

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

In the Matter of	)	
	)	
Administration of the North American	)	
Numbering Plan	)	
	)	
Millicorp Petition for Limited Waiver	)	
Of Section 52.15(g)(2)(i) of the Commission's	)	
Rules Regarding Access to Numbering	)	CC Docket No. 99-200
Resources	)	
	)	
SmartEdgeNet	)	
Petition for Limited Waiver	)	
of Section 52.15(g)(2)(i) of the	)	
Commission's Rules Regarding Access	)	
to Numbering Resources	)	

**REPLY COMMENTS**

SmartEdgeNet, LLC ("SEN") hereby respectfully submits these Reply Comments on the Comments of Bandwidth.com, Inc., Level 3 Communications, LLC, and COMPTTEL (collectively, "Joint Commenters") on SEN's Petition for Waiver ("Petition") in the above-captioned matter.

The Joint Commenters completely miss the point of the Petition. The manner by which a carrier transmits communications, whether by TDM, IP or two Dixie<sup>®</sup> cups and a string, is irrelevant to whether a carrier should have access to number resources for the benefit of the public it serves. Yet because the rule in question requires state certification and because enhanced service providers like SEN cannot be state certified, the rule inadvertently excludes enhanced service providers simply because they provide IP-enabled services. SEN is simply asking the Commission to recognize the irrelevancy of the requirement, which was imposed at a time when IP-enabled services were nascent.

None of the arguments by the Joint Commenters addresses the issue of why the mode of transmission is relevant. Instead, they raise arguments that would be equally applicable to them if it

were not for the state certification requirement. In so doing, they misread Commission precedent regarding waiver of 47 C.F.R. 52.15(g)(2)(i), presume (adverse) facts about SEN that are not in evidence and that are not true, introduce new hurdles for waiver candidates in the form of disclosure and state certification requirements, and entirely disregard SEN's commitment to meet the conditions of the *SBCIS Waiver Order*.<sup>1</sup> Further, they pointedly ignore the Commission's recent transformational efforts in the area of intercarrier compensation.

The Joint Commenters argue that there are no special circumstances setting SEN "apart from the literally hundreds of other VoIP providers that have chosen not to become carriers."<sup>2</sup> However, the test contained in the *SBCIS Waiver Order* is not whether a waiver applicant can distinguish itself from other VoIP providers. Rather, the test in the *SBCIS Waiver Order* is whether good cause exists to waive a Commission rule, and whether the waiver request is in the public interest.<sup>3</sup>

Exactly consistent with the *SBCIS Waiver Order*, SEN demonstrated in its Petition that good cause exists to waive Section 52.15(g)(2)(i) of the Commissions' Rules. In particular, absent the waiver, SEN "would have to partner with a local exchange carrier (LEC) to obtain North American Numbering Plan (NANP) telephone numbers."<sup>4</sup> SEN would unnecessarily need to purchase a retail product from a LEC.<sup>5</sup> SEN also showed that waiver of Section 52.15(g)(2)(i) is in the public interest. Allowing SEN (like SBCIS) to directly obtain numbers from the NANPA and the PA will help achieve the Commission's goals of fostering innovation and speeding the delivery of advanced IP-enabled services to American consumers.<sup>6</sup>

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<sup>1</sup> *In the Matter of Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 05-20 (released Feb. 1, 2005) ("*SBCIS Waiver Order*").

<sup>2</sup> Joint Comments at 3.

<sup>3</sup> *SBCIS Waiver Order* at ¶ 3.

<sup>4</sup> *Id.* at ¶ 4.

<sup>5</sup> *Id.* at ¶ 5.

<sup>6</sup> *Id.* at ¶¶ 6, 8.

For all these reasons, it is irrefutable that SEN has met the established good cause and public interest requirements detailed in the *SBCIS Waiver Order*.<sup>7</sup> The Commission therefore should grant SEN's waiver request on an expedited basis to avoid any further delay of allowing the public to benefit from its IP-enabled services.

The Joint Commenters are also simply wrong to state that showing the need to partner with or buy from a LEC to obtain numbers "proves too much."<sup>8</sup> The need to partner with or buy from a LEC to obtain numbers *is* the special circumstances test for an IP-services provider in the *SBCIS Waiver Order*. The attempt of the Joint Commenters to shoehorn other considerations into the special circumstances test (*e.g.*, how a waiver applicant differs from other VoIP providers) contravenes the plain language of *SBCIS Waiver Order* and reads into that Order showings that simply do not exist.<sup>9</sup>

The contention by the Joint Commenters that granting the Petition would be "discriminatory" against "those carriers that have invested the resources necessary to become certificated carriers and act in accordance with the obligations imposed on carriers"<sup>10</sup> is nonsensical. The discrimination here is in favor of certificated carriers, such as the Joint Commenters, which, by operation of law, are the only entities able to access public numbering resources.<sup>11</sup> SEN *cannot* become a certificated carrier as a matter of law. SEN is an enhanced service provider. Furthermore, as expressly noted in its Petition, SEN will meet all of the conditions imposed by

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<sup>7</sup> SEN's showing is the Commission's roadmap which it crafted in the *SBCIS Waiver Order* and which it expected future waiver applicants to follow. SEN has followed each step of that roadmap and thus, without more, deserves the waiver it seeks.

