

May 11, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition of TeleCommunication Systems, Inc. and
HBF Group, Inc for Waiver of Part 52 of the Commission's
Rules, CC Docket NO. 99-200

Dear Ms. Dortch:

The purpose of this letter is to refresh the record in CC Docket No. 99-200 with regard to the above-referenced Petition of TeleCommunication Systems, Inc. ("TCS") and HBF Group, Inc. for Waiver of Part 52 of the Commission's Rules (filed February 20, 2007) to permit TCS as a VoIP Positioning Center ("VPC") to be eligible to receive pseudo Automatic Number Identification resources ("p-ANIs") without having to demonstrate that it is certificated in all fifty states.¹

Introduction

TCS is one of the primary providers of VPC service and in this capacity provides location information for E911 calls for over 100 million subscribers of wireless and VoIP providers. In so doing, TCS handles over 120,000 E911 call per day. VPC service of the type provided by TCS is critical to the ability of VoIP providers to comply with the Commission's requirement that they supply 911 capabilities to their customers. In order to provide this service, VPCs such as TCS must have access to p-ANIs. Unfortunately, by letter dated September 8, 2006 from Thomas J. Navin, Chief, Wireline Competition Bureau to the North American Numbering Council and NeuStar, Inc., Mr. Navin indicated that VPCs seeking p-ANIs from NeuStar must be licensed or certified by the FCC or a state commission consistent with Part 52 of the Commission's Rules.²

¹ *Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission Rules*, CC Docket No. 99-200 (filed February 20, 2007) ("TCS Petition"). Section 52.15(g)(2)(i) provides in relevant part that an applicant for initial numbering resources must provide evidence that it "is authorized to provide service in the area for which the numbering resources are being requested." TCS seeks a waiver of this requirement to the extent that its application would require TCS to obtain certification as a condition of eligibility for utilization of p-ANIs. TCS is not seeking a waiver of the remainder of part 52.

² Navin Letter at 3.

Although TCS provides VPC throughout the United States, it is not certified in all jurisdictions. Therefore, unless the Petition is granted, at some point a VPC such as TCS might not have access to a sufficient number of p-ANIs³ and as a result the ability of its VoIP provider customers to meet their statutory obligation to provide E911 service pursuant to the NET 911 Improvement Act of 2008 would be seriously impaired.⁴

Although the Commission has acknowledged the pendency of the TCS Petition, to date it has not acted on TCS's request. Specifically, at footnote 66 in its *NET 911 Order* the Commission stated:

In this Order, therefore, we do not address whether we should modify or waive section 52.15(g)(2)(i) of the Commission's rules to allow VPC providers that are neither carriers nor interconnected VoIP providers to obtain numbering resources. *See* TCS Comments at 4 (requesting that the Commission address issues raised in a TCS Petition for waiver that is pending in CC Docket No. 99-200). Our determination that such providers are not granted access rights under the NET 911 Act does not prejudice the Commission's ultimate decision on any pending petitions for waiver.⁵

At the same time, the Commission determined that the rates, terms, and conditions pursuant to which VPCs must make p-ANIs and other capabilities available are subject to FCC regulation.⁶ As a consequence, unlike VoIP providers, VPCs receive the "burdens" of regulations, but do not receive of the "benefits" in connection with "access to the capabilities they need to provide E911 service."⁷ There is no reason to continue to discriminate in this fashion between VoIP providers and the VPCs upon whom, in many cases, they depend.

As will be demonstrated below, the Commission's continued failure to grant TCS' Waiver Petition is contrary to the public interest and may serve to delay the deployment of VoIP E911.⁸ After two years of deliberation, we respectfully submit that it is appropriate for the Commission to act.

