should also delay the effective date of the Bureau's grant of special temporary authority (STA) that SBCIP previously received to

C. Granting the Limited Waiver Requested by SBCIP Will Not Impede State Number Conservation Efforts.

1. General Concerns About State Number Conservation Efforts.

In its petition, SBCIP explained that the limited waiver it seeks is fully consistent with the Commission's numbering resource optimization goals.²³ SBCIP pointed out that, aside from the state certification requirement from which it seeks a waiver, SBCIP will fully comply with all of the Commission's numbering resource requirements, including but not limited to thousand-block number pooling, numbering resource utilization/forecast reports, local number portability, contributions to numbering administration costs, and facilities readiness requirements.

A few commenters, however, raise concerns that allowing SBCIP to obtain direct access to numbering resources without state certification will impede state number conservation efforts.²⁴ While the Ohio Commission expressly does not object to SBCIP obtaining direct access to numbering resources, it is concerned that "lack of [state] certification will frustrate the ability of the Ohio Commission to enforce number conservation requirements."²⁵ The Pennsylvania Commission is similarly concerned about its "ability to monitor the usage of telephone numbers and to prevent unnecessary proliferation of new area codes."²⁶

conduct a non-commercial trial of VoIP service. PointOne Comments at 4-5. *See Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, DA 04-1721 (released June 17, 2004) (granting STA). PointOne has apparently filed its own STA request for numbering resources and PointOne does not want SBCIP to obtain a "first mover" advantage through "regulatory happenstance." PointOne Comments at 4. But PointOne fails to explain why it could not have filed its STA request months, or even years, before SBCIP. Moreover, it would create a strong disincentive to innovation -- not to mention being unprecedented and patently unfair -- to penalize SBCIP simply for being the first entity to seek regulatory relief in order to develop a new form of IP-PSTN interconnection. The Bureau should flatly reject PointOne's proposal.

²³ Petition for Limited Waiver at 9-10.

²⁴ *See* Ohio Comments at 2; Pennsylvania Comments at 2. *See also* Iowa Comments at 2-3; TWT Comments at 9.

²⁵ Ohio Comments at 2.

²⁶ Pennsylvania Comments at 2. *See also* NARUC Reply Comments at 1 (claiming (incorrectly) that SBCIP is proposing "to by-pass state oversight" when seeking numbering resources).

As SBCIP stated in its petition, we are very sensitive to state concerns about the potential inefficient use of numbering resources.²⁷ We wish to emphasize, however, that granting the limited waiver of the state certification requirement will not impede state number conservation efforts in any way. In fact, state certification is not at all necessary to ensure SBCIP's full compliance with federal numbering regulations as well as any state numbering requirements appropriately promulgated under a delegation of federal numbering authority. For proof of this point, the Bureau need only look to the use of numbering resources by CMRS providers.

Indeed, CMRS providers are not required to have state certifications in order to obtain direct access to numbering resources from NANPA and/or the PA (or for any other purpose).²⁸ Yet CMRS providers currently hold millions of telephone numbers.²⁹ Instead, Commission rules and NANPA procedures permit a wireless applicant for numbering resources to satisfy section 52.15(g)(2)(i) by presenting a copy of its Commission-issued spectrum license -- no state certification is required.³⁰

²⁷ Petition for Limited Waiver at 9 n.30.

²⁸ Under the Communications Act, CMRS providers are generally not subject to state regulation and do not need state certification to offer service. *See* 47 U.S.C. § 332(c)(3). *See also VOIP: The Opportunities and Challenges Ahead*, Remarks of Commissioner Kathleen Q. Abernathy at the Quello Center (Feb. 19, 2004) (“In several respects, we can draw powerful lessons from our experience with wireless services. . . . I think the wireless experience suggests that VOIP services will flourish under a predominantly federal scheme that employs a light regulatory touch.”).

²⁹ *Numbering Resource Utilization in the United States as of December 31, 2003*, FCC, Table 1 (May 2004) (cellular and PCS providers hold 317,254,000 telephone numbers).

³⁰ *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7613 n.178 (2000) (observing that states are preempted from entry regulation of CMRS providers, but noting that CMRS providers must have a Commission license to operate); NANPA Fact Sheet “Effects of the FCC’s NRO Order on Code Administration, Updated 06/15/2004,” available at http://www.nanpa.com/pdf/nro_effects.pdf (directing wireless providers to submit a copy of their Commission license). Some states impose “registration” requirements on CMRS providers, under which a provider fills out a form supplying a variety of information about its operations (e.g., trade name, address, contact information, etc.). In some cases, a state commission may use this registration information to help track CMRS providers and their use of numbering resources. *See* Ohio Comments at 2. SBCIP does not object to filing registration information with a

