



N A R U C
National Association of Regulatory Utility Commissioners

NOTICE VIA ELECTRONIC FILING

June 1, 2012

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

RE: *Notice of Oral Ex Parte filed in the proceedings captioned:*

In the Matter of Administration of the North American Numbering Plan, CC Docket 99-200; Corecomm-Voyager, Inc., Dialpad Communications, Inc., Enhanced Services d/b/a Pointone, Frontier Communications of America, Inc., Nuvio Corporation, Qwest Communications Corporation, RNK, Inc. d/b/a RNK Telecom, Inc., Unipoint, Voex, Inc., Vonage Holdings Corp., & Wiltel Communications, LLC Petitions for Limited Waiver of Section 52.15(G)(2)(I) of the Commission's Rules Regarding Access to Numbering Resources. [DA 11-2074]

Secretary Dortch:

On Thursday, May 31, 2012, the undersigned met with FCC Commissioner Ajit Pai, Matthew Berry, Chief of Staff for Commissioner Pai and Gene Fullano, Acting Legal Advisor to Commissioner Pai.

I pointed out that a number of carriers continue to seek favored treatment via direct access to numbers and without the related obligations. I noted that the FCC should not favor one competitor over another – based on the technology they use to provide a service - by making sure they don't have to comply with the same rules as their competitors.

NARUC has passed several resolutions on this topic. Most recently, in February, the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution specifically targeting the petitions that were the subject of the FCC's DA 11-2074 notice. The resolution, which passed both the Committee and the NARUC Board of Directors without opposition, has two crucial points.¹

First, the relief requested by the carriers in this proceeding is broad and should be handled in the context of a rulemaking proceeding. Indeed, NARUC's resolution specifically asks the FCC "to issue a Notice of Proposed Rulemaking to address the waiver requests by VoIP and IP-enabled service providers, in CC Docket No. 99-200" to among other things, assure that the rules apply to competitors in a non-discriminatory manner and to address several specific factors outlined *infra*.

¹ See, *Resolution Concerning Access to Numbering Resources and Adherence to Numbering Rules by Voice over Internet Protocol and IP-Enabled Service Providers* (February 8, 2012), available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Access%20to%20Numbering%20by%20VoIP%20Service%20Providers.pdf>

Second, NARUC's resolution "specifically stresses the importance of requiring all service providers (licensed and unlicensed, certificated and non-certificated, over-the-top and embedded alike) to comply with numbering utilization and optimization requirements, as well as the obligation to comply with all industry guidelines and practices approved by the FCC and all numbering authority delegated by the FCC to the States."

During the meeting, among other things, the undersigned also pointed out that generally,

- Congress anticipated that the States and the FCC would work together on required oversight.
- Continuation of that Federal-State partnership is crucial at some level.
- History demonstrates that State commissions are more than willing to cooperate often engaging in activity, at considerable expense, to implement the FCC's vision of how any oversight should occur. The most recent FCC initiative on USF/ICC is a prime example.
- During the undersigned's 23 years with NARUC, the FCC's choices to not make hard decisions because they are politically difficult has had very real repercussions for American taxpayers and ratepayers. When the FCC does not make the hard choices, the problem does not disappear. States, territories and even localities end up in protracted litigation with industry – usually over the course of several years - at taxpayer/ratepayer expense over an entire range of subsidiary/secondary issues raised by the FCC's inaction. This diverts both the States and the FCC away from crucial responsibilities. Choosing not to make one or two hard decisions, can frustrate policy implementation across the board and makes it very difficult for States (and industry competitors) to plan. The longer the delay the more complex the problems become and the more proceedings generated. Frequently, after several States have basically made hard decisions made necessary by FCC inaction, the agency will act – and require additional State proceedings – at State taxpayer/ratepayer expense – to bring the State regime in line with the FCC's pronouncements. Some additional State expense of lining up local rules to meld with federal policy is necessary in our system, but it should not be necessary that taxpayers pay multiple times, first for the State proceeding to figure out what the federal law requires, for litigation on that State's determination in federal Court, for State's participation before the FCC on the same issue, and for State proceedings after the FCC finally decides to change the local rule.
- FCC's treatment of VoIP technologies is a prime example. Whether you believe the illogical (and ridiculous) claims that VoIP is truly "inseverable" coming from companies that, before the FCC imposed an E911 obligation, charged differentially for State-wide and nationwide service (like Vonage did when it first started providing service) and still charge for international calls often at a separate rate, and others, that routinely "sever" the traffic for purposes of calculating their USF payments into the federal fund - or not – and whether you believe that a lighter regulatory regime should apply – limited to things like 911 service, emergency outage restoration, the applicability of CALEA, and/or universal service and service quality – or not – what Congress expected is pretty clear. The statutory definition of "telecommunications services" is straight-forward. Whatever goes in – be it voice or data – if it comes out at the other end of the transmission line unchanged – e.g., voice-in – voice out – it's a telecommunications service. That simple statement alone would have stopped dead innumerable and very expensive State proceedings and appeals. It also would have kept the FCC from wasting a lot of ratepayer/taxpayer funds dealing with a lot of additional waiver requests like the ones in this proceeding – not to mention innumerable additional rulemaking to answer questions that are only questions because of the FCC's reluctance to classify VoIP.

