

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

CC Docket No. 99-200

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA
ON SBCIP PETITION FOR LIMITED WAIVER**

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The California Public Utilities Commission and the People of the State of California (the CPUC or California) submit to the Federal Communications Commission (FCC or Commission) these Reply Comments in response to Opening Comments on a petition for a "limited waiver" of a federal numbering rule filed by SBC IP Communications, Inc. (SBCIP).¹ SBCIP, a provider of Voice-over-Internet-Protocol (VoIP) services and an affiliate of SBC Communications, Inc., seeks a waiver of 47 C.F.R. § 52.12(g)(2)(i) in order to obtain telephone numbers directly from the North

¹ See Comment Sought On SBC IP Communications, Inc. Petition For Limited Waiver Of Section 52.12(g)(2)(i) Of The Commission's Rules Regarding Access To Numbering Resources, CC Docket No. 99-200, Public Notice, DA 04-2144 (rel. July 16, 2004). SBC IP Communications, Inc. (SBCIP) filed its petition on July 7, 2004. Parties filed Opening Comments on August 16, 2004.

American Numbering Plan (NANP) Administrator or Pooling Administrator (hereinafter referred to as “Numbering Administrators”). Section 52.12(g)(2)(i) requires that an applicant for numbers provide evidence that it has state authority to provide telephone service in the relevant geographic area.

The CPUC agrees with the overwhelming majority of parties who filed Opening Comments that the Commission should deny SBCIP’s Petition. While the CPUC appreciates SBCIP’s commitment, as a user of numbering resources, to comply with federal numbering requirements, the CPUC strenuously opposes SBCIP’s request to circumvent the state numbering authority to which all other NXX² codeholders are subject. In addition, the CPUC supports the recommendation of most commenters that the complex and varied issues raised by the Petition should be resolved “holistically,” as Vonage puts it, for all VoIP providers.³ The CPUC believes that the appropriate forum for such resolution is in the Commission’s *IP-Enabled Services* docket.⁴

As a preliminary matter, California would like to remind the Commission of just how far the FCC and the states have come in gaining control over the nation’s telephone

² The FCC has described an NXX code as follows: “‘Central office code’ or ‘NXX code’ refers to the second three digits (also called digits D-E-F) of a ten-digit telephone number in the form NPA-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9. 47 C.F.R. § 52.7(c).” *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-104 (rel. March 31, 2000) at note 4. An NXX prefix consists of 10,000 numbers, or 10 blocks of 1000 numbers each.

³ Comments of Vonage Holdings Corp. (Vonage Comments) at 5.

⁴ *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, FCC 04-28, (rel. March 10, 2004) (*IP-Enabled Services*).

number inventory. In 1999, California opened its 25th area code, and at that time, industry estimates projected that California would need to open sufficient new area codes to bring the total number in the state to more than 40 by the year 2002. As a result of efforts initiated first by several states, including California, and later by the FCC itself, new rules governing carrier use of and accounting for telephone numbers has dramatically reduced the need for new area codes to be opened.⁵ The projected life of the NANP has been extended by decades. The significant cost and inconvenience to customers of undergoing area code changes have been reduced to reasonable and manageable levels.

All of this has been achieved through the careful and methodical development of and application of rules for monitoring the nation's supply of telephone numbers, which the FCC has formally deemed to be a public resource. California was among the first states to establish a number pool, to establish rules for sequential numbering, to establish a 75% utilization threshold (which the FCC grandfathered), and to establish state rules for operation of a lottery system for CO codes.

⁵ As an example, in 1998, California opened five new area codes. This year, California will open its first new area code since 1999.

I. Introduction

The CPUC agrees with the many commenters who argue that the unresolved issues raised by SBCIP's Petition are so numerous as to render the Petition fatally premature.⁶

AT&T aptly describes a significant danger created by SBCIP's Petition:

[T]he relief requested could cause the Commission and carriers to prematurely expend substantial time and incur significant costs deploying networks, services, and numbering resources in a manner that the Commission might ultimately find unacceptable, or in need of substantial modification.⁷

Surprisingly, almost all of the parties that filed Opening Comments reject SBCIP's proposal to waive one federal numbering requirement – § 52.12(g)(2)(i) – which SBCIP argues would enable it to have direct access to numbers. PointOne and Sprint are the only parties to support SBCIP's proposal, so long as the Commission grants a blanket waiver to all VoIP providers.⁸

⁶ AT&T Comments In Opposition To SBCIP Petition For Limited Waiver (AT&T Comments) at 4 (stating that granting the Petition “while the Commission is considering proposals on the very same subject would end run the pending notice and comment proceeding for no better reason than to provide a special dispensation for SBCIP”) and 7 (indicating that the Petition raises issues that exceed the scope of this proceeding); Comments of BellSouth Corporation (BellSouth Comments) at 3 (stating that the “issue cannot and should not be decided in a vacuum,” but should be considered in the *IP-Enabled Services* proceeding); Comments of Iowa Utilities Board (Iowa Comments) at 3 (stating that a waiver “is inappropriate when the FCC has a pending docket...to consider the same regulation”); Comments of the Pennsylvania Public Utility Commission (PaPUC Comments) at 1-2 (stating that the Petition should be denied because, among other reasons, the issue is pending in the *IP-Enabled Services* proceeding), and; Opposition of Time Warner Telecom (Time Warner Opposition) at 2-3.