Notwithstanding their lack of state certification, however, CMRS providers are still subject to all applicable federal and state numbering requirements.³¹ Indeed, the Ohio Commission and the Pennsylvania Commission appear to acknowledge as much in their comments.³² The New York Commission also drives this point home by affirmatively stating that it does *not* oppose SBCIP's petition seeking a waiver of the state certification requirement, asking only that SBCIP comply with state numbering requirements adopted under authority delegated to state commissions by this Commission, specifically New York's facilities readiness requirements.³³

By granting SBCIP's waiver request, the Bureau would simply be treating SBCIP like a CMRS provider for the limited purpose of directly applying for numbering resources. SBCIP would have the same rights and responsibilities that CMRS providers have in the process of acquiring those numbering resources and would need to comply with all applicable federal and state numbering requirements.³⁴ Such a grant, therefore, would have absolutely no effect on a state's ability to promulgate or enforce valid numbering requirements under authority delegated by this Commission pursuant to section 251(e)(1) of the Act.

state commission, with the understanding that the information is being provided for the sole purpose of assisting that commission in its number conservation efforts and not for other regulatory purposes.

³¹ See 47 U.S.C. § 251(e)(1); 47 C.R.F. § 52.3 ("The Commission shall have exclusive authority over the portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction."); *Numbering Resource Optimization*, CC Docket No. 99-200, Order, 16 FCC Rcd 15,842 ¶ 37 (2001) (federal numbering authority, which applies to all carriers including CMRS providers, may be delegated to the states).

³² Ohio Comments at 2 (describing ability to enforce number conservation measures for wireless carriers); Pennsylvania Comments at 2 (mentioning state registration requirement).

³³ New York Comments at 2-4. See also Missouri Comments at 1-2 (not opposing SBCIP's petition, but asking the Commission to ensure compliance with state numbering requirements). We address SBCIP's facilities readiness compliance below in section II.C.2.

³⁴ There would be one small administrative difference between SBCIP and a CMRS provider: in applying to NANPA and/or the PA for numbering resources, SBCIP would provide a copy of the Bureau's waiver order rather than a copy of a Commission-issued spectrum license.

2. Specific Number Conservation Issues.

While SBCIP has already stated its commitment to meeting all applicable numbering requirements,³⁵ we take this opportunity to address specific numbering requirements raised by commenters in response to our petition so there will be no doubt about the extent of our commitments:

Facilities Readiness. Under the “facilities readiness” requirement of section 52.15(g)(2)(ii) of the Commission’s rules, an applicant must “be capable of providing service within sixty (60) days of the numbering resources activation date.”³⁶ Pursuant to Commission orders and industry procedures, an applicant can demonstrate facilities readiness through a variety of evidence, such as an executed interconnection agreement with a LEC; a business plan to provide service in the area where numbering resources are sought; network planning documents demonstrating that equipment has been purchased and is, or will be, operational; a confirmation letter from the entity with which the applicant will interconnect; or other similar evidence.³⁷ In addition, the Commission has delegated authority to the states to adopt additional facilities readiness criteria in certain circumstances, and some state commissions, such as New York, have used that authority to craft state-specific facilities readiness criteria.³⁸

In its petition, SBCIP stated that it would meet the “facilities readiness” requirement of section 52.15(g)(2)(ii), and also provided examples of how it could demonstrate facilities

³⁵ Petition for Limited Waiver at 10.

³⁶ 47 C.F.R. § 52.15(g)(2)(ii).

³⁷ See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd at 7615 ¶ 97; NANPA Fact Sheet “Effects of the FCC’s NRO Order on Code Administration, Updated 06/15/2004,” at http://www.nanpa.com/pdf/nro_effects.pdf.

³⁸ See New York Comments at 3.

readiness in the particular context of the VoIP services it intends to offer.³⁹ Some commenters inferred from SBCIP's statements that it intended to meet *only* the facilities readiness requirements that SBCIP itself had proposed and not any of the federal or state facilities readiness requirements that would normally apply. This was not SBCIP's intent. Thus, to dispel any confusion, SBCIP clarifies that it is willing and able to satisfy the federal facilities readiness requirement, and any of the facilities readiness requirements proposed by SBCIP that the Bureau deems necessary. SBCIP is also willing to work with any state commission to satisfy applicable state facilities readiness requirements.

State Numbering Audits. TWT seeks clarification of whether SBCIP intends to "subject itself to state audits of its numbering usage."⁴⁰ But this issue was never in doubt. Just as states exercise federally-delegated auditing authority over numbering usage by CMRS providers -- who operate without state certification -- so too would states be able to exercise auditing authority over SBCIP's numbering usage if the Bureau grants SBCIP's petition.⁴¹

In this regard, allowing SBCIP to obtain direct access to numbering resources will actually *improve* the effectiveness of state number conservation efforts. With most VoIP services today, a CLEC provides numbering resources to a VoIP provider, who in turn provides

³⁹ SBCIP Petition for Limited Waiver at 10 (stating that SBCIP would satisfy section 52.15(g)(2)(ii) and could also show: (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 functionality for implementation of local number portability).