- At least one rationale strongly pressed by industry for this non-decision seems to eviscerate or at least make more cumbersome (and expensive) for States to exercise their inherent authority to handle service quality, oversee interconnection disputes among competitors, emergency communications, universal service measures, emergency outage/disaster recovery, and even area code splits/number conservation. It is pretty clear, whatever else Congress expected from the FCC, elimination of such oversight is probably not on the list. If, in FCC policymakers' views, preemption is necessary, Congress was generous in equipping the FCC with an efficient mechanism to accomplish it – Section 253.
- NARUC has for years been a strong proponent of regulators taking a technology-neutral approach to regulatory oversight. Regulators are generally poor substitutes for the market in choosing winning technologies – though they are certainly necessary to implement specific government polices like USF, CALEA, emergency communications, outage restoration, and to address concerns market forces cannot handle – like fraudulent operators or practices that are a barrier to competition, e.g., the former wireless industry seven year battle to avoid providing customers with local number portability. The last thing regulators should be doing is giving particular competitors significant advantages, because of the technology they use to provide service, by selectively applying general rules or worse, engaging in *Soviet style five year planning*² narrowly focused on assuring the adoption of a particular technology. That's not to say the agency and regulators generally cannot or should not play a crucial role on standards and interconnection. But the FCC probably shouldn't be in the business of telling carriers, e.g., they must use CDMA or GSM on allocated frequency bands.
- States have an obvious and logical role in key areas, including numbering oversight. Phone numbers for the intermediate term are still associated by the public with specific geographic areas. NARUC has historically agreed with the FCC that numbers are a limited resource which must be utilized in the most efficient way to accommodate new entrants and new technologies into the telecommunications marketplace. Poor management can lead to unnecessary exhaust of area codes requiring state level relief proceedings and development of implementation plans which are costly and can have a negative impact on both consumers and commerce.
- The undersigned indicated during the meeting that I would be filing an ex parte in this docket and including some additional background materials – which follow. The undersigned is providing via e-mail a copy of this filing to Mr. Berry and to Mr. Fullano.

BACKGROUND

NARUC, founded in 1889, is the national organization representing the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These commissions are charged with regulating the rates and conditions of service associated with the intrastate operations of telephone utilities. NARUC is recognized by Congress in several statutes³ and consistently by the Courts⁴ as well as a host of federal

² The undersigned was not necessarily suggesting that "soviet style five year planning" is what the FCC has done in this instance, though it is clear the commission's approach to service providers offering functionally equivalent paid voice services is not technology neutral. Mr. Berry, this seems an opportune time to remind you that the NARUC November meetings are in Baltimore this year and NARUC is really quite hopeful that both you and Commissioner Pai (and of course Mr. Fullano) can attend.

³ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir

agencies,⁵ as the proper entity to represent the collective interests of State utility commissions. In the Federal Telecommunications Act,⁶ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.