³ P-ANIs are critical components of VPC technology. One of the main purposes of a VPC is to provide call routing instructions to the VoIP service provider's softswitch so that E911 calls can be routed to the appropriate Public Service Answering Point ("PSAP"). The means by which the correct PSAP is communicated from the VPC to the softswitch is through the use of p-ANIs. After extensive and expensive testing, each p-ANI is assigned to a unique PSAP. Currently, VPCs obtain p-ANIs from a fixed "pool" that is to be shared by multiple VPC soft switches. Typically, approximately ten p-ANIs are assigned per PSAP, so that ten different calls from a variety of IP-enabled voice service providers can be processed simultaneously.

⁴ "The NET 911 Act explicitly imposes on each interconnected VoIP provider the obligation to provide 911 and E911 service in accordance with Commission existing requirements." Report and Order, *In the Matter of Implementation of the NET 911 Improvement Act of 2008*, WCB Docket No. 08-171, para.3 (released October 21, 2008).

⁵ *Id.* note 66.

⁶ *Id.* at paras 30-34.

⁷ *See* footnote 99 of the *NET 911 Order* where the Commission decides to afford VoIP Providers both the "benefits" and the "burdens" in connection with access to capabilities. *Id.* at note 99

⁸ While the Commission granted VoIP providers the rights to access and manage p-ANI, the reality is that almost all VoIP providers do not have the resources to acquire, test, and manage p-ANI and the associated

1. State Certification as a Precondition is Unsustainable and a Burden on the States

Contrary to the position set forth in the Navin Letter, state certification should not be a precondition for VPC access to p-ANIs. In fact, the record demonstrates that state certification of VPCs is not required. There is no basis for applying the provisions of 47 C.F.R. § 52.15(g)(2)(i) as a condition for p-ANI eligibility. The state certification requirement upon which Mr. Navin relied was designed to address the question of how CLECs should obtain state licensing to offer residential and business voice services—none of which are at issue here.

It is difficult and costly for VPCs such as TCS to obtain state certification and the typical state process does not focus on issues of relevance to determining the eligibility of an entity to provide VPC service. CLEC state certification procedures, while appropriate for true “numbering resources” for the PSTN and to provide a legal basis for the negotiation of Interconnection Agreements, are simply not designed to determine the suitability of a VPC. The state CLEC certification process often contemplates the filing and approval of a retail tariff, for end-user customers, and/or a wholesale tariff, for use by other carriers. This process does not pertain to a VPC and does not address reliability or experience or any of the concerns which are pertinent to VPCs. In addition, as noted below, the State Public Service Commissions often find the process of certifying a VPC to be unconventional and distracting, if not burdensome on their already full workloads.

VPC state certification in fifty-one jurisdictions is impossible due to CLEC regulations in some states that prohibit certification for entities such as VPCs that do not provide dial tone to retail customers, do not have retail tariffs, do not have interconnection agreements, and other state specific requirements. In the alternative, VoIP providers themselves would be forced to become certificated in all jurisdictions—a task which at a minimum would delay VoIP E911 deployment and strain p-ANI resources.

As recent history demonstrates, those VPCs that have attempted to gain CLEC certification have met with mixed results because various jurisdictions have taken conflicting good faith positions (based on differing state laws and regulations) regarding VPC certification. For example, the Public Utilities Commission of Ohio (“PUCO”) refused to certify the VPC, Intrado Communications Inc., as a CLEC on the ground that “its telephone exchange activities are restricted in scope and, thus, do not extend to the level of a CLEC.”⁹ Instead the PUCO went through the unusual and time consuming process of establishing a new designation known as a “competitive emergency services

PSAP relationships. That is why the VPC relationship is so critical. As TCS has commented previously, the numbering and technology scaling that VPCs offer is critical to most VoIP providers.