⁴⁰ TWT Comments at 9. TWT also questions whether SBCIP intends to identify, in advance of receiving a waiver, the area codes in which it is seeking numbering resources. *Id.* SBCIP will, of course, provide all of the requisite information that NANPA needs to address SBCIP's application for numbering resources, and will work with NANPA, the Commission and the states to address any potential number conservation issues that may theoretically arise from that application. But SBCIP is aware of no requirement that would force an applicant to publicly give its competitors special advance notice of the markets it intends to enter, and we do not believe that imposing such a requirement solely on SBCIP would be fair or equitable.

⁴¹ See 47 C.F.R. § 52.15(k) (numbering audit procedures); *Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd 252, 296-297 (2001) (discussing state authority to conduct audits of numbering usage).

those resources to its end-user customers. In that scenario, states are limited to monitoring the CLEC's use of numbering resources and have no direct perspective into the VoIP provider's use of those resources. But by obtaining direct access to numbering resources, SBCIP would become subject to state auditing authority over the manner in which SBCIP uses those numbers for its own end-user customers, thus giving states a valuable, new insight into the manner in which numbering resources are used in a VoIP environment.

Numbering Resource Utilization/Forecast (NRUF) Reports. In its petition, SBCIP agreed to file NRUF reports for the numbering resources it receives pursuant to the instant waiver request.⁴² In a curious argument, Vonage suggests -- without a shred of authority -- that SBCIP is an end user of telephone numbering resources and, as such, may not file an NRUF report because such reports may only be filed by carriers.⁴³ But Vonage is mistaken on both points. First, SBCIP is not seeking a waiver merely to obtain numbering resources for its own internal purposes as an end user; rather, it plans to use those resources in the VoIP services it offers to its own end-user customers. Second, nothing in the Commission's rules or on the face of the NRUF reporting form (FCC Form 502) *prohibits* a non-carrier from filing an NRUF report. Moreover, as with state auditing authority discussed above, SBCIP's commitment to file NRUF reports will actually assist the states in their number conservation efforts because SBCIP will report on the numbering usage directly associated with its VoIP service, which should prove more insightful than the NRUF reports filed by CLECs who merely provide numbering resources to a VoIP

⁴² Petition for Limited Waiver at 10.

⁴³ Vonage Comments at 8.

provider. Accordingly, the Bureau should reject Vonage's unsupported and meritless argument.⁴⁴

Thousand-Block Number Pooling. The Iowa Commission points out that thousand-block number pooling is not available in some small, rural exchanges.⁴⁵ Thus, despite SBCIP's commitment to comply with thousand-block number pooling, a request for numbering resources would necessitate the assignment of a block of ten-thousand numbers, which the Iowa Commission considers "wasteful" in small, rural exchanges (1,000 lines or less) that lack thousand-block number pooling capability. However, SBCIP does not have current plans to request numbering resources in any rural exchange with 1,000 lines or less during the effectiveness of its requested waiver, thereby obviating the Iowa Commission's concerns.⁴⁶

Mandatory Ten-Digit Dialing. The Ohio Commission expresses concerns that some VoIP providers -- specifically Vonage -- are providing seven-digit dialing in violation of federal rules requiring ten-digit dialing in circumstances where area code overlays have been implemented by a state commission.⁴⁷ Ohio is concerned that this apparent violation of federal rules could undermine state number conservation efforts. Without expressing an opinion on the

⁴⁴ BellSouth raises a similarly meritless argument regarding the assignment of an Operating Company Number (OCN) to SBCIP. BellSouth Comments at 6. BellSouth states (correctly) that an entity must have an OCN assigned by the National Exchange Carrier Association (NECA) to obtain numbering resources. See http://www.necaservices.com/source/NECAServices_43_1569.asp. But BellSouth goes on to claim, without a shred of authority, that OCNs may only be assigned to carriers. SBCIP could find no authority for the proposition that a non-carrier is barred from obtaining an OCN. In any event, SBCIP has already obtained an OCN from NECA, whose staff indicated to SBCIP that it routinely makes OCNs available to non-carriers that meet NECA's assignment criteria. Thus, BellSouth's claim is entirely baseless.

⁴⁵ Iowa Comments at 2-3.

⁴⁶ To the extent that one of SBCIP's existing or potential customers develops a need for VoIP service and associated numbering resources in such a small rural, exchange, SBCIP commits to work with the relevant state authority to minimize any number utilization concerns that may arise.

⁴⁷ Ohio Comments at 4-5.

impropriety of Vonage’s conduct, SBCIP represents that it will comply with applicable federal and state requirements regarding ten-digit dialing.⁴⁸

D. Granting SBCIP’s Waiver Petition Will Foster Increased Competition and Consumer Choice in the Market for IP-Enabled Services.