⁷ AT&T Comments at 5.

⁸ See Comments of PointOne (PointOne Comments) at 2; Comments of Sprint Corporation (Sprint Comments) at 2-3. The New York Department of Public Services indicates that it would not oppose a limited waiver for SBCIP, pending resolution of whether VoIP providers should obtain state certification, and depending upon “demonstrated need for [direct access to numbering] and commitment to accept regulatory obligations relevant to such access.” Comments of the New York State Department of Public Service (NYDPS Comments) at 2-3 (citation omitted).

With regard to the broad issue of the appropriate regulatory status of VoIP providers, the CPUC supports the Opening Comments of the NYDPS, the Ohio PUC, the PaPUC, and Sprint who argue that VoIP providers should be considered “telecommunications carriers,”² and as such could obtain “direct access” to numbering resources. The CPUC believes that SBCIP and other VoIP service providers currently enjoy full and equitable access to NANP resources through their underlying LEC service providers. Nevertheless, as telecommunications carriers, VoIP providers could enjoy “direct access” largely within the existing framework for numbering conservation. As public resources that must be protected and used efficiently, all telephone numbers in the NANP, regardless of how they are used, should be subject to the ongoing national and state activities that are carefully coordinated to ensure the continued availability of numbering resources through efficient use and conservation.

Contrary to SBCIP’s claims, granting the Petition would not only prejudice issues that are properly resolved in the *IP-Enabled Services* proceeding, but would result in impacts that could not be reversed. Furthermore, the requested waiver would endanger federal and state goals of ensuring the adequacy of numbering resources.

If the Commission decides, however, that VoIP providers should continue to be treated as “information service providers” but should have “direct access” to numbering

² NYDPS Comments at 2; Comments of the Public Utilities Commission of Ohio (Ohio PUC Comments) at 2; PaPUC Comments at 1-2, and; Sprint Comments at 2. The CPUC stated in comments in the *IP-Enabled Services* proceeding that, “to the extent that services using IP technology enable the end-use customer to control the form or content of the information transmitted, and to specify the points at which the customer’s chosen form of information is sent and received, those services would [] qualify as telecommunications services under the [Telecommunications Act of 1996] if offered to the public for a fee.” *Comments of the People of the State of California and the California Public Utilities Commission,*

resources, the CPUC strongly urges the Commission to require that VoIP providers comply with all federal and state numbering requirements. Because state authority over information service providers is more limited than that authority over telecommunications carriers, the Commission should expressly delegate authority to states to enforce the same numbering requirements on all code holders and users of NANP numbering resources, regardless of their regulatory classification.

II. Petition Is Premature

Most commenters agree that SBCIP's Petition raises a host of complex regulatory and technical questions that the Commission should address before considering any waiver of § 52.15(g)(2)(i).¹⁰ For example, Vonage argues that, rather than addressing SBCIP's Petition "as drafted," the Commission "should instead consider holistically the issue of allowing VoIP providers to directly obtain telephone numbering resources from the NANPA and the PA and adopt competitively-neutral rules."¹¹ Other commenters go further and indicate that legal and practical uncertainties require broader determinations relating to VoIP providers that are most appropriate for the IP-Enabled Services proceeding.¹²

WC Docket No. 04-36 (May 28, 2004), at 24.

¹⁰ AT&T Comments at 7; BellSouth Comments at 2; Iowa Comments at 2 ("However, there is no description of the alleged burdens and no analysis of whether these alleged burdens on carriers are justified by the public benefit. This broad policy question should be addressed in the pending rule making proceeding, not a limited waiver docket."); Ohio PUC Comments at 3-9; PaPUC Comments at 1-2; Time Warner Opposition at 2-3, and; Vonage Comments at Executive Summary.

¹¹ Vonage Comments at 5.

¹² See, e.g., AT&T Comments at 4-5; Iowa Utilities Board Comments at 3; PaPUC Comments at 4-5, and;

Furthermore, denying the SBCIP Petition will not preclude SBCIP from providing widespread commercial IP-enabled services. SBCIP itself acknowledges that it and other VoIP providers can, and do, obtain numbers with which to serve their customers.¹³ Of course, as the NYDPS, the Ohio PUC, the PaPUC, and Sprint have all noted, SBCIP also has the option of obtaining numbers by actually complying with existing rules, *i.e.*, obtaining state authority to provide telecommunications services.¹⁴

A. Granting The Petition Effectively Prejudges The “IP-Enabled Services” Case

SBCIP claims that, as a provider of IP-enabled services such as VoIP, it is a provider of an “information service,” not a provider of “telecommunications service.”¹⁵ The regulatory regimes associated with “information service providers” and “telecommunications carriers” are vastly different, as explained in the FCC’s *IP-Enabled Services NPRM*.¹⁶ In that proceeding, the FCC faces questions such as whether or not VoIP providers fall squarely within one of these regulatory classifications, whether they fall more properly into a different category or combination of categories, and whether those classifications or the regulatory treatment associated with them should be modified.