<sup>8</sup> Joint Comments at 3-4.

<sup>9</sup> Ironically, the offer in the Joint Commenters to sell products to SEN and other waiver candidates to access the PSTN and, presumably, gain access to numbering resources, is precisely the bottleneck interposition of certificated carriers, like the Joint Commenters, between SEN and numbering resources that gives rise to SEN's (as well as SBCIS's) Petition.

<sup>10</sup> Joint Comments at 5.

<sup>11</sup> 47 C.F.R. § 52.15(g)(2)(i).

the Commission in the *SBCIS Waiver Order*.<sup>12</sup> Consequently, SEN has already committed to the obligations imposed on certificated carriers so highly prized by the Joint Commenters, which they erroneously suggested will not apply to SEN.

The Joint Commenters argue that SEN has provided too little information to the Commission and that the company ought to go through a new federal process akin to state certification so that the Commission might receive “the information routinely provided to the state commissions during the state certification process.”<sup>13</sup> This disclosure process is plucked out of thin air; it does not appear anywhere in the Commission’s rules or in the *SBCIS Waiver Order*. The aim appears to be simply to interpose more costs and delays on the implementation of IP-enabled services. The novel request is best suited to a petition for rulemaking, not comments on a waiver request. Moreover, in order to access numbering resources, SEN will need to register with NANPA, providing company contact and other relevant information.<sup>14</sup> Joint Commenters’ concerns, to the extent they are valid, are well met by existing NANPA procedures.

Tellingly, the California Public Utilities Commission (“CPUC”) – the only public party to file regarding the Petition – has not suggested in this docket that non-certificated carriers go through a CPCN-like process before the FCC as a condition of getting access to numbering resources. In its comments on the Petition the CPUC made clear it was repeating comments it filed on January 25, 2012 in this docket.<sup>15</sup> Those earlier CPUC comments set forth four principles to underpin new federal numbering rules, none of which apply to the Petition.<sup>16</sup> Moreover, the CPUC’s January 25, 2012 Comments stated several times that the CPUC *does not*

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<sup>12</sup> Petition at 5-6.

<sup>13</sup> Joint Comments at n. 6, 7-8.

<sup>14</sup> See, e.g., <http://www.nanpa.com/faq/sitefaq.html>.

<sup>15</sup> CPUC Comments at 1.

<sup>16</sup> See, e.g., Comments of the California Public Utilities Commission and The People of the State of California at 8-10 (filed January 25, 2012) (hereinafter “CPUC January 25, 2012 Comments”).

*oppose* granting waivers to VoIP providers seeking access to numbers so long as such waivers are granted on the same conditions as the SBCIS waiver:

While the CPUC does not oppose allowing VoIP providers direct access to number in the NANP, doing so affords the FCC a chance to, at least in part, eliminate a structure which makes number utilization inefficient and which is becoming more and more outdated.<sup>17</sup>

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In light of the Commission's decision to grant a limited waiver to one VoIP provider (subject to certain conditions), however, the CPUC does not oppose granting the same limited waiver to similar VoIP providers, under the same conditions.<sup>18</sup>

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The CPUC's position has not changed insofar as the CPUC continues to advocate for VoIP providers who obtain numbers directly from the NANPA to be subject to the same rules and authority, including authority delegated to the states, as other providers.<sup>19</sup>

Thus, no other party agrees with Joint Commenters' request to deny the Petition. Indeed, the CPUC has taken exactly the opposite position.<sup>20</sup>

Joint Commenters' further arguments that SBCIS distinguished itself from other potential waiver candidates because SBCIS is an affiliate of a major ILEC are misplaced, and curious as well.<sup>21</sup> A reading of the *SBCIS Waiver Order* shows that the Commission actually had to address competitors' concerns that SBC would provide discriminatory access to the PSTN in favor of its affiliate, SBCIS.<sup>22</sup> If anything, therefore, non-affiliation with an ILEC is in SEN's favor.

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<sup>17</sup> CPUC January 25, 2012 Comments at 3.

<sup>18</sup> *Id.* at 4 (citation omitted).

