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

In the Matter of	)	
	)	
	)	
Administration of the North American Numbering Plan	)	CC Docket 99-200
	)	
	)	
UniPoint Enhanced Services d/b/a PointOne Petition For Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources	)	

PETITION FOR LIMITED WAIVER

UniPoint Enhanced Services d/b/a PointOne (PointOne), an unregulated information service provider, hereby respectfully requests that the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (the Commission or FCC), grant PointOne a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules to allow PointOne to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA).[1] PointOne intends to use these numbering resources in deploying IP-enabled services,[2] including Voice over Internet Protocol (VoIP) services, on a commercial basis to residential and business customers.

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[1] See *In the Matter of Administration of the North American Numbering Plan,* Order, FCC 05-20, CC Docket No. 99-200, FCC 05-20 (Feb. 1, 2005)(*SBCIS Waiver Order*) at ¶ 5.

[2] In this Petition, we use the term "IP-enabled services" and "VoIP services" interchangeably to collectively refer to PointOne's services. *See also, IP-Enabled Services,* WC Docket No. 04-36, *Notice* of Proposed Rulemaking, 19 FCC Rcd 4863 at ¶ 1, fn 1 (2004) *(IP-Enabled Services NPRM).*

I. INTRODUCTION

As a leading world-wide, facilities-based provider of Internet Protocol (IP)-enabled services, PointOne has deployed a state-of-the-art, Advanced IP Communications Network. This all-IP network enables PointOne to deliver robust and sophisticated "any-to-any" services. What this means is that PointOne interconnects with, transmits, and routes IP traffic between any origination and termination facility or device (including phones, computers, PDAs, wireless devices, etc) without discriminating based on the form or capability of the facility or device. For instance, PointOne is capable of both IP and TDM-based interconnection and can terminate voice traffic entering its network as an e-mail to a computer, a text message on a PDA, or a voice application on a SIP phone. Although interconnection with the public switched network (PSTN) presents unique and challenging issues for an unregulated information service provider, PointOne recognizes the tremendous network effects and resulting consumer benefits of providing connectivity to all types of networks and end users. PointOne, therefore, offers services that can be utilized by any end user whether connected to PSTN or IP end points.

For the reasons stated in SBCIS's petition and the Commission's order granting it, and the reasons stated herein, PointOne likewise asserts that this petition meets the standard established for granting such waivers, and that granting this petition will serve the public interest. PointOne requests that the Bureau grant its request expeditiously on delegated authority within the precedent clearly established by the *SBCIS Waiver Order*.

II. BACKGROUND - SBCIS WAIVER PETITION AND ORDER

In early July 2004, SBCIS requested a "limited waiver" of 47 CFR §52.15(g)(2)(i) in order that it may provide its VoIP services to end-users.[3] In its request, SBCIS stated that granting its petition, which would allow it to obtain numbering resources directly from the NA or PA, would serve the public interest, foster efficient use of numbering resources, allow for innovation and growth of VoIP and attendant services, and promote efficient interconnection between VoIP providers and LECs.[4]

On February 2, 2005, the FCC issued an Order granting SBCIS' waiver.[5] It declared that granting SBCIS' waiver of the "certification requirement" rule was in the public interest in that it allowed SBCIS to "deploy[] IP-enabled services, including Voice over Internet Protocol (VoIP) services, on a commercial basis to residential and business customers."[6] The Commission found that absent relief, SBCIS would be forced into inefficient interconnection arrangements due to the need to partner with LECs in order to obtain numbers.[7] It further found that granting the waiver was in the public interest, insofar as it furthered the Commission's goal of deploying broadband and other advanced services. However, the Commission conditioned its approval on SBCIS' compliance with the Commission's other numbering requirements. Specifically, SBCIS is required to: (1) comply with the Commission's directives regarding number utilization,

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[3] *SBC IP Communications Inc. Petition for Limited Waiver of Section 52.15(g)(2)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed July 7, 2004 (*SBC IS Waiver Petition*).

[4] *SBCIS Waiver Petition* at pp.1-2.

[5] *SBCIS Waiver Order* at ¶ 1.

[6] *Id.* at ¶ 1, ¶ 4.

[7] *Id*. at ¶ 6.

forecasting, and pooling;[8] (2) notify both the FCC and relevant state commission 30 days prior to submitting a request for numbering resources;[9] (3) process porting requests "directly" as opposed to through a LEC;[10] (4) comply with the "facilities readiness" requirement by requiring a state-approved interconnection agreement between it and the applicable incumbent LEC, or equivalent services ordered via an approved tariff;[11] and (5) comply with any other obligations the Commission may impose in its *IP-Enabled Services* proceeding.[12] Given these conditions, the Commission ruled that SBCIS met its burden for showing "good cause" in support of its waiver request.[13] The Commission also found that to the extent other entities sought waivers under similar circumstances, that it would grant comparable relief.[14]

III. DISCUSSION

A. Need for A Waiver

The waiver petitions recently filed by RKN Telecom (RNK)[15] and Nuvio Corporation (Nuvio)[16] contain an excellent overview of the operational hardships that result from requiring adherence to FCC Rule 52.15(g)(2)(i), and is consistent with PointOne's experience, as well. The problems that PointOne has and may encounter are the same as those from which SBCIS sought and won relief. Specifically, as succinctly delineated by Nuvio in its petition:

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8 *Id.* at ¶ 9.

