

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

In the Matter of )  
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RNK, Inc. d/b/a RNK Telecom, Nuvio )  
Corporation, Unipoint Enhanced Services d/b/a )  
Pointone, Dialpad Communications, Inc., ) CC Docket No. 99-200  
Vonage Holdings Corporation, and Voex, Inc. )  
Petitions for Limited Waiver of )  
Section 52.15(g)(2)(i) of the Commission's Rules )  
Regarding Access to Numbering Resources )  
\_\_\_\_\_ )

**REPLY COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”) hereby replies to comments submitted in response to the request by the Federal Communication Commission (the “Commission”) for comments regarding the above-captioned petitions for a limited waiver of section 52.15(g)(2)(i) of the FCC's rules.<sup>1</sup> As explained below, T-Mobile urges the Commission to require Petitioners to demonstrate they are both able and willing to comply with the conditions set forth in the SBCIS Waiver Order *before* granting any further waivers of section 52.15(g)(2)(i) of the FCC's rules. T-Mobile agrees with the majority of commenters in this proceeding that the FCC must strictly hold the Petitioners to their heavy burden in seeking a waiver so the efforts and resources that the Commission, the states, and the industry have invested to implement numbering optimization measures will not be unnecessarily compromised.

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<sup>1</sup> See *Wireline Competition Bureau Seeks Comment on RNK, Inc. d/b/a RNK Telecom, Nuvio Corporation, Unipoint Enhanced Services d/b/a Pointone, Dialpad Communications, Inc., Vonage Holdings Corporation, and Voex, Inc. Petitions for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, Public Notice, CC Docket No 99-200, DA 05-663 (rel. March 11, 2005).

**I. THE PUBLIC INTEREST REQUIRES THAT ANY FURTHER WAIVERS OF SECTION 52.15(g)(2)(i) OF THE FCC'S RULES BE SUBJECT TO THE CONDITIONS SET FORTH IN THE SBCIS WAIVER ORDER**

The comments in this proceeding reflect nearly universal agreement that any further waivers of section 52.15(g)(2)(i) of the Commission's rules must be subject to the conditions set forth in the SBCIS Waiver Order.<sup>2</sup> In the SBCIS Waiver Order, the Commission made clear that SBCIS and every entity that subsequently receives a similar waiver must (1) comply with the FCC's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and (2) process port requests *directly* rather than going through a LEC.<sup>3</sup> T-Mobile agrees that strict compliance with these conditions is crucial to ensure that the waivers do not undermine the Commission's numbering optimization rules and policies, including the policy against permitting carriers to receive numbering resources before they are ready to use them.<sup>4</sup>

As the Maine Public Utilities Commission explained, the Commission's numbering optimization rules and policies have been a crucial factor in slowing the rate at which numbers

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<sup>2</sup> See, e.g., Maine Public Utilities Commission at 2-3 (urging the Commission to condition Petitioner's waivers in the same way it conditioned SBCIS's waiver and to add an additional condition); California Public Utilities Commission at 3 (commenting that it does not oppose granting the same waiver if it is under the same conditions and urging the Commission to affirm that VOIP providers are subject to state numbering requirements to the same extent that other companies are); Ohio Public Utilities Commission at 2-3 (supporting SBCIS's intention to abide by the Commission's numbering rules and recommending that, at a minimum, all waiver recipients be required to do the same); SBCIS at 1 (asking the Commission only to ensure that all waiver recipients are subject to the same requirements); XO at 3-5 (demonstrating the importance of the numbering rules and the conditions of SBCIS's waiver).

<sup>3</sup> See *SBCIS Waiver Order* at ¶ 9 ("Requiring SBCIS to comply with numbering requirements will help alleviate concerns with numbering exhaust.").

<sup>4</sup> See, e.g., Maine Public Utilities Commission at 2 (noting that telephone numbers are a "precious public resource" and area code exhaust has "cost consumers and businesses millions, if not billions, of dollars over the past ten years."); see also, e.g., XO at 3-4 (describing the rapid rate of new area code assignment that was a catalyst for the Commission to implement the numbering optimization measures).

were being assigned and prevented what was a near exhaustion of resources.<sup>5</sup> Moreover, as the Iowa Utilities Board noted, disrupting the current numbering rules and policies merely to permit non-common carriers to receive numbers directly from NANPA would be unacceptable and flatly inconsistent with the public interest.<sup>6</sup> Accordingly, it is absolutely necessary for the Commission to ensure that (1) no waivers are granted to entities before they are actually ready to use numbers, and (2) waiver recipients strictly comply with the conditions set forth in the SBCIS Waiver Order and use any numbers they receive as efficiently as possible.<sup>7</sup>