In its petition, SBCIP explained that granting its waiver request would allow SBCIP to engage in efforts to develop innovative, new forms of interconnection between IP networks and the PSTN, which will spur the deployment of advanced technologies, encourage more efficient commercial arrangements between VoIP providers and carriers, and increase competitive choices for consumers.⁴⁹ Several commenters agree. Sprint, for example, states that “[d]irect access to numbering resources will encourage the deployment of VoIP technology by, and the availability of VoIP services from, a wide range of service providers.”⁵⁰ PointOne also states that “permitting unregulated VoIP providers to apply for numbering resources without obtaining carrier certification is a critical step to establishing more efficient interconnection arrangements between VoIP providers and incumbent LECs, leading to more rapid availability of innovative and cost efficient IP-enabled services.”⁵¹

Predictably, however, some leading providers in the VoIP market are unhappy with the additional competition that may result from SBCIP obtaining direct access to numbering resources. In a transparent attempt to stave off that competition, these providers impute

⁴⁸ The Ohio Commission also questions whether SBCIP will comply with this Commission’s requirements concerning the non-geographic assignment of telephone numbers and the maintenance of rate center designations for ported telephone numbers. Ohio Comments at 3-4. Without expressing an opinion on the accuracy of the Ohio Commission’s characterization of this Commission’s numbering requirements, SBCIP reiterates its intention to comply with all Commission numbering resource requirements, including any applicable assignment or portability requirements. *See* Petition for Limited Waiver at 10.

⁴⁹ SBCIP Petition for Limited Waiver at 2-5, 7-9.

⁵⁰ Sprint Comments at 3.

⁵¹ PointOne Comments at 6.

nefarious motives to SBCIP's waiver petition. AT&T claims that SBCIP is attempting "to tilt the competitive playing field in SBCIP's favor by obviating the need for SBCIP to obtain numbering resources from competitive carriers."⁵² But this claim unwittingly belies AT&T's own anti-competitive motives for opposing SBCIP's petition. Based on its comments, it appears AT&T would like nothing better than to keep VoIP providers perpetually beholden to the CLEC industry for access to numbering resources, which are a limited public resource. It is thus quite ironic that AT&T, a leading advocate for boundless access to ILEC facilities, is now so blatantly advocating in favor of restricting access to the limited supply of numbering resources in order to thwart competition in the VoIP market. The Bureau should reject AT&T's hypocritical argument out of hand.

Vonage also attempts to cast doubt about SBCIP's motives for seeking a limited waiver to obtain direct access to numbering resources. Vonage suggests that, by virtue of its affiliate relationship with SBC (the ILEC), SBCIP will garner an unfair advantage in any efforts to obtain trunk-side interconnection with SBC, and SBC cannot be trusted to make such interconnection available to unaffiliated VoIP providers.⁵³

Vonage fails to recognize, however, that SBC is already subject to an extensive set of non-discrimination requirements.⁵⁴ Under those requirements, SBC may not discriminate in favor of an affiliated information service provider at the expense of an unaffiliated information service provider. Thus, to the extent SBC offers a trunk-side interconnection service to SBCIP,

⁵² AT&T Comments at 3.

⁵³ Vonage Comments at 4. Vonage expresses similar concerns about SBC's willingness to provide local number portability to unaffiliated VoIP providers and questions whether SBC will somehow discriminate in favor of SBCIP in processing porting requests. Vonage Comments at 9.

⁵⁴ See 47 U.S.C. § 202 (prohibiting unjust or reasonable discrimination). See also *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 ¶¶ 112-13 (identifying section 202 of the Act as a basis for the Commission's number portability authority).

it would be required to offer that service under the same terms and conditions to other VoIP providers. Indeed, SBC has already taken steps to develop just such a service. In June 2004, SBC issued a notice announcing a non-commercial trial “aimed at designing more efficient methods of exchanging traffic between IP networks and the Public Switched Telephone Network (PSTN).”⁵⁵ This notice, which is posted on SBC’s website for public review, served as an open invitation to interested VoIP providers who wished to participate in the trial. These are hardly the actions of a company engaged in a clandestine attempt to discriminate in favor of its own affiliate. Accordingly, the Bureau should reject Vonage’s unfounded assertions.

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 and authorize SBCIP to obtain numbering resources directly from NANPA and/or the PA for use in the provision of IP-enabled services, which will promote the deployment of competitive, new communications technologies while ensuring the efficient use of numbering resources.

Respectfully Submitted,

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⁵⁵ See http://www.sbc.com/public_affairs/regulatory_documents/cei_plans_and_amendments/Illinois_Accessible_Letter_0808031_JZ_Edits.doc.