<sup>19</sup> *Id.*

<sup>20</sup> Similarly, the National Association of Regulatory Utility Commissioners ("NARUC") – to which Joint Commenters also cite for support (Joint Comments at 7) – have not called for such a new federal vetting process. SEN does not oppose the principles and rule changes suggested by the CPUC and NARUC, and already has agreed to comply with Part 52 of the Commission's Rules, the SBCIS conditions and NANPA/PA requirements.

<sup>21</sup> It is passing strange that Joint Commenters – two of whom are direct competitors to ILECs and one of whom is an association whose mission it is to promote competition with ILECs – would raise as a concern that SEN is *not* affiliated with an ILEC.

<sup>22</sup> *SBCIS Waiver Order* at ¶ 7, n. 48.

The Joint Commenters next request that the Commission deny the Petition until adoption of final rules in the *IP-Enabled Services* proceeding.<sup>23</sup> The request has been rejected previously by the Commission, including in the context of SBCIS's waiver:

Finally, a few commenters urge the Commission to address SBCIS's petition in the current *IP-Enabled Services* proceeding. We decline to defer consideration of SBCIS's waiver until final numbering rules are adopted in the *IP-Enabled Services* proceeding. The Commission has previously granted waivers of Commission rules pending the outcome of rulemaking proceedings, and for the reasons articulated above, it is in the public interest to do so here.<sup>24</sup>

Because SBCIS met the good cause and public interest requirements embedded in the *SBCIS Waiver Order*, the Commission declined to delay granting the company a waiver. The same construct applies here: If SEN meets the good cause and public interest requirements embedded in the *SBCIS Waiver Order* it, too, should not be subject to an artificial delay. Significantly, the Joint Commenters have not demonstrated how SEN has not met the same such requirements found in the *SBCIS Waiver Order* to be adequate to grant a waiver in this instance.

Perhaps the most egregious claim Joint Commenters level against SEN is that the company will not pay intercarrier compensation.<sup>25</sup> This claim confuses SEN with a long distance carrier. SEN will provide, *inter alia*, local PSTN access to its customers and, as a result, seeks access to numbering resources. Thus, SEN stated in its Petition: "SEN does not intend to participate in any intercarrier compensation arrangement, as such responsibility will rest with the telecommunications carrier with which SEN will associate itself."<sup>26</sup> SEN made this statement to alleviate concerns that the company – a non-certificated carrier essentially providing access service – would attempt to "double dip" intercarrier compensation. By way of example, if interexchange traffic originated through SEN's remote IP-enabled local access node, SEN would

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<sup>23</sup> Joint Comments at 13.

<sup>24</sup> *Id.* at ¶ 11 (citations omitted).

<sup>25</sup> Joint Comments at 12.

<sup>26</sup> Petition at 6.

not seek to charge the interexchange carrier to which such traffic is handed off for such origination service. Instead, the CLEC with which SEN associates itself would be responsible for originating access fees (if any). Similarly, if SEN terminated interexchange traffic through its node, SEN would not assess terminating access charges on such traffic. Again, the CLEC would be responsible for terminating access fees (if any). The same would be true for reciprocal compensation traffic: SEN would not seek to charge reciprocal compensation; its CLEC partner would be responsible for such charges (if any).

Joint Commenters' unsupported claim also ignores the biggest developments in intercarrier compensation of the past decade – the Commission's November, 2011 Order reforming terminating access charges (including prospectively applying such charges to VoIP traffic) to bill and keep over the next two years,<sup>27</sup> and its March, 2012 order making clear that originating access charges for VoIP traffic are likely to phase down to bill and keep on a similar schedule.<sup>28</sup> The Commission's orders assure that no entity – certificated carrier or VoIP provider – will be able to engage in access charge arbitrage. SEN's commitment not to seek intercarrier compensation is foursquare with the Commission's move to a bill-and-keep regime.

For the reasons described above and in its Petition, SEN respectfully requests that the Commission grant expeditiously the company a limited waiver of Section 52.15(g)(2)(i) comparable to that granted to SBCIS. The Comments of the Joint Commenters aside, it is clear what is going on here. The Joint Commenters want to exclude, or at least slow down, the

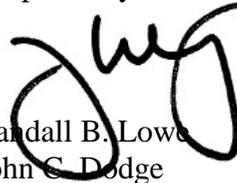
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<sup>27</sup> Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, 2011 FCC LEXIS 4859 (rel. Nov. 18, 2011).

<sup>28</sup> Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, 2012 FCC LEXIS 1777 (rel. Apr. 25, 2012).

competition brought about by IP-enabled services. To do so, they have raised completely irrelevant and specious arguments. The Commission should push ahead and do what's right by ignoring their transparent protestations and allow carriers like SEN to help meet the Commission's goals of customer choice, "fostering innovation and speeding the delivery of advanced services to consumers."<sup>29</sup>

Respectfully submitted,



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<sup>29</sup> *SBCIS Waiver Order* at ¶ 6.