The issues raised in the subject petitions are not new. Indeed, NARUC has previously adopted other resolutions concerning the availability of telephone numbers to Voice over Internet Protocol (VoIP) and Internet Protocol (IP)-enabled service providers at both its November 2007 Annual Convention⁷ and July 2007 Summer Committee Meetings.⁸ NARUC has historically agreed with the FCC that numbers are a limited resource which must be utilized in the most efficient way to accommodate new entrants and new technologies into the telecommunications marketplace. Poor management can lead to unnecessary exhaust of area codes requiring relief proceedings and development of implementation plans which are costly and can have a negative impact on both consumers and commerce.

While the FCC has exclusive jurisdiction, under 47 U.S.C. § 251(e) (1996) over the North American Numbering Plan (NANP), the agency has wisely delegated significant authority to NARUC member Commissions to help manage the resources. The FCC also delegated day-to-day responsibilities for administering numbering resources to the North American Numbering Plan Administrator (NANPA) and the National Pooling Administrator (PA). Under the Part 52 rules only carriers with FCC licenses, State certifications or FCC waivers may apply to the NANPA or the PA for direct access to numbering resources. These carriers are subject to a number of obligations, including the requirement to file Number Resources Utilization and Forecast (NRUF) information, as well as meeting the requisite number utilization requirements.

1994) (where the D.C. Circuit explains “Carriers, to get the cards, applied to (NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system).

⁴ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff’d 672 F.2d 469 (5th Cir. 1982), aff’d en banc on reh’g, 702 F.2d 532 (5th Cir. 1983), rev’d on other grounds, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commission’s of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

⁵ NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

⁶ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁷ See, *Resolution Concerning Availability of Numbers to Voice over Internet Protocol Providers and IP-Enabled Services* (Nov. 2007) (<http://www.naruc.org/Resolutions/Availability%20of%20Numbers%20to%20VoIP%20passed.pdf>)

⁸ See, *Resolution Concerning Adherence to Numbering Rules by Voice over Internet Protocol and IP-Enabled Services Providers* (Jul. 2007) (http://www.naruc.org/Resolutions/TC-1%20Resolution%20Concerning%20Adherence%20to%20Numbering%20Rules%20by%20Voice%20over%20Internet_July07.pdf).

Many small nomadic VoIP and IP-enabled service providers have chosen not to obtain FCC licenses, seek State certification, or obtain FCC waivers to gain direct access to numbering resources, but instead partner with eligible carriers to indirectly gain access to numbering resources. However, several carriers did file several years ago seeking an FCC waiver. On December 27, 2011, seven years after those companies filed petitions⁹ specifically seeking a waiver of 47 C.F.R. § 52.15(g)(2)(i) to allow direct access to numbering resources, the FCC sought comments to refresh the record.¹⁰

On January 6, 2012, the National Association of Regulatory Utility Commissioners (NARUC) sought an extension¹¹ of the deadline to respond to that *Public Notice*. NARUC sought that extension in part to allow the association to reconsider the merits of the various petitions via a resolution poised for action at its February 2012 Winter meetings and in part to allow other NARUC member commissions more time to prepare their submissions.¹²

On January 9, 2012, the Wireline Competition Bureau granted in part NARUC's request for an extension.¹³ The Bureau's decision provided enough time to allow several of NARUC's member State commissions to file comments.¹⁴ NARUC did subsequently pass a resolution, but only after the deadline for filing comments passed.

⁹ See, *RNK, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed February 7, 2005; *Nuvio Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed February 15, 2005; *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*, filed March 2, 2005; *Dialpad Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed March 1, 2005; *Vonage Holdings Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed March 4, 2005; *VoEX, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed March 4, 2005; *Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed March 28, 2005; *CoreComm-Voyager, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed April 22, 2005; *Net2Phone Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed May 6, 2005; *WilTel Communications, LLC Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed May 9, 2005; *Constant Touch Communications Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed May 23, 2005; *Frontier Communications of America, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed August 29, 2006.

¹⁰ See, *Wireline Competition Bureau Seeks to Refresh Record on Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, Public Notice (rel. Dec. 27, 2011) [DA 11-2074] (*Public Notice*) at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1227/DA-11-2074A1.pdf.

