

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
) CC Docket No. 99-200
The North American Numbering Plan)

**OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.
TO UNIPOINT ENHANCED SERVICES d/b/a POINTONE
PETITION FOR LIMITED WAIVER**

I. POINTONE IS NOT SIMILARLY SITUATED TO SBC INTERNET SERVICES, INC. (“SBCIS”). POINTONE SHOULD NOT BE GRANTED NUMBERS UNLESS IT SECURES THOSE NUMBERS IN A CARRIER CAPACITY OR SPECIFICALLY ON BEHALF OF ITS IP-ENABLED OPERATIONS.

A. Qwest Opposes PointOne’s Waiver Petition Because of its Material Omissions

Qwest Communications International Inc. (“Qwest”), on behalf of its wireline and IP-enabled operations,¹ opposes UniPoint Enhanced Services d/b/a/ PointOne (“PointOne”) Petition for Limited Waiver, filed March 2, 2005 (“Waiver Petition” or “Petition”).² PointOne is a carrier attempting to position itself in name and regulatory treatment solely as an enhanced service provider. It is not similarly-situated to SBCIS and, accordingly, should not be granted a limited waiver as if it were.³

¹ Qwest Corporation (“QC”) and Qwest Communications Corporation (“QCC”) that houses its IP-enabled operations.

² See *Public Notice*, CC Docket No. 99-200, DA 05-663, rel. Mar. 11, 2005.

³ SBC IP Communications, Inc. (n/k/a SBC Internet Services, 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 (“SBCIS Petition”). The Federal Communications Commission (“Commission”) granted the SBCIS Petition on February 1, 2005, see *In the Matter of Administration of North American Numbering Plan, Order*, CC Docket No. 99-200, FCC 05-20 (“SBCIS Waiver Order”).

The purpose of this opposition is to alert the Commission that a grant of a seemingly innocent “me too” waiver might be argued, by the beneficiary of the waiver, to confer or endorse a particular “status” on the petitioner -- *i.e.*, the petitioner “must be” an IP-enabled service provider or why would it be seeking a waiver? If a waiver is granted, the status of the IP-enabled service provider is confirmed. As discussed in greater detail below, this is a disturbing proposition when a service provider is simultaneously a common carrier **refusing to admit to such status**, as well as an IP-enabled provider that might otherwise be entitled to seek a waiver in the nature of the SBCIS Petition. This is the case with PointOne.

PointOne offers common carrier service yet refuses to admit to that status. Its refusal is used as a sword to evade the payment of access charges that are lawfully owed to local exchange carriers that provide tariffed services to PointOne. Indeed, a review of PointOne’s Waiver Petition, as well as its website (www.pointone.com/), demonstrates that PointOne is providing at a minimum common carrier termination service, utilizing its Internet backbone network “in the middle,” similarly to what AT&T Corp. (“AT&T”) was doing as outlined in the *AT&T IP In The Middle Case*.⁴

Supported by relevant Commission precedent, Qwest has been disputing PointOne’s carrier status with it for some time in the context of liability for access charges for PointOne’s terminating traffic. The Commission should take no action here that endorses the charade being touted by PointOne that it is solely an information or enhanced service provider and maintains no common carrier status. The Commission would possibly be acting in just such an endorsing manner (even if unwittingly) should it grant a “waiver” to PointOne that might later be argued as

⁴ See *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order*, 19 FCC Rcd 7457 (2004) (“*AT&T IP In The Middle Case*”).

a ruling on PointOne's "status" as an information provider. For this reason, Qwest opposes any regulatory action in favor of PointOne's Waiver Petition.

B. PointOne is a Common Carrier with Respect to Certain of its Offerings; and not Exclusively an Information Provider as its *Waiver Petition* Suggests

In its Waiver Petition, PointOne describes its business as the delivery of "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."⁵ PointOne's description of its business is nothing less than an admission of its carrier status with respect to certain of its offerings. Its common carrier status is confirmed by a review of its website.⁶

At a minimum, PointOne is an aggregator of terminating common carriage traffic, using an IP backbone network as its technology of choice for the aggregation.⁷ As with AT&T, "the decision to use its Internet backbone to route [or aggregate] certain calls is made internally"⁸ by PointOne. It appears that any enhanced functionality associated with the traffic termination is not offered to PointOne's customers. Rather, it looks as if those capabilities are simply inherent in its equipment.⁹ Moreover, it most likely also is true that any purported additional or

⁵ PointOne Waiver Petition at 2.

⁶ On its website, PointOne's suite of products is claimed to include termination services. On information and belief, Qwest is of the position that DS3 terminations are included in those services.

⁷ The fact that some interexchange carriers might argue that their terminating "carrier" of choice -- PointOne -- is not a carrier but an information or enhanced service provider is immaterial at this point in the charade. The facts are the facts. All these players are well versed in obfuscating those facts to advance their pecuniary purpose of access charge avoidance.

⁸ *AT&T IP In The Middle Case*, 19 FCC Rcd at 7465 ¶ 12.

⁹ *Compare In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, *Regulation of Prepaid Calling Card*

“enhanced” functionality that PointOne claims is associated with its termination service is merely incidental to the telecommunications service offered, rendering the total overall service still a telecommunications service.¹⁰

In its Waiver Petition, PointOne fails to identify or describe any discrete business corporation, division or operation dedicated solely to the provision of IP-enabled services, implying that it is an information service provider in its entirety. This is unlike the SBCIS Petition that was filed on behalf of an “information service provider affiliate of SBC Communications, Inc.”¹¹ It is also dissimilar to the approach taken by RNK Inc. d/b/a RNK Telecomm, in its filing where it acknowledged its carrier status with respect to at least aspects of its service offerings and asserted that it offers its VoIP services through a separate division,¹² and more recently by Qwest,¹³ where the petitioner’s carrier operations requested numbering resources specifically on behalf of its IP-enabled operations.