Time Warner Opposition at 2-3, 7-8.

¹³ SBCIP Petition at 2-3.

¹⁴ SBCIP does not argue that it would be unable to comply with existing rules to remain in business. *See id.* at 11 (stating that, if the Bureau grants the Petition, but “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”).

¹⁵ *Id.* at 6.

¹⁶ *IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, FCC 04-28 (rel. March 10, 2004) at paras. 42-49 (*IP-Enabled Services NPRM*).

By raising what is ostensibly primarily a numbering issue, and seeking waiver of a subsection of the FCC's numbering rules "merely" to obtain "direct access" to phone numbers, SBCIP is attempting to disguise the true nature of its request. The CPUC agrees with AT&T that SBCIP is actually using this back-door effort, a seemingly stand-alone waiver request, to circumvent the FCC's proceeding on *IP-Enabled Services* and to obtain an early determination on its regulatory status.¹⁷

As a practical matter, until the FCC concludes otherwise, providers of IP-enabled services appear to be benefiting from the minimal federal regulation associated with information service providers. There are several "carrier-related" responsibilities that should be applied to VoIP providers but which, in this period before the FCC issues a decision in the *IP-Enabled Services* proceeding, some VOIP providers have avoided. These obligations include payments to federal universal service and similar state public purpose programs, the provision of E911, compliance with CALEA, the payment of intercarrier compensation charges, compliance with state-specific consumer protections, and, of course, compliance with federal and state numbering rules.

Several commenters observe that the ability to obtain numbering resources directly from the Numbering Administrators, however, appears to be one of the regulatory advantages of being classified as a telecommunications carrier (albeit an advantage that

¹⁷ AT&T Comments at 4-5 ("A grant of the relief SBCIP requests while the Commission is considering proposals on the very same subject would end run the pending notice and comment proceeding for no better reason than to provide a special dispensation for SBCIP.").

comes with the responsibilities of complying with state and federal numbering rules).¹⁸ SBCIP's Petition effectively asks the Bureau to let "light-handed" regulation of VoIP providers remain undisturbed, while granting VoIP providers the opportunity to obtain numbering resources that are currently only available to carriers – entities that are traditionally accountable to state and federal authorities, and thus to the public interest, in ways that information service providers are not.

B. The Effect of Granting A Waiver Would Not Be “Limited”

SBCIP argues that, because the Commission would retain “complete flexibility to take whatever action it deems warranted in the *IP-Enabled Services* rulemaking,”¹⁹ and the requested waiver would only last until a decision in that case, the Petition is for a “limited” waiver. While it *may* be legally and procedurally correct that a decision on this Petition would not limit the Commission's actions in the *IP-Enabled Services* case, it is patently false from a practical perspective. SBCIP alleges that, if 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.”²⁰ But it is worth noting that this is not a commitment on the part of SBCIP to dutifully seek carrier status in those states in which it may receive numbers under a limited waiver. SBCIP's statement is more of a promise that the

¹⁸ See, e.g., NYDPS Comments at note 7; Ohio PUC Comments at 6-7, and; Sprint Comments at 2.

¹⁹ SBCIP Petition at 11.

²⁰ *Id.*

VoIP provider does not intend to violate any future rules, leaving open the possibility that SBCIP could claim that it must abandon providing services because it is not willing to become a carrier.

If the waiver is granted, SBCIP could obtain numbers in a Los Angeles rate center, for example, without becoming a state-certified local exchange carrier. SBCIP could then go far beyond the VoIP “trial” with its own employee customers and undertake to provide widespread commercial service.²¹ However, if SBCIP is later unable or unwilling to meet the state requirements for becoming a carrier, as may be required by a later Commission decision, the Commission would be faced with the possibility that, in having to return the numbering resources it obtained under the “direct access” granted by the waiver, SBCIP will cease service in that area. Or, SBCIP could raise the retail rates of those VoIP customers to “compensate” for the additional costs SBCIP might incur in order to comply with a “new” federal law that “requires” it to return to the type of serving arrangements and interconnection it used prior to getting the waiver.

In addition, to the extent that the Commission approves a waiver, some commenters recommend that the waiver apply to all VoIP providers.²² Or, if the Commission attempts to limit the waiver to SBCIP, such a decision nevertheless leaves the door wide open for any and all VoIP providers because SBCIP fails to distinguish itself from other VoIP providers that could reap similar benefits from the granting of a waiver. Consequently, the FCC would be hard-pressed to deny similar requests for direct

²¹ SBCIP states as follows: “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 52.15(g)(2)(i) that were raised in response to the *IP-Enabled Services NPRM*.” *Id.* at 1, note 2 (citation omitted).

²² *See, e.g.*, PointOne Comments at 2-3, and; Sprint Comments at 2-3. *See also* Vonage Comments at 5-6 (“Unconditionally granting SBCIP’s Petition at this time would simply bestow SBCIP with a significant competitive advantage over other VoIP providers given its affiliate relationship with SBC Communications, Inc. “).

numbering access from other VoIP providers without appearing to act in an arbitrary and capricious manner. A rational VoIP provider, faced with the uncertainty surrounding the outcome of the *IP-Enabled Services* docket, would seek to obtain as many numbers as possible, as soon as possible, in case the Commission later decides that future numbering resources can only go to state-certificated carriers.