9 *Id.*

10 *Id.*

11 *Id.* at ¶ 10.

12 *Id.* at ¶ 11.

13 *Id.* at ¶ 4.

14 *Id.* at ¶ 4, ¶11.

15 *RNK Telecom. Petition for Limited Waiver of Section 52.15(g)(2)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed Feb. 4, 2005 (*RNK Waiver Petition*).

16 *Nuvio Corporation Petition for Limited Waiver of Section 52.15(g)(2)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed Feb. 14, 2005 (*Nuvio Waiver Petition*).

- 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 PointOne 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 and Nuvio point out, 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 for several reasons:
- Obtaining state certification in every state where PointOne 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 an unregulated, non-carrier. As PointOne is similarly 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 Waiver Order* and its *IP-Enabled Services NPRM*, there is good cause to grant this waiver and doing so is in the public interest.

B. GOOD CAUSE EXISTS FOR THE COMMISSION TO GRANT POINTONE A LIMITED WAIVER OF 47 C.F.R.§52.15(g)(2)(i)

Pursuant to section 1.3 of the Commission's rules, the Commission, or Bureau through delegated authority, may waive a rule upon a showing of "good cause."[17] Under this standard, the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and where special circumstances warrant a deviation from the rules, which deviation serves the public interest.[18] In considering whether to grant a waiver, the Commission should take into account issues of hardship, equity, or more effective implementation of overall policy.[19]

As stated *supra,* the Commission recently granted a similar petition filed by SBCIS. Specifically, the Commission found that allowing SBCIS to obtain numbers on its own would encourage the use of IP-enabled services that interconnect with the PSTN, thereby facilitating rapid deployment of new technology to American consumers.[20]

Requiring IP-enabled service providers to become common carriers in each state before allowing direct access to numbering resources clearly rises to the level of hardship, as the Commission found in the *SBCIS Waiver Order*, and would serve as a barrier to entry of IP-enabled services into the marketplace. As to equity issues, the

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[17] 47 C.F.R. § 1.3.

[18] *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*Wait Radio*); *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[19] *Id*., 418 F.2d at 1159.

[20] *SBCIS Waiver Order* at ¶¶4, 6.

Commission further stated in the *SBCIS Waiver Order* that "[t]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order."[21] PointOne is requesting comparable relief to that requested by SBCIS in its petition and should it not have the benefit of such relief, PointOne would suffer an unfair competitive disadvantage when competing with SBCIS.

Because PointOne's direct access to numbering resources will promote the efficient and cost effective deployment of revolutionary IP-enabled service to the public, thereby serving the public's interests with increased and immediate choices, the Bureau has good cause to grant PointOne's Petition for Limited Waiver of 47 C.F.R. §52.15(g)(2)(i).

C. EVIDENCE OF FACILITIES READINESS SHOULD NOT BE LIMITED TO INTERCONNECTION AGREEMENTS WITH INCUMBENT LECS

PointOne agrees with the concerns presented by RNK regarding the "facilities-readiness" test in a VoIP context. As explained by RNK, by this rule, an applicant for initial numbering resources must, at a minimum, demonstrate that it "is or will be capable of providing service within sixty (60) days of the numbering resources activation date."[22] In the Commission's *First Number Resources Optimization Order (NRO)*, it found that applicants for numbering resources must show to the pooling administrator, that they have business plans, interconnection agreements, or contracts for unbundled network elements, or that equipment has been purchased.[23] In its *SBCIS Waiver Order*, the Commission stated that SBCIS should submit "an interconnection agreement with the

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[21] *SBCIS Waiver Order* at ¶4.

[22] 47 C.F.R. §82.15(g)(2)(ii).

[23] *Numbering Resource Optimization*, First Report and Order and Further Notice of Proposed Rulemaking, CC 99-200, 15 FCC Rcd 7574, ¶ 96 (2000).

incumbent LEC that serves the geographic area in which the carrier proposes to operate"[24] or proof of purchase of interconnection via a lawful and approved tariff.[25]

PointOne is not opposed to a similar condition on its grant of authority. However, PointOne agrees with RNK that the Commission should permit unaffiliated VoIP providers to demonstrate facilities readiness by providing interconnection or traffic exchange agreements with any LEC serving the relevant geographic area not just the relevant ILEC.

Although direct tandem-level interconnection is *desirable*, because unregulated information service providers have no legally enforceable right to interconnect directly with ILECs, indirect interconnection should be permitted to the extent that it is *functionally equivalent* to direct connection. As clearly articulated by RNK, approval of PointOne's request would be consistent with the evolution of interconnection methods and the Commission's encouragement of development of wholesale, as well as retail markets.

IV. CONCLUSION

For all of the reasons stated herein, PointOne respectfully requests that the Bureau, pursuant to authority delegated to it by the Commission, expeditiously grant its Petition for Limited Waiver of 47 C.F.R. §52.15(g)(2)(i).

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[24] *SBCIS Waiver Order* at ¶ 10.

[25] *Id*.

Respectfully Submitted,

By /s/ Staci L. Pies

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