

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

In the Matter of)	
)	
)	
Administration of the North American Numbering Plan)	CC Docket 99-200
)	
)	
Petition of Nuvio Corporation.)	
For Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission’s Rules Regarding)	
Numbering Resources)	

PETITION FOR LIMITED WAIVER

Nuvio Corporation (“Nuvio”) hereby respectfully requests that the Wireline Competition Bureau (“Bureau”) of the Federal Communications Commission (the “Commission”), grant Nuvio a limited waiver of Section 52.15(g)(2)(i) of the Commission’s rules to allow Nuvio to obtain numbering resources directly from the North American Numbering Plan Administrator (“NANPA”) and/or the Pooling Administrator (“PA”). Nuvio intends to use these numbering resources in deploying IP-enabled services, including Voice over Internet Protocol (“VoIP”) services, on a commercial basis to residential, governmental, educational and business customers.

The Commission recently granted a petition filed by SBC Internet Services, Inc. (SBCIS) which presented facts and circumstances indistinguishable from Nuvio’s situation, described here. In that Order, the Commission agreed, for the same reasons presented here, that there was good cause for granting the petition, and that doing so would be in the public interest. In brief, the Order acknowledges that for a non-carrier, such as SBCIS or Nuvio, Section 52.15(g)(2)(i) causes unnecessary expense and delay in the deployment of IP-enabled services by requiring such entities to become certified carriers in every state in which they intend to do business, or contracting for services with such a carrier in every such location in

order to gain access to numbering resources. For the reasons stated in that petition and the Commission's order granting it, and the reasons stated herein, Nuvio likewise urges that this petition meets the standard established for granting such waivers, and that granting this petition will serve the public interest. Nuvio requests that the Bureau grant it expeditiously on delegated authority within the precedent clearly established by the SBCIS Order.

I. THIS PETITION IS LIMITED IN NATURE AND NUVIO IS AMENABLE TO COMPLYING WITH THE SAME CONDITIONS IMPOSED ON SBCIS IN THE ORDER

Nuvio's petition for waiver is styled as a limited petition because (a) Nuvio seeks relief only from the specific section of the rules cited in the caption and (b) Nuvio seeks relief only for a limited period of time, namely, until the Commission adopts final numbering rules in the pending *IP-Enabled Services* proceeding, as did SBCIS. Both of these limitations are consistent with the contours of the recently granted SBCIS petition, and the Order granting it. Further, Nuvio is amenable to complying with the numbering resource-related conditions that the Commission imposed upon SBCIS in paragraphs 9 and 10 of the Order.¹

II. APPLICABLE STANDARD FOR GRANTING THE WAIVER

Nuvio acknowledges that the Commission's rules enjoy a presumption of validity that creates a "heavy burden" when applying for a waiver. Nevertheless, Nuvio believes that the Commission's recent granting of the SBCIS petition should predispose if not predetermine the granting of this petition based on

¹ Nuvio notes that 47 C.F.R. Section 52.15(g)(2)(ii), the so-called facilities readiness test, requires applicants for numbering resources to present evidence that they are or will be ready within 60 days to utilize the numbering resources requested. This rule is reasonably aimed at ensuring efficient use of scarce numbering resources. The Commission's SBCIS Order discusses the possibility that the requestor might present an interconnection agreement with the incumbent LEC as evidence of compliance with this subsection of the rules. We state our willingness to accept a waiver conditioned on the obligation to show evidence of readiness based upon the understanding that there are several ways to demonstrate such readiness, and that presenting an interconnection agreement with the incumbent LEC is just one of them.

indistinguishable facts and circumstances, outlined below. It is well settled that the Commission may waive its rules when good cause is demonstrated² and where requiring adherence to the rule would be inconsistent with the public interest.³ Considerations of hardship, equity, or more effective implementation of overall policy on an individual basis may be deemed relevant.⁴ Just as those considerations weighed in favor of the granting of the SBCIS's waiver petition, they militate in favor of granting this petition.