Thus, whether the Commission were to grant a waiver to all VoIP providers immediately, or approve later “me-too” petitions for waiver, the practical impossibilities of “reversing” the grant of a waiver, without causing harm to consumers, would be magnified and replicated among numerous VoIP providers and their thousands of customers. In sum, SBC is not requesting a “limited” waiver for its VoIP affiliate, but is seeking tacit authority to begin what SBC hopes will be the next phase of its affiliate’s life – as an information service provider with the benefits, but not the *responsibilities*, of a telecommunications carrier.

III. Significant Numbering Issues Must Be Resolved Before “Direct Access” To Numbers Should Be Considered For VoIP Providers

The CPUC strongly supports BellSouth’s statement that “a more comprehensive review of the Commission’s numbering rules is necessary to determine the implications of granting the instant waiver request.”²³ Without this, such a waiver could jeopardize the Commission’s goal of ensuring the efficient use of numbering resources. BellSouth further states that:

²³ BellSouth Comments at 7.

Whether through forbearance, ancillary, or some other statutory authority, the Commission must ensure that, regardless of the regulatory classification of SBCIP or its VoIP service, all entities who obtain numbers from the NANPA or PA comply with all numbering related obligations, including, but not limited to, the submission of numbering reports, participation in number pooling and portability, and sharing the costs of number administration.²⁴

With the caveat that such numbering obligations should include compliance with state numbering rules, the CPUC fully supports this position.

One of the basic tenets of the FCC and state numbering rules, as well as the various Industry Numbering Committee (INC) guidelines for assignment of numbers, is the notion that those who obtain numbers must possess the facilities to provide telecommunications service: “[A] carrier shall not receive numbering resources if it does not have the appropriate facilities in place, or is unable to demonstrate that it will have them in place to provide service.”²⁵ In explaining the purpose for this requirement, the FCC stated that “allowing carriers to build inventories before they are prepared to offer service results in highly inefficient distribution of number resources and is counterproductive to our goal of optimizing the use of numbering resources.”²⁶ The FCC specifically directed the NANP Administrator to “withhold initial numbering resources from any carrier that does not comply with” requirements set forth in that

²⁴ *Id.* at 4.

²⁵ *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-104 (rel. March 31, 2000) at para. 96 (“*First NRO Order*”).

²⁶ *Id.*

order.²⁷ Indeed, the entity to which a central office (CO) code is assigned is called the “codeholder,” and that codeholder must be a telecommunications carrier.

One of the fundamental questions at issue in this petition is whether FCC and state rules, as well as industry guidelines, should be circumvented by an entity that does *not* identify itself as a telecommunications carrier, and thus, pursuant to INC guidelines, *cannot* be a “codeholder.” If the answer to this question is “yes” and the Commission grants the requested waiver, then those presently empowered to monitor and protect a vital public resource will be foreclosed from doing so simply because a company has decided it is not a carrier subject to the FCC’s and state numbering rules. Allowing SBCIP or any other VOIP provider to obtain numbers directly from the Numbering Administrators, without, as SBCIP requests, subjecting these entities to all FCC and state rules, would be tantamount to allowing carriers without facilities to obtain and stockpile numbers. Aside from the conundrum that would be created by having a double standard for obtaining telephone numbers, SBCIP’s proposal would lead to confusion for those attempting to enforce the FCC’s and state rules.

A. Compliance With Federal Numbering Requirements

At a basic level, the Commission must ensure that any “direct access” to numbering resources by VoIP providers is accompanied by the requirement that all federal numbering rules are applicable to them, regardless of their regulatory status. For example, if the Petition is granted, SBCIP offers to “comply with all existing

²⁷ *Id.* at para. 98.

Commission numbering resources,” and lists four major numbering issues.²⁸ As the Iowa Utilities Board observes, “it appears that SBCIP is merely agreeing to comply with some, but not all, of the Commission’s existing regulations.”²⁹ The Commission should not rely on statements of voluntary compliance, but should explicitly order VoIP providers to comply not only with all federally codified numbering rules, but with, as BellSouth describes, all “industry-approved standards and guidelines,”³⁰ such as those adopted by INC.

Because the FCC’s numbering rules in Part 52 were adopted expressly to “establish...requirements and conditions for the administration and use of telecommunications numbers for provision of telecommunications services,”³¹ the rules repeatedly refer to the responsibilities of “carriers.” Therefore, allowing VoIP providers to obtain numbers directly from Numbering Administrators as “non-carriers,” while requiring them to follow federal numbering requirements, will require modifications to the Commission’s rules.

B. Compliance With State Numbering Requirements

Just as important as adhering to federal numbering rules, VoIP providers should also be subject to the jurisdiction of state commissions, many of whom have developed additional numbering rules that are consistent with the Commission’s overall goal of

²⁸ SBCIP Petition at 10.

²⁹ Iowa Utilities Board Comments at 3.

³⁰ BellSouth Comments at 5 (also describing some of the areas in which there are industry-approved guidelines).