⁹ Finding and Order, *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, ¶7 Public Utilities Commission of Ohio, Case No. 07-1199-TP-ACE (Feb. 8, 2008).

telecommunications carrier”¹⁰, and limited such carriers to one per county. This could generate a race among VPCs to register in as many counties as possible “just in case” they someday acquire a customer in that county, with the ultimate effect being to force VSPs to hire multiple VPCs across the state of Ohio and thus creating a bizarre nightmare of monopolistic county-level contracts, testing, etc. In Virginia, Intrado has had difficulty negotiating an interconnection agreement because Embarq does not recognize it as a “carrier” and, as a result, Intrado is in arbitration before the FCC on the issue.¹¹ There have been similar problems in other states. On the other hand, the North Carolina Utilities Commission in a 107 page recommended arbitration order found that Intrado was entitled to interconnection under Section 251 of the Communications Act even the particular provisions were “less than perfectly lucid.”¹²

In TCS’ case, state certification would add nothing. TCS is a public company which has demonstrated the required level of integrity as an operator. Moreover, it already provides nationwide VPC service. TCS does agree, however, that it must comply with the reporting requirements of the Part 52 numbering rules and already is complying with all applicable reporting requirements to the FCC.¹³

2. Grant of TCS’ Petition Would Promote the More Efficient Use of Numbering Resources

Permitting TCS to access numbering resources without the burden of first obtaining state certification is a more efficient use of numbering resources. The alternative of requiring thousands of interconnected VoIP providers to take the time and make the effort to secure p-ANIs would prove to be unworkable.

Although TCS has been able to self-administer a sufficient number of p-ANIs to meet the E911 requirements of its clients, in the long run, TCS might not be able to acquire and manage a sufficient number of p-ANIs for shared use among its nomadic VoIP provider customers. The negative consequences and disruption to the emergency service capabilities of VoIP providers and their customers would be significant if this were to occur. Nomadic VoIP providers would be required to immediately seek certification in all fifty-one jurisdictions and obtain, manage, test, and deploy their own p-ANIs.¹⁴ This would create confusion and significantly delay VoIP E911 deployment. It would potentially exhaust the reservoir of assignable p-ANI and would be completely contrary to NENA recommendations. Moreover, it would require each PSAP to test, at considerable time and expense, with dozens (or hundreds) of interconnected nomadic VoIP service providers that might never actually use the p-ANIs assigned to them. Most

¹⁰ *Id.* It should be noted that the case was filed in November 2007 and continues to this day.

¹¹ *Petition of Intrado Communications of Virginia Inc., In the Matter of Petition of Intrado Communications of Virginia Inc.*, WC 08-33 (filed March 6, 2008).

¹² See Telecommunications Reports-May 15, 2009 “N.C. Regulators Rule Intrado Can Interconnect with AT&T”

¹³ For example, TCS files E911 service outage reports on a regular basis

¹⁴ It has been suggested that TCS could simply use its VoIP customer’s pANI resources; however, this does not address the continuing number conservation, testing, and deployment issues discussed herein. Using the VoIP customer’s p-ANI is simply not a solution.

VoIP providers are too small to undertake these certification and testing efforts, and without the ability to rely on VPCs might have to choose between limiting their operations and ignoring their statutory obligations. These concerns are not inconsequential.

Although it is impossible to address the question of the impact of VPCs on number conservation with complete precision, TCS's calculations were contained in its previous waiver filing¹⁵ leading to the conclusion that a VPC could service the entire country with less than 1% of the p-ANI resources required by VoIP providers to accomplish the same services.¹⁶ The Commission should encourage such an efficient use of resources.

3. Grant of TCS' Petition Will Promote Public Safety

The public safety benefits of using VPCs as p-ANI aggregators are also evident. On an average day, TCS routes over 120,000 E911 calls without difficulty. The disruption, confusion, and even danger to our national E911 system that would be involved in forcing hundreds of nomadic VoIP providers to obtain, test, and maintain possibly millions of p-ANIs argues powerfully in favor of TCS's simple and easily granted waiver request.

The negative impact that the Commission's position could have was recognized by The Association of Public-Safety Communications Officials-International ("APCO") in a Position Statement it posted on April 16, 2008. APCO indicated in part:

APCO International is concerned that some providers of VoIP Position Centers (VPC) may have to discontinue services to VoIP Service Providers (VSP) if they are denied access to pseudo Automatic Number Identification (p-ANI) codes.