¹¹ See, *National Association of Regulatory Utility Commissioners Motion for Extension of Time*, CC Docket No. 99-200 (filed Jan. 6, 2012) (*NARUC Motion*) at: <http://apps.fcc.gov/ecfs/document/view?id=7021752721>.

¹² *NARUC Motion* at 6.

¹³ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Order, by the Chief of the Wireline Competition Bureau Sharon Gillett, extending the comment date 14 days to January 25, 2012, available online at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-26A1.doc.

¹⁴ See, *Comments of the Public Service Commission of Wisconsin*, CC Docket No. 99-200 (filed Jan.25, 2012) at <http://apps.fcc.gov/ecfs/document/view?id=7021755893>; *Comments of the California Public Utilities Commission* (filed Jan.25, 2012) at <http://apps.fcc.gov/ecfs/document/view?id=7021756229>; and *Comments of the Nebraska Public Service Commission* (filed Jan.25, 2012) at <http://apps.fcc.gov/ecfs/document/view?id=7021756286>. Compare, *Letter to the Federal Communications*

DISCUSSION

All four recent State commission commenters suggest very specific pre-conditions to any additional waiver grants in this proceeding. While NARUC did not file comments on the listed petitions back in 2005, we did file comments on the SBC IP Communications petition that instigated the petitions that are the subject of the notice in 2004.¹⁵ Moreover, several NARUC members also filed comments addressing one or more of the listed petitions on April 11, 2005.¹⁶

All of the State comments filed in this proceeding, both in 2005 and more recently last month raise crucial issues about State efforts to assure continued conservation and efficient use of numbering resources. Neither the NANPA nor the PA has a mechanism to directly monitor utilization of numbers by unlicensed and non-certificated VoIP and other IP-enabled service providers. Unlicensed and non-certificated carriers are not likely to have an incentive to efficiently utilize numbering resources. This alone increases the obstacles for States monitoring numbering resources utilization pressing for efficient use.

In 2005, the FCC granted a waiver of the certification requirements to SBC Internet Services Inc. (AT&TIS), an affiliate of an incumbent local exchange carrier, which allowed AT&TIS to gain direct access to numbering resources, even though it was not an FCC licensed or State certificated service provider.

The FCC's order imposed a number of requirements as a pre-condition to access.¹⁷

A number of commenters, including NARUC, highlight the fact that granting these petitions raises complex routing, number exhaust/utilization, interconnection, and intercarrier compensation issues. The Commission needs to address these issues, and the only appropriate mechanism to address them in with the needed detail and scrutiny is through expansion of an existing rulemaking proceeding, such as the *IP Enabled Services* proceeding,¹⁸ or by issuing a notice of proposed rulemaking focused on these issues.

Commission Secretary from Paul Kjellander, President, Idaho Public Utilities Commission, CC Docket No. 99-200 (filed Feb. 1, 2012) at: <http://apps.fcc.gov/ecfs/document/view?id=7021858900>.

¹⁵ See, August 30, 2004 *Reply Comments of the National Association of Regulatory Utility Commissioners*, filed in the proceedings captioned: *In the Matter of SBC IP Communications, Inc. Petition for a Limited Waiver of Section 52.159(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200 [DA 04-2144], available online at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=6516482575>.

¹⁶ See, April 11, 2005 filings from *NE* (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6517511475>) *IA* (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6517511123>) *ME* (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6517511256>) *OH* (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6517511183>) *MI* (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6517511329>) and *CA* (<http://fjallfoss.fcc.gov/ecfs/document/view?id=6517511543>).

¹⁷ The FCC imposed a number of conditions on SBCIS requiring it to adhere to the same requirements as FCC licensed and State certificated service providers, including requirements that SBCIS comply with: (1) all numbering utilization and optimization requirements; (2) all numbering authority delegated by the FCC to States; (3) all industry numbering guidelines and practices; (4) all numbering request requirements and timelines; and (5) all facilities readiness requirements.