³¹ 47 C.F.R. § 52.1 (referring to Subpart A of 47 C.F.R. § 52).

maximizing numbering resources, while still being responsive to the public's desire for new services requiring telephone numbers. If the Commission determines that VoIP providers are common carriers, no additional Commission action is necessary for states to exert numbering authority over the providers. However, should the Commission determine that VoIP providers may obtain numbers directly from the Numbering Administrators without being carriers, the FCC should delegate authority to states to enforce federal and state numbering requirements over such VoIP providers. The Pennsylvania PUC argues, for example, that an FCC grant of a waiver "should expressly permit state commissions in SBC IP's service territory to impose reasonable registration or certification requirements as part of the state's obligation to promote numbering efficiency and consistent with SBC IP's recognition that numbers are a scarce public resource."³²

Waiving the requirement that a company obtain state authorization to get direct numbering access, without adopting or modifying other rules, upsets the balance that Congress and the Commission have created. A company seeking to provide telephone service must obtain telephone numbers associated with particular geographic regions in a state. To do so, the company must prove to a Numbering Administrator that it has state authority to provide such service *as a telecommunications carrier*. That state authorization gives a state commission unambiguous jurisdiction to ensure that, in doing

³² PaPUC Comments at 2-3.

business as a carrier in the state, the carrier is acting in a manner consistent with the public interest, such as meeting the various carrier responsibilities mentioned above.

The Commission adopted § 52.15(g)(2)(i) after reviewing evidence that entities without proper state authorization had been able to obtain initial numbers.³³ For example, one party reported in that proceeding that “the CO Code Assignment Guidelines’ liberal standard for obtaining initial numbering resources allowed two carriers in eastern Massachusetts to obtain over 200 NXX codes that they never used.”³⁴ The Commission thus adopted § 52.15(g)(2)(i) and (ii) to “achieve [its] goal of maximizing the use of numbering resources.”³⁵ Because VoIP technology enables companies to provide services without the high levels of infrastructure investment historically associated with traditional voice service, the number and variety of players in the voice market could actually increase the need for such checks and balances.

The CPUC agrees with the Ohio Commission that § 52.15(g)(2)(i) plays a valuable role:

By requiring state certification, the Ohio Commission and the FCC are able to ensure that numbers are assigned to carriers only where the carrier has made a commitment to serve and the company is authorized to operate. The Ohio Commission is concerned that if IP-enabled companies offering telecommunications services are not certified, this lack of certification will frustrate the ability of the Ohio Commission to enforce number conservation requirements directly on such carriers.³⁶

³³ *First NRO Order* at para. 94.

³⁴ *Id.*

³⁵ *Id.* at para. 96.

³⁶ Ohio PUC Comments at 2.

In California, the Commission delegated authority to allow California to establish thousand-block number pooling in certain area codes.³⁷ The FCC's delegation enabled California to dramatically slow the number drain in many area codes before the national pooling rules were implemented. Similarly, the FCC has delegated to California special authority over our state number lottery scheme, which the CPUC has relied on to maintain a strong monitoring program which we conduct jointly with the NANPA.

Unless the Commission explicitly affirms state authority over how VoIP providers use numbers, whether obtained directly from the Numbering Administrators, or from a LEC, the usage of numbering resources by VoIP providers are likely to jeopardize the Commission's numbering goals.

C. Outstanding Issues Requiring Resolution

Time Warner highlights the glaring absence of necessary information in SBCIP's Petition for waiver:

SBC IP volunteers to comply with the reporting and pooling requirements, but it does not specify its intentions for acquiring initial codes. It does not state whether it intends to take numbers from multiple area codes, or just one. If it is not just one area code, from how many codes will it take numbers? What impact will this have on the NANP? Clearly, further detailed inquiry is necessary before the Commission can simply allow VoIP providers like SBC IP to obtain numbers from anywhere in the country without limitation or explanation.³⁸

³⁷ Subsequently, the Commission superseded that delegated authority to states by creating a national number pooling scheme, and requiring states to largely conform their state pooling rules with the national pooling rules.

³⁸ Time Warner Opposition at 9.

As discussed in more detail below, several commenters also describe specific issues relating to VoIP providers that arise if such providers are not considered telecommunications carriers for regulatory purposes. Other commenters identify problems resulting from the nature of VoIP service, regardless of the classification of the service. The range and depth of the concerns raised by numerous parties illustrate the need for additional information and analysis that should properly be performed in the context of a rulemaking, rather than in response to the instant waiver request.

1. Issues Stemming Primarily From The Non-Carrier Status of VoIP Providers

The questions raised below arise primarily because VoIP providers are not currently treated as carriers, and are just a sample of the many open issues that commenting parties have introduced in the first round of comments on the Petition. If a waiver is granted, Vonage, for example, asks the following: would an ILEC allow VoIP providers to interconnect on a trunk-side basis at a tandem switch on a non-discriminatory basis, on the same terms, conditions, and rates as the ILEC's own affiliate?³⁹ Would VoIP providers directly request number porting from ILECs, and would such requests be honored on a non-discriminatory basis?⁴⁰ How would VoIP providers comply with all of the numbering requirements as a non-carrier?⁴¹ Similarly,

³⁹ Vonage Comments at 4.

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 8-9.