APCO International respectfully requests that the Federal Communications Commission (Commission) fully examine the impact of a decision to deny VPC access to p-ANI codes and its affect on the ability of public safety answering points (PSAP) to locate VoIP 9-1-1 callers using current VPC services.

APCO International believes that if VPCs are forced to discontinue services to VSPs VoIP consumers may be at risk when calling 9-1-1.¹⁷

TCS believes that APCO is justified in its concern that consumers may be at risk if VPCs are forced to discontinue (or are unable to begin to offer) E911 services to VoIP providers. It is imperative that the Commission act in the affirmative on the Petition.

¹⁵ *Reply Comments of Telecommunication Systems Inc.*, WC Docket No. 07-243; WC Docket No. 07-244; WC Docket No. 04-36; CC Docket No. 95-116; and CC Docket No. 99-200 (Filed April 21, 2008) ("TCS Reply Comments"), at page 11. TCS incorporates by reference all its earlier Waiver filings.

¹⁶ "As these estimates demonstrate, TCS believes the number conservation benefits involving the use of 122,000 p-ANIs versus the use of almost 16 million P-ANIs are clear." *Id.*

¹⁷ *TCS and HBF Petition to Waive Part 52 of Commission Rules* Position Statement, APCO Government Affairs <http://www.apcointl.org/new/government/positionstatements.php> (April 16, 2008)

4. Grant of TCS' Petition Is Consistent With the Navin Letter and the NET 911 Act

As the Commission has indicated, nothing in either the NET 911 Act or the *NET 911 Order* prevents the Commission from granting TCS' Petition.¹⁸ VPCs should not be relegated to receiving only the “burdens” of regulation without being allowed the “benefits” in connection with “access to the capabilities they need to provide E911 service.” Such a result is unjust and would limit competitive entry by resource-constrained smaller interconnected VoIP providers dependent upon VPC service or by other VoIP providers that have made an economic decision to allocate resources to customer services as opposed to p-ANIs.

It makes no sense for the Commission to eschew the option offered by the Navin Letter to grant waivers to VPCs such as TCS, and to allow the Rounting Number Authority (RNA) to assign pANI without CLEC certification.¹⁹ Such authorization would not undermine the authorities of local PUCs.

The Net911 Act makes clear that the relevant capabilities necessary to provide E911 service, and the rates, terms, and conditions pursuant to which they are provided, are to be controlled by FCC regulation, not state certification. While the Navin letter was arguably drafted before the importance of VPCs was generally recognized, Congress was very aware of the significant role played by VPCs when it adopted the NET 911 Act. It was noted at page 6 of the House Report that in order to gain access to key facilities and infrastructure, such as p-ANIS, VoIP providers have “entered into commercial arrangements with LECs or third parties to gain access to 911 components.” It was further noted that the NET 911 Act was not intended to “abrogate existing commercial arrangements relating to the provision of 911 and E911 services entered into by VoIP providers prior to enactment” of the Act.²⁰ As a consequence, the grant of TCS' Petition is consistent with Congressional intent that interconnected VoIP providers have meaningful rights of access to any and all capabilities necessary to provide 911 and E911 service from entities that own or control those facilities, particularly from those VPCs from whom they are already receiving capabilities such as p-ANIs.

¹⁸ *NET 911 Order, supra* at n. 66

¹⁹ See 47 C.F.R § 1.925(b)(3)(i) (“The Commission may grant a request for waiver if it is shown that [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and that a grant of the required waiver would be in the public interest[.]”)

²⁰ H.R. Rep. No. 110-442 at 6, 13 (2007)

Conclusion

For the reasons herein stated, we respectfully request that the Commission should grant TCS' Petition for Waiver of Part 52 of the Commission's Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Russell Frisby, Jr.", with a large, sweeping flourish at the end.

H. Russell Frisby, Jr.

cc: Ann Stevens
Marilyn Jones
Tim Stelzig

204651