Because it is not possible to determine whether PointOne is a common carrier with an information service provider arm, or an information service provider denying its common carrier status, the Commission should be wary and proceed cautiously with respect to PointOne’s Waiver Petition.

Services, WC Docket No. 05-68, *Order and Notice of Proposed Rulemaking*, FCC 05-41, rel. Feb. 23, 2005, ¶ 15.

¹⁰ *Id.* at ¶ 16.

¹¹ SBCIS Petition at 1.

¹² *See RNK Petition for Limited Waiver*, CC Docket No. 99-200, dated Feb. 4, 2005 at 7 (referencing RNKVoIP™ division).

¹³ *See Qwest Communications Corporation, on Behalf of its IP-Enabled Service Operations, Petition for Limited Waiver*, CC Docket No. 99-200, filed Mar. 29, 2005.

C. PointOne's Waiver Petition is Fatally Flawed and Should be Denied

PointOne seeks numbers on behalf of PointOne in its entirety, yet stating that it “intends to use . . . numbering resources in deploying IP-enabled services, including Voice over Internet Protocol (VoIP) services[.]”¹⁴ So far, PointOne’s filing seems to chant the mantra of a “me too” waiver, using language almost identical to that used by SBCIS and others seeking direct access to telephone number resources.

PointOne’s failure to differentiate between its common carriage offerings (that would support direct access to numbering resources from the North American Numbering Plan Administrator assuming PointOne’s application for such numbers was in order) and its IP-enabled operations (that require a waiver to secure direct access to number resources) is fatal to its requested relief. Without a commitment that any numbering resources secured by PointOne will be used **only** with respect to its IP-enabled offerings, PointOne does not present facts similar to those associated with the SBCIS Petition. Thus, the Commission is in no position to “grant . . . relief to an extent comparable to what” it granted in the *SBCIS Waiver Order*.¹⁵ In short, contrary to PointOne’s undemonstrated assertion,¹⁶ it is *not* similarly situated to SBCIS. Therefore, it should not be granted a “me too” waiver.

The fact that a service provider may experience “operational hardships . . . result[ing] from requiring adherence to FCC Rule 52.15(g)(2)(i)”¹⁷ is, in and of itself, not the standard for granting a “me too” waiver in the nature of the SBCIS Petition. If the service provider is a common carrier, then -- in that capacity -- relief from the hardship would be accomplished *via a*

¹⁴ PointOne Waiver Petition at 1.

¹⁵ See *SBCIS Waiver Order* ¶ 11.

¹⁶ PointOne Waiver Petition at 5.

¹⁷ *Id.* at 4.

petition for waiver to the Commission of the specific aspects of the rule creating the hardship. And, as of late, if the service provider is an IP-enabled service provider similarly-situated to SBCIS, the provider -- in that capacity -- can petition for a waiver to the Commission, as well.¹⁸ Upon meeting certain fact patterns and agreeing to certain conditions, the information service provider might also be granted direct access to telephone number resources.

PointOne's filing demonstrates that the "me too" waiver process is susceptible to gaming by service providers intent on such purpose. The Commission should exercise substantial caution in reviewing and acting upon the "me too" waiver petitions so that it can be assured that the proponents of such filings are factually similarly-situated to SBCIS. Should the Commission fail to engage in this kind of disciplined analysis, service providers believing they can be anything they want to be just by naming themselves one thing or another will utilize the limited matter of access to numbering resources to claim legal and policy "victories" far in excess of that limited context.

The facts and the format of a service provider's business operations is critical to an assessment of whether it is a common carrier in all aspects of its operations, a common carrier that also offers non-common carriage offerings, or not a common carrier at all. These appellations continue to carry with them substantial regulatory obligations ranging from maintenance of the common welfare (*e.g.*, through universal service contributions, access to services by persons with disabilities) to the lawful assessment and payment of access charges.

If any business operation can petition the Commission through the vehicle of a waiver petition regarding access to numbering resources, and -- if successful -- argue that the waiver

¹⁸ Arguing that the inefficiencies identified by other parties filing for waivers "are the same inefficiencies and obstacles of which SBCIS complained in its petition *because of its **status as an unregulated, non-carrier.***" *Id.* at 5 (emphasis and bold added).

confirmed the information service provider status of the operator, the equitable action associated with an SBCIS-type of waiver will be converted into a unwitting confirmation that the petitioner maintains a “status” of an unregulated information provider (*i.e.*, why grant a waiver to a carrier through an SBCIS-type process? Only information providers or information services operations need waivers).¹⁹ This cannot be in the public interest and assertions to the contrary²⁰ are disingenuous.

II. CONCLUSION

For all of the above reasons, Qwest urges the Commission to proceed cautiously in reviewing requests for “me too” waivers, similar to the waiver granted to SBCIS. No filing party should be able, through the procedural mechanism of making a filing at the Commission, to game the waiver process in a manner that implicates and impacts substantive carrier rights and obligations. Accordingly, PointOne’s Waiver Petition should be denied at this time.

Respectfully submitted,

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¹⁹ *See id.* at 5-6.

²⁰ *Id.* at 2.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC. TO UNIPOINT ENHANCED SERVICES d/b/a POINTONE PETITION FOR LIMITED WAIVER** to be 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 99-200, 2) served, via e-mail on Ms. Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission at sheryl.todd@fcc.gov, 3) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com, and 4) served via e-mail on Staci L. Pies, Vice President, Governmental and Regulatory Affairs, PointOne, at spies@pointone.com

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