Time-Warner asks whether and how local number portability requirements would extend to VoIP providers if they are not regulated as local carriers.⁴²

BellSouth recommends that, before getting numbers, SBCIP should verify that: “(1) it has tested its capability to interface with the Number Portability Administration Center; and (2) it is technically capable of porting and pool[ing] numbers.”⁴³ BellSouth also notes that technical limitations require code holders to file certain numbering reports using their Operating Company Numbers (OCNs), but that OCNs are currently only assigned to telecommunications carriers.⁴⁴

2. Issues Unique To VoIP Service Providers

Requiring VoIP providers to comply with “all existing Commission numbering resources requirements” does not resolve certain phenomena that result from how VoIP is provisioned. For example, Time-Warner observes that, while the Commission has not required carriers to be capable of location portability, it is technically feasible for VoIP services.⁴⁵ Time-Warner suggests that this issue should be addressed in the context of VoIP service because such location portability may “impair the ability of consumers to port their numbers, especially between VoIP providers and LECs...”⁴⁶ Vonage references the new criteria that SBCIP proposes should be used to determine whether VoIP providers meet the “facilities readiness” requirement for obtaining initial

⁴² Time Warner Opposition at 9-10.

⁴³ BellSouth Comments at 5.

⁴⁴ *Id.* at 6.

⁴⁵ Time Warner Opposition at 10.

⁴⁶ *Id.*

numbers.⁴⁷ Vonage emphasizes the Commission should carefully scrutinize the proposed criteria for many reasons, one of which is that one requirement can only be satisfied by affiliates of RBOCs!⁴⁸

The Ohio PUC notes that VoIP providers should be subject to the same rules as CMRS providers with regard to number porting. The Ohio PUC quotes the FCC's requirement that "...a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port."⁴⁹ The Ohio PUC warns that, if this requirement is not applied to VoIP providers, desirable NPAs could experience "accelerated exhaust," and "confusion will result as to the appropriate inter-carrier rating and compensation for such calls."⁵⁰ In the absence of rules specific to VoIP providers, the Ohio PUC recommends applying existing rules to VoIP providers.⁵¹

The CPUC urges the Commission to examine such issues further through a rulemaking process that allows more comprehensive input by parties, and that can lead to a more comprehensive determination.

⁴⁷ Vonage Comments at 6-8.

⁴⁸ *Id.* at 7.

⁴⁹ Ohio PUC Comments at 3 (citing *Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 03-284 (rel. November 10, 2003) at para. 28).

⁵⁰ Ohio PUC Comments at 3-4.

⁵¹ *Id.* at 4.

a) Non-Geographic Number Assignment

A particular concern that is magnified with the growth of IP-enabled services is “non-geographical assignments of numbers” – assigning a phone number to a customer that is not associated with the physical location of the customer. Some areas with dense populations are already threatened with exhaust based on the demand created by normal, geographically-based number assignment. VoIP customers asking for telephone numbers in other geographic locations are likely to desire numbers exactly in those locations closer to exhaust.

Regardless of whether the FCC or the Wireline Competition Bureau grants SBCIP’s Petition, California recommends that the Commission, state authorities, and the North American Numbering Council (NANC) promptly work to address this new numbering challenge. At this time, and in light of the potentially high rate of non-geographic number assignment, California believes it necessary to restrict the use of numbers outside the geographical area of association. Otherwise, California residents in a particular area code could ultimately be required to undergo the expense and inconvenience of an area code change prompted by assignment of numbers from that area code to users conceivably located all over the country, and reclamation of such numbers may be politically and practically infeasible. Thus, the CPUC recommends that the FCC preclude VoIP providers from engaging in non-geographical assignment of numbers. This is critical in area codes and rate centers that are already facing exhaust. The FCC should conclude (if not as a permanent finding, then at least as a preliminary finding) that such a prohibition is necessary to protect consumers that have a physical presence

(whether residential, or with a bricks-and-mortar business) in a geographic region from the expense and inconvenience of artificially premature area code exhaust.⁵²

In the alternative, the FCC should explicitly delegate to states the authority to exercise their discretion to determine when the public interest supports a prohibition on non-geographic assignment. In the absence of a national preliminary finding that the interests of residents and businesses that are physically present in an area must be protected by such a prohibition, the FCC should allow states to make such a finding as the public interest requires. Delegating states authority to impose such a limit would allow state commissions to monitor non-geographical number assignments to determine if limiting such assignments is necessary. Some area codes may be more desirable than others, and thus may be more susceptible to non-geographical assignment by VoIP providers.

IV. The Benefits Of A Waiver Are Questionable At Best

The CPUC agrees with Vonage and other commenters that the Commission should proceed cautiously in considering SBCIP's Petition. For example, Vonage raises questions about the benefits of the requested waiver. Contrary to the claims of SBCIP,⁵³

⁵² With regard to the definition of a "physical presence" in this context, the CPUC notes that, for mobile telecommunications providers, the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116-126, provides that taxing of wireless use is to be based on the customer's "place of primary use" (PPU): "All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under sections 116 through 126 of this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services." 4 U.S.C. § 117(b).

⁵³ SBCIP Petition at 3.

