

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	CC Docket No. 99-200
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)	

REPLY COMMENTS OF VONAGE HOLDINGS CORP.

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Dated: August 31, 2004

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I. INTRODUCTION

Vonage Holdings Corp. (“Vonage”) submits these reply comments in the above-referenced proceeding. A total of ten parties filed comments in this docket, including four state commissions,¹ three telecommunications carriers,² two providers of Voice over Internet Protocol (“VoIP”) services³ and one cable/telecom provider.⁴ Of the comments filed, only one party supported the Petition for Limited Waiver (“Petition”) without reservation.⁵ Five parties argued that the Federal Communications Commission (“FCC”) should deny SBC-IP Communications, Inc.’s (“SBC-IP”) Petition for a variety of reasons, including: the fact that VoIP providers can currently obtain telephone numbers; that the issues raised by the Petition are being considered in the *IP-Enabled Services*

¹ The Iowa Utilities Board, the New York Department of Public Service, the Public Utilities Commission of Ohio and the Pennsylvania Public Utilities Commission submitted comments.

² AT&T Corp., BellSouth Corporation, and Sprint Corporation filed comments.

³ Comments were filed by PointOne and Vonage.

⁴ Time Warner Telecom filed comments.

⁵ See generally, *PointOne Comments*.

*NPRM*⁶ and; that use of the waiver procedure would be an inappropriate way to handle SBC-IP's request.⁷ The remaining parties, including Vonage, argued that prior to granting SBC-IP's request, more details were needed concerning a number of issues, such as: number portability; traffic exchange agreements; intercarrier compensation and; SBC-IP's proposed facilities readiness requirement.

In reviewing the comments filed in this proceeding, Vonage joins those parties that request further details prior to granting the Petition.⁸ Further details regarding SBC Communications Inc.'s commitment to making available non-discriminatory tandem interconnection arrangements to unaffiliated VoIP providers, as well as the full extent of the relationship between SBC-IP and its RBOC affiliate, are needed before the FCC allows the affiliate of a RBOC to obtain direct access to numbering resources. While these are important issues, Vonage sufficiently addressed these issues in its comments and the comments of other parties also highlighted similar concerns.⁹ Instead, Vonage limits these reply comments to respond to several concerns raised by the Public Utilities Commission of Ohio ("PUCO") regarding Vonage's service . Contrary to the allegations of the PUCO, the features and functions offered by Vonage are provided in conformity with all relevant rules and regulations and the FCC should reject entertaining assertions to the contrary.

⁶ See Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, (rel. Mar. 10, 2004).

⁷ See generally, *AT&T Corp. Comments*, *BellSouth Corporation Comments* , the *Iowa Utilities Board Comments*, *The Pennsylvania Public Utilities Commission Comments*, and *Time Warner Telecom Comments*.

⁸ See generally, *BellSouth Corporation Comments* and *Time Warner Telecom Comments*.

⁹ See *Comments of Vonage*; see also *AT&T Comments*, *Comments of the Public Utilities Commission of Ohio*, and *Comments of the New York State Department of Public Service*.

II. VONAGE'S SERVICE IS IN COMPLIANCE WITH ALL NUMBERING RULES

The PUCO has alleged that Vonage, in making available area codes of the customer's choosing, is acting "in direct violation of current FCC service provider number portability rules."¹⁰ Vonage questions the relevancy of this claim in the context of SBC-IP's Petition. SBC-IP has already committed to abide by existing numbering rules.¹¹ Accordingly, to the extent that the PUCO is concerned that granting SBC-IP's Petition will result in providing SBC-IP with the ability to assign numbers in violation of rules that are not the subject of SBC-IP's Petition, the PUCO's concerns are misplaced.

If, instead, the PUCO has used the occasion of SBC-IP's petition to engage in a polemic against Vonage, then Vonage urges the FCC to disregard the PUCO's comments on this matter. Importantly, the PUCO fails to cite the numbering rules it claims Vonage is violating. The absence of references to any rules is due to the fact that there are no rules prohibiting Vonage's innovative service offering. The Alliance for Telecommunications Industry Solutions' Industry Numbering Committee ("ATIS-INC") studied this very issue for approximately one year – from January through November, 2003—in the Voice over Internet Protocol ("VoIP") Workshop. As the FCC is aware, the participants of the INC include a wide range of communications companies including: ILECs, CLECs, cable/telecommunications companies, wireless providers, and, in this particular workshop, Vonage.¹² At the end of a lengthy and detailed study of numbering issues relating to the provision of VoIP services, the INC determined that "there is no

¹⁰ *Public Utilities Commission of Ohio Comments*, at 4.

¹¹ *See* Petition for Limited Waiver, *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).