## **II. THE FCC SHOULD GRANT A WAIVER ONLY IF PETITIONERS DEMONSTRATE THEY ARE CAPABLE OF COMPLYING WITH THE SBCIS WAIVER ORDER CONDITIONS**

As numerous commenters noted, the Petitioners in this proceeding have not demonstrated that grant of the waivers they request would serve the public interest, or that they are capable of complying with (1) the FCC's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and (2) are able to process port requests directly rather than going through a LEC.<sup>8</sup> However, as explained above, compliance with these conditions is the only way to ensure that the requested waiver is in

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<sup>5</sup> Maine Public Utilities Commission at 1-2 (explaining how the MPUCs diligence, in conjunction with federal regulators and the industry, has helped it put off the need for a new area code in Maine for an estimated 12 years).

<sup>6</sup> Iowa Utilities Board at 2 (urging the Commission to be cognizant of the potential harm to area code stability that is a likely result of the waivers and to condition the approval of the waivers to minimize such harm).

<sup>7</sup> *See also* XO at 3-4 (explaining the Commission's rules serve the important purposes of (1) ensuring carriers do not receive numbers before they are ready to use them (2) ensuring numbers are used as efficiently as possible and (3) ensuring that numbers that are no longer being used are returned so they may be put into use by other carriers).

<sup>8</sup> *See, e.g.*, Verizon at 2 (noting only two of the six petitioners even state that they will comply with local number portability requirements); *see also, e.g.*, Nebraska Public Service Commission at 2 (commenting that Petitioners have not demonstrated good cause or shown that a waiver is in the public interest); XO at 6-7 (demonstrating that none of the petitioners have demonstrated they are capable of complying with the conditions placed on SBCIS).

the public interest. Therefore, it is extremely important that the Commission only grant waivers to recipients who demonstrate that they are capable of complying with the conditions imposed in the SBCIS Waiver Order.<sup>9</sup>

Waiver applicants bear a heavy burden because the FCC may waive a rule only when the particular facts before it make strict compliance inconsistent with the public interest.<sup>10</sup> Here, unless waiver applicants can demonstrate that they are capable of complying with the conditions set forth in the SBCIS Waiver Order, denial of the waiver petitions is necessary to serve the public interest. Therefore, T-Mobile agrees with the other commenters that the Commission cannot grant the requested waivers until it has determined that the Petitioners are capable of complying with the conditions of the SBCIS Waiver Order.

### **III. THE FCC SHOULD REQUIRE PETITIONERS TO DEMONSTRATE THAT THEY ARE CAPABLE OF COMPLYING WITH THE SBCIS WAIVER CONDITIONS *BEFORE* GRANTING ANY ADDITIONAL WAIVERS**

For the reasons set forth above, T-Mobile agrees with XO that the Commission must require petitioners to demonstrate that they are currently capable of complying with the conditions set forth in the SBCIS Waiver Order *before* granting any further waivers.<sup>11</sup> T-Mobile agrees that NANPA is not in the position to determine whether waiver recipients are currently ready to comply with the SBCIS waiver conditions, and thus petitioners must be ready to comply with the conditions before they receive a waiver.<sup>12</sup> T-Mobile also agrees that shifting the burden of making this determination to the states at best would be inefficient and at worst would lead to

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<sup>9</sup> See Michigan Public Service Commission at 3 (commenting that there must be a “burden of responsibility” to ensure recipients are “cognizant of the magnitude of their request.”); see also, e.g., XO at 11-12.

<sup>10</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>11</sup> See XO at 9-12.

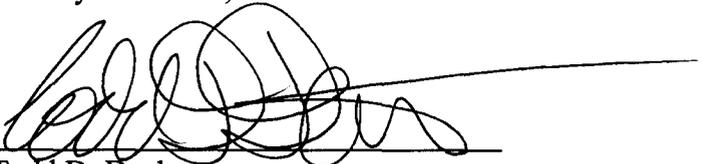
<sup>12</sup> See *id.*

inconsistent standards being applied across the nation.<sup>13</sup> Therefore, the public interest requires that the FCC, which has plenary jurisdiction over numbering resources, ensure that no waivers are granted to any entity which is not already capable of complying with the conditions set forth in the SBCIS Waiver Order.

**IV. CONCLUSION**

T-Mobile urges the Commission to require Petitioners to demonstrate that they are both able and willing to comply with the conditions of the SBCIS Wavier Order *before* granting any of the requested waivers.

Respectfully submitted,

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<sup>13</sup> See *id.*