Vonage notes that its “experience with competitive local exchange carriers (“CLECs”) is that the locations, calling scopes and installation schedules are satisfactory.”⁵⁴

SBCIP also indicates that granting a waiver will lead to “more efficient forms of interconnection” between VoIP providers and the PSTN.⁵⁵ Vonage, however, contends that this benefit may only exist for RBOC affiliates:

While it is easy for SBCIP to claim that this type of interconnection would increase efficiencies, it is [*sic*] efficiencies that only SBCIP and other RBOC affiliates can take advantage of because, arguably, RBOCs have no obligation to allow *other* VoIP providers to interconnect with the PSTN on a trunk-side basis at a tandem switch.⁵⁶

SBCIP then draws an analogy between the interconnection “inefficiencies” that it asserts it could avoid by obtaining a waiver of the numbering requirement in § 52.15(g)(2)(i), and an earlier Commission decision that local exchange carriers (LECs) are required to make a certain, more “efficient” type of interconnection available to wireless carriers.⁵⁷ SBCIP states that “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.”⁵⁸ SBCIP implies that the “efficiency” that granting a waiver would facilitate is the same principle upon which the FCC relied determining in the *Wireless Declaratory Ruling* that wireless companies should be allowed to obtain not just “Type 1” interconnection, but also “Type 2” interconnection, a technical distinction

⁵⁴ Vonage Comments at 3 (citation omitted).

⁵⁵ See, e.g., SBCIP Petition at 3, 5.

⁵⁶ Vonage Comments at 4.

⁵⁷ SBCIP Petition at 3-5.

⁵⁸ *Id.* at 3.

discussed in the Petition.⁵⁹ In fact, SBCIP interprets the Commission’s findings regarding wireless interconnection so loosely as to be misleading.

The Petition cites the *Wireless Declaratory Ruling* and alleges that, “[i]n facilitating [Type 2] interconnection, the Commission recognized that it may offer ‘superior technical capabilities and greater service quality.’”⁶⁰ In fact, the Commission’s decision used this terminology merely in describing the assertions of a party who filed a report with the Commission.⁶¹ In adopting the requirement that wireline carriers provide “Type 2” interconnection, the Commission clearly and unambiguously used a different standard – whether the requested type of interconnection was “technically feasible.”⁶²

Furthermore, at issue in the *Wireless Declaratory Ruling* was the technical kind of interconnection that wireline carriers had to make available to wireless carriers as part of all phone carriers’ obligation to interconnect with all other “telecommunications carriers” under § 252(a)(1) of the Telecommunications Act of 1996 (1996 Act).⁶³ In the case of SBCIP, a self-proclaimed information service provider, carriers currently have no

⁵⁹ The SBCIP Petition describes the differences between these two types of interconnection on pages 3-4; *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, *Declaratory Ruling*, FCC 87-163 (rel. May 18, 1987) (*Wireless Declaratory Ruling*).

⁶⁰ SBCIP Petition at 4 (citing *Wireless Declaratory Ruling* at para. 27).

⁶¹ The Commission stated that the Cellular Telecommunications Division of Telocator Network of America filed a “Cellular Interconnection Report and Request for Further Relief” (*Cellular Report*) upon which the Commission sought public comment. *Wireless Declaratory Ruling* at paras. 1, 2, and 27.

⁶² *Wireless Declaratory Ruling* at para. 31 (“According to the *Cellular Report*, numerous landline companies concede the feasibility of Type 2 facilities, and some have already made such facilities available. Based on this information, we regard Type 2 as technically feasible.”). *See id.* at para. 29 (interpreting the *FCC Policy Statement on Interconnection of Cellular Systems (Wireless Policy Statement)*, attached as Appendix B to *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order*, FCC 86-85, 59 Rad Reg. 2d (P&F) 1275 (rel. March 5, 1986): “We merely explained that if Type 2 service is technically feasible, it should be provided [by wireline carriers as a form of interconnection].”).

⁶³ *See, e.g., Wireless Declaratory Ruling* at para. 8 (referring to “cellular operators,” which are now more commonly referred to as part of a broader class of “wireless carriers” or “CMRS providers;” also referring

obligation to interconnect with proclaimed information service provider. Thus, even if “increased efficiency” was a standard for determining a carrier’s § 252 obligations, it would be inapplicable to SBCIP’s Petition.

The Petition goes on to assert that the Commission recognized that Type 2 interconnection “may help wireless carriers to ‘minimize unnecessary duplication of switching facilities and the associated costs to the ultimate customer.’”⁶⁴ Once again, contrary to SBCIP’s implication, the FCC did not rely on avoiding duplication of facilities and associated costs as the basis for adopting the Type 2 service requirement. In the statement the Petition cites, the FCC was interpreting the “reasonable interconnection” to which wireless carriers are entitled, and observed the following:

A cellular system operator is a common carrier, rather than a customer or end user, and as such is entitled to interconnection arrangements that ‘minimize unnecessary duplication of switching facilities and the associated costs to the ultimate customer.’⁶⁵

The kind of interconnection *to which a carrier should be entitled* is, of course, a different standard than the kind of interconnection that the FCC may want to encourage between a carrier and an information service provider when that interconnection has the potential to threaten the adequacy of numbering resources and affect the life of the NANP. To the extent that the above comment of the FCC is relevant at all to the SBCIP Petition, a reasonable, straightforward reading of the FCC’s view is that a “non-common carrier,” in

to “landline telephone companies,” now more commonly called “wireline carriers”).