¹² Participants included, among others: AT&T, BellSouth, Cingular, Level 3, MCI, Nortel, Qwest, SBC, Time Warner, T-Mobile, Verizon, Verizon Wireless, and Vonage.

basis . . . for chang[ing] [INC] guidelines until such time as regulatory decisions may provide direction”¹³ Indeed, in concluding it’s workshop, ATIS-INC did not find that there were any violations of the INC’s numbering guidelines or FCC rules. The PUCO claims that in providing customers with a choice of area codes, VoIP services could cause accelerated exhaust in “certain areas of the country with ‘desirable’ area codes”¹⁴ This very concern, as well as many other imagined “parade of horrors,” was considered in detail during the INC’s VoIP Workshop. Despite intense scrutiny, at the conclusion of the VoIP Workshop, no issues were found substantial enough to require revision to numbering rules and guidelines. Accordingly, consideration of this issue in the context of SBC-IP’s Petition is not only irrelevant but has already been considered and rejected by ATIS-INC.

III. VONAGE’S SEVEN-DIGIT DIALING CAPABILITY DOES NOT VIOLATE ANY LAWS OR RULES

The PUCO also claims that Vonage’s new software feature that allows for seven-digit dialing will “circumvent the intentions of the [PUCO] in area where overlays have been required.”¹⁵ Again, Vonage questions the relevancy of this issue to SBC-IP’s petition. The PUCO asserts that “all providers of *telecommunications services*, including [SBC-IP], Vonage, and all other IP-enabled providers, should be required to follow the FCC’s rulings regarding dialing patterns in order to maintain parity.”¹⁶ As noted above, SBC-IP has pledged to conform to all existing numbering rules and regulations. Alternatively, if the PUCO is arguing that Vonage and SBC-IP are telecommunications

¹³ *Industry Numbering Committee (INC) Report on VoIP Numbering Issues* (rel. Nov. 4, 2003), available at <http://www.atis.org/pub/clc/inc/iss/iss393.doc>.

¹⁴ *See PUCO Comments*, at 3-4.

¹⁵ *Public Utilities Commission of Ohio Comments*, at 4.

¹⁶ *Id.* at 5 (emphasis added).

carriers subject to rules and regulations that apply to such entities, then this portion of the PUCO's comments appears directed at a different proceeding—the *IP-Enabled Services NPRM*.¹⁷ Under existing law, federal courts have found Vonage's service to be an "information service" under federal law.¹⁸ Accordingly, regulations applicable to telecommunications service providers are inapplicable to the Company.

Aside from the fact that there is no legal basis for subjecting Vonage's service to telecommunications regulations, Vonage respectfully submits that the PUCO has failed to take into consideration important policy considerations in evaluating Vonage's service. Providers of innovative VoIP services, like Vonage, face enormous hurdles to market entry. Vonage provides a communication service that is available as an application over the Internet and the Company competes nationwide. Accordingly, Vonage offers service in many areas where there are no area code overlays. Prior to activating its 7-digit dialing software feature, Vonage customers located in areas without overlays had to dial ten digits, placing the Company at a significant competitive disadvantage as compared to traditional providers of telephone services. Vonage urges both the PUCO and the FCC to remember the law of unintended consequences when regulators analyze emerging services reflexively, rather than through deliberate analysis. Subjecting information service providers like Vonage to a ten-digit dialing obligation would result in the Company either incurring significant costs to re-design its service offering, if it could even do so, solely for purposes of making it operate like legacy technology, or

¹⁷ See Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, (rel. Mar. 10, 2004).

¹⁸ See *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, 290 F. Supp. 2d 993 (D. Minn. 2003); see also Preliminary Injunction Order, *Vonage Holdings Corp. v. New York State Public Service Commission*, S.D.N.Y., Case No. 04 CIV 4306 (July 16, 2004).

hamstringing itself in areas of the United States where customers are only required to dial 7-digits.

It is also necessary for the FCC and state commissions to remember the truly revolutionary service that Vonage has brought to market. Vonage customers are required to install specialized customer premises equipment (“CPE”) in order to make use of Vonage’s service. By implementing a seven-digit dialing feature, Vonage has made available to its users a software program that allows them to customize their CPE. Adopting a regulation that would prohibit VoIP providers from allowing their customers to utilize 7-digit dialing software would be tantamount to prohibiting users from programming speed dialing features on telephone sets or on private branch exchange systems. Clearly, the intent of the relevant FCC regulation is to level the competitive playing field between providers of circuit-switched telephone service where programming occurs at the switch level, rather than at the edge of the network in CPE.

IV. CONCLUSION

Vonage urges the FCC to obtain more details from SBC-IP prior to granting its Petition. Specifically, many of the details of how it intends to utilize numbering resources, and comply with existing numbering rules requires further explanation. Additionally, SBC-IP's RBOC affiliate must be compelled to adopt safeguards and offer interconnection such that all providers of VoIP services are able to compete with SBC-IP on a level playing field.

Vonage also emphasizes that the concerns raised by the PUCO concerning area codes and seven-digit dialing are unrelated to this proceeding and should be rejected by the FCC. Vonage has already expended a great deal of resources in participating in an ATIS-INC VoIP Workshop where the Company's practices were examined without any adverse finding. Vonage's service provides tremendous consumer benefits and the PUCO's concerns only underscore how applying legacy telecommunications regulation to Internet applications would be harmful to consumers and the emerging industry.

Respectfully submitted,

/s/

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