III. BACKGROUND: NUVIO'S SERVICE OFFERINGS AND THE NEED FOR A WAIVER

Nuvio is headquartered in Kansas City, Missouri and develops, licenses, and markets VoIP services to businesses, education, consumer and government customers. Its multi-state marketing effort reaches customers through a growing network of private-label partners. In addition to consumer NuvioVoice products, Nuvio also has NuvioCentrex, a complete IP based Centrex application for businesses that updates traditional telephony infrastructure.

The nationwide market that Nuvio is addressing makes compliance with 47 C.F.R. Sec. 52.15(g)(2)(i) a hardship that increases service costs and retards deployment to customers. The recently filed RKN, Inc. Petition for Limited Waiver⁵ of the same section of the rules as is at issue here contains an excellent overview of the operational hardships that result from requiring adherence to the rule, and is consistent with Nuvio's experience, too. The problems that Nuvio is encountering are the same as those from which

² 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

⁴ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁵ *In the Matter of Administration of the North American Numbering Plan, 99-200, RNK, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed February 4, 2005

SBCIS sought and won relief. Specifically:

- Section 52.14(g)(2)(i) establishes that only certified carriers ready to provide service in a geographic area are permitted to self-provision numbers. This requires a competitive IP-enabled services provider like Nuvio either to (a) become certified in every state where it might win customers or (b) obtain access to numbers through a certified carrier. As RKN points out, however, carriers are not permitted to sell numbers, so gaining access to numbers that have been assigned to a carrier requires competitive IP enabled services providers to purchase ISDN-PRI trunk services from such carriers in order to gain access to numbering resources.
- Both of these approaches are unsatisfactory, however, for several reasons.
 - Obtaining state certification in every state where Nuvio does or will do business is expensive and onerous. It is also an inefficient way to gain access to numbering resources in a system that has de facto moved beyond the geographic connection between area codes and customers.
 - Purchasing services from a certified carrier is more expensive than the incremental, administrative costs of direct access to numbering resources. Further, the numbers provided in association with such services often come with practical restrictions on the portability of the number – a process that the Commission has sought to facilitate in other service contexts, in the interest of competition – and restrictions on the type of traffic that may be carried.

These are the same inefficiencies and obstacles of which SBCIS complained in its petition because of its status as a non-carrier. As Nuvio is identically situated to SBCIS, and as it is prepared to offer the same types of IP-enabled services, the benefits of which the Commission has foreseen and acknowledged, both in the SBCIS Order and its IP-Enabled Services NPRM, there is good cause to grant this waiver and

doing so is in the public interest.

IV. AS IN THE SBCIS ORDER, GOOD CAUSE EXISTS HERE FOR GRANTING THE WAIVER AND GRANTING THE WAIVER IS IN THE PUBLIC INTEREST

In its Order granting the SBCIS waiver petition, the Commission found that “special circumstances” supported the conclusion that granting the waiver was in the public interest, and that, as such, “good cause” existed to grant the waiver, thus meeting the standard specified in the Commission’s rules.

In reviewing the “special circumstances” that supported the granting of the waiver, the Commission explained that requiring a provider to partner with a LEC in each and every state to obtain access to numbers would slow down deployment of IP-enabled services, and, therefore, delay propagation of the economic and other benefits that would accrue from such deployment to users across the country. The Commission has described IP-enabled services as having revolutionary potential benefits, and has exhibited enthusiasm for removing obstacles to their timely deployment.

Nuvio faces exactly the same obstacles to timely deployment of its new services as the Commission deemed worthy of relief in granting SBCIS’s petition. Nuvio seeks by means of this petition to overcome these obstacles to offering exactly the type of services that the Commission has indicated will bring great benefits to the country, which was the prime “good cause” and “public interest” justification that the Commission relied upon in the SBCIS Order. Therefore, Nuvio’s circumstances are identical to SBCIS’s circumstances both as to obstacles and objectives, and Nuvio urges the granting of this waiver, too.

CONCLUSION

For all of the foregoing reasons, Nuvio requests prompt consideration and granting of its petition by the Bureau pursuant to authority delegated to it by the Commission.

Respectfully submitted

//signed//

Jason P. Talley
Chief Executive Officer
Nuvio Corporation

//signed//

Kathleen M.H. Wallman
Consultant to Nuvio Corporation

February 14, 2005