⁶⁴ SBCIP Petition at 4 (citing *Wireless Policy Statement* at para. 2).

⁶⁵ *Wireless Policy Statement* at para. 2.

fact, is **not** necessarily “entitled to arrangements that ‘minimize unnecessary duplication of switching facilities and the associated costs to the ultimate customer.’”

Citing to statements in the FCC’s *Wireless Declaratory Ruling*, SBCIP next asserts the following:

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. (*Wireless Declaratory Ruling* paras. 29, 33.)⁶⁶

First, SBCIP’s citation to paragraph 33 of the *Wireless Declaratory Ruling*, which refers to the ‘efficiency’ of Type 2 interconnection, is presumably intended to provide support for the first part of SBCIP’s assertion. However, the FCC is clearly considering “efficiency” in that paragraph to address a dispute between wireless and wireline carriers about the appropriate charges for Type 1 and Type 2 interconnection, and not to adopt a type of interconnection.⁶⁷ Furthermore, a close reading of paragraph 29, which contains the quoted language in the second part of SBCIP’s assertion above, strongly suggests that the FCC described its “longstanding goal” primarily to explain and buttress its position that “BOCs” (and presumably all wireline companies) should provide technically feasible interconnection “within a reasonable time.”⁶⁸

⁶⁶ SBCIP Petition at 4.

⁶⁷ *Wireless Declaratory Ruling* at para. 30. See also *Wireless Declaratory Ruling* at para. 33, which begins with the following: “Contrary to the assertions of Southwestern Bell, the record indicates that certain difference between Type 1 and Type 2 interconnection produce difference in their respective costs.”

⁶⁸ *Wireless Declaratory Ruling* at para. 29.

With regard to numbering resources in particular, SBCIP once again attempts to draw an analogy between itself and wireless providers. SBCIP first states the following:

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 the CLECs today),⁶⁹ but are instead a public resource.⁷⁰

SBCIP appears to be attempting to remind the Commission that numbers are not “owned” by LECs, and thus, like wireless providers, SBCIP ‘deserves’ to have access to numbering resources. Putting aside the fact that SBCIP and other VoIP providers already have access to numbers through LECs, the context in which the FCC discussed “ownership” of numbers in that case was in evaluating whether, and to what extent, telephone companies that administer and assign NXX codes could impose charges on wireless carriers “solely for the use of numbers.”⁷¹ The issues of ownership, and charges between companies, are now moot because the administration of numbering resources is no longer in the hands of fellow market competitors.

SBCIP’s final misguided allegation is that “[t]he Commission concluded that wireless carriers, just like the ILECs, were ‘entitled to reasonable accommodation of their numbering requirements.’”⁷² The irony here is that a complete and accurate quotation which conveys the FCC’s conclusion is as follows:

Cellular telephone companies are part of the network and are *entitled to reasonable accommodation of their numbering requirements* on the same basis as an independent wireline

⁶⁹ *Wireless Policy Statement* at para. 4.

⁷⁰ See *Administration of the North American Numbering Plan*, CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2591 (1995).

⁷¹ *Wireless Policy Statement* at para. 4.

⁷² SBCIP Petition at 4 (citing *Wireless Policy Statement* at para. 4).

telephone company [emphasis added]. We expect that telephone companies responsible for the administration of the numbering plan to accommodate the needs of cellular carriers for NXX codes and telephone numbers in accordance with the status of cellular companies as providers of local exchange service.⁷³

To the extent that SBCIP and other VoIP providers acknowledge that they are indeed “providers of local exchange service” (or that the Commission so acknowledges), the CPUC will support direct access of VoIP providers to numbering resources which matches the access given to all other carriers.

V. Conclusion

The CPUC strongly urges the Commission to deny SBCIP’s Petition for a Limited Waiver. Granting the requested waiver before resolving the broader VoIP issues raised in the Commission’s *IP-Enabled Services* proceeding is a dangerous step towards allowing VoIP providers to reap an important benefit of being a carrier – direct access to numbering resources – without bearing a carrier’s responsibilities. Regardless of the regulatory status of VoIP providers, however, the CPUC also emphasizes that it is important that VoIP providers, as assignees of numbers to end-users, are subject to both federal and state numbering requirements to ensure proper accountability for the use of those numbers. If the Commission declines to treat VoIP providers as carriers, the Commission should explicitly delegate to states the jurisdiction to enforce numbering rules on all service providers that assign numbers to end users, including VoIP providers.

⁷³ *Wireless Policy Statement* at para. 4 (citation omitted).

Finally, in light of the legal and technical complexities associated with the issues of VoIP service and numbering resources, independently, the many concerns and questions raised by parties in Opening Comments are likely to be merely the tip of the iceberg. In sum, they present a compelling basis for rejecting SBCIP's Petition in favor of a careful review of the issues in a broader context like the Commission's *IP-Enabled Services* docket.

Respectfully submitted,

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