¹⁸ See, e.g., *In the Matter of IP Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

Indeed, notwithstanding the single waiver granted AT&T-IS, there is currently no consistent or stated FCC rule or policy regarding the assignment of numbers to unlicensed or non-certificated service providers. Neither the FCC's 2005 SBCIS Waiver (nor the 2007 NARUC Resolutions) address or attempt to ameliorate the detrimental impacts of expanding number resource access to non-carrier VoIP and IP-enabled service providers. Such issues, which should be explored in a rulemaking, include:

- The impact on number exhaust as a myriad of VoIP and IP-enabled service providers become Code Holders in order to obtain local routing numbers (LRNs);
- The impact on call routing issues raised by permitting VoIP and IP-enabled service providers that are not listed in the Local Exchange Routing Guide (LERG) to obtain numbers;
- The impact on State commission consumer protection capabilities;
- The uncertainty relating to whether VoIP and IP-enabled service providers have interconnection and compensation obligations;
- The impact on area code exhaust if VoIP and IP-enabled service providers were allowed access to numbering resources in rural rate centers still designated as "Pooling Excluded" by the PA; and
- The impact on area code exhaust if VoIP and IP-enabled service providers acquire numbering resources without regard for utilization and conditions in the local telecommunications market.

An examination of the limited comments filed in this proceeding demonstrates clearly that the Petitioners have never provided crucial details needed before the Commission can rule on the rationality of granting the requested waivers. For example, there is almost no detail in the record before the agency on how they will interact with existing carriers on crucial intercarrier issues like routing, interconnection (including reciprocal interconnection obligations), and compensation. In fact, with respect to routing and facilities readiness, Vonage, the carrier who has reignited the FCC's interest in these petitions, in one recent pleading appears to rely entirely on Neutral Tandem and other *carrier* partners for expertise.¹⁹ If critical routing expertise rests exclusively with carriers, it raises significant questions about the advisability of assigning non-carriers phone numbers to such entities without additional information (in the record) about the impact on a range of issues. What happens if a non-carrier VoIP provider becomes a Code Holder of a pooled NXX? Is it necessary to provide non-geographic carriers like several of the petitioners with location routing numbers? California, in its comments at page 5, suggests not – pointing out that

[i]n monitoring AT&T-IS' use of numbers, the CPUC has found that A&T-IS has been engaging in a practice which, while not a violation of the FCC's rules, has led to inefficiencies in the allocation of thousands of number in California . . . AT&T-IS obtains a location routing number (LRN) in many rate

¹⁹ *Letter of Counsel to Vonage Holding Corp. Brita Strandberg and Rachel Petty to Marlene H. Dortch*, February 9, 2012 (filed January 9, 2012) at 3 & 4 (relying on Neutral Tandem products and similar "off-the-shelf routing solutions" to address carrier routing concerns if Petitions are granted). The letter is online at: <http://apps.fcc.gov/ecfs/document/view?id=7021859515>.

centers where acquisition of an LRN is not necessary, given that AT&T-IS is not a geographically-based service provider. The assignment of numerous LRNs requires concomitant assignment of thousands of numbers that remain unused, simply to support the allocation of the LRN.

What is the impact on State oversight across the board and what will be the impact on consumers? Again, California notes on page 6 of its comment:

California is concerned that allowing an unlicensed service provider, which maintains that it is not a telecommunications service provider and therefore not subject to the rules imposed on such service providers, would promote even more disregard for number conservation and the rules which promote number conservation.

Significantly, California proposes, at 6, several “rule changes” to “alleviate current problems and promote better number utilization.” Specifically, the CPUC urges that:

States be given the right to determine which rate centers are available to each VoIP provider . . . VoIP providers be required to have a minimum of 75% utilization before obtaining additional number resources . . . VoIP providers be required to expand number porting beyond rate center boundaries. . . and all calls to VoIP providers be deemed local.

The changes California calls for clearly require a rulemaking. And California is not the only NARUC member whose comments suggest a rulemaking is required. For example the Pennsylvania Public Utility Commission’s comments²⁰ at 7-9, urge the FCC to deny the Vonage Petition and

to address issues of general importance like those set out . . . using a rulemaking procedure. The FCC should not allow petitioners to pursue general relief in a specific pleading with it is more appropriate to consider the issue[s] in a rulemaking.

The Pennsylvania comments, at 6-8 also point out accurately that of the carriers, at least Vonage, is seeking:

relief from a self-created dilemma generated by . . . [the] Vonage Preemption order. In that decision, Vonage convinced the FCC to preempt state certification and any 911 mandate on providers of retail VoIP services. Vonage has a problem because precluding states from providing a certificate or imposing 911 mandates...means Vonage cannot get direct access to numbering resources . . . If the FCC provides VoIP providers like Vonage access to numbers . . . State commissions will find it extremely hard to monitor and insure numbering conservation efforts currently in place because some providers . . . will be getting numbers [that] have no know location or certificate to ensure compliance.

²⁰ *Comments of the Pennsylvania Public Utility Commission*, CC Docket 99-200 (filed Oct. 6, 2011), available online at: <http://apps.fcc.gov/ecfs/document/view?id=7021713240>.

The impact on State's authority is an issue that should be fully explored. There is no question that numbering resource management authority delegated by the FCC to the States has greatly contributed to the overall success of meeting number utilization and optimization goals, reducing area code exhaust, and facilitating the efficient and timely porting of numbers between service providers. NARUC members felt so strongly about the need for a full vetting of these issues in a rulemaking proceeding, that a third resolution was deemed necessary. There are a host of unresolved issues. A rulemaking is the logical way to proceed. Accordingly, the attached NARUC resolution respectfully requests that:

the FCC issue a Notice of Proposed Rulemaking to address the waiver requests by VoIP and IP-enabled service providers, in CC Docket No. 99-200, in order to proceed in a non-discriminatory manner and to consider:

- [1] Whether and on what conditions unlicensed or non-certificated VoIP and IP-enabled service providers should obtain numbering resources directly from the NANPA and the PA; and
- [2] Delegating pooling authority to all States; and
- [3] The broader implications of its decisions on numbering issues attributed to unlicensed and non-certificated VoIP and IP-enabled service providers, including their impact on: (i) Meeting number utilization and optimization goals; (ii) Reducing area code exhaust; (iii) Addressing critical routing issues; and (iv) Carrier and service provider interconnection and compensation obligations; and (v) Facilitating the efficient and timely porting of numbers between service providers.

The FCC should not make the unfortunate choice of proceeding via a waiver proceeding, with a necessarily limited record, particularly when the Commission has not given any notice of additional rules/conditions it may impose broadly. Moreover, before any rulemaking decision grants these "carriers" direct access to numbering resources, there are certain minimum prerequisites to a rational order that adequately protects the public interest in this limited resource, including the following:

[1] *States must be given the ability to determine which rate centers are available to "VoIP" "carriers."* In "Pooling Excluded" rate centers there are no thousands-blocks of numbers available to VoIP and IP-enabled service providers, and assignment of NXXs in ten thousands-blocks of telephone numbers would likely lead to premature area code exhaust in rural areas. Granting to the States the ability to determine which rate centers in the respective State are available to unlicensed and non-certificated VoIP and IP-enabled service providers will promote conservation and optimization of number utilization.

[2] *Unlicensed and non-certificated VoIP and IP-enabled service providers must at a minimum comply with the FCC's Part 52 numbering rules and the same conditions the FCC previously imposed on AT&TIS.* The FCC has missed many opportunities to assure a level playing field and act in a technology neutral fashion in the past. Some of those misguided decisions have, as the Pennsylvania comments point out, led directly to this outcome. If the FCC wishes to continue to favor VoIP service providers over their direct competitors, logic suggests the differential application of duties Congress assigned and expected the FCC to apply to telecommunications service providers should be kept to a minimum. Application of the same rules to entities gaining access to the same public and scarce resources should be subject to the same rules of access. Indeed, NARUC's resolution specifically stresses the importance of requiring all service providers (licensed and unlicensed, certificated and non-certificated, over-the-top and embedded alike) to

comply with numbering utilization and optimization requirements, as well as the obligation to comply with all industry guidelines and practices approved by the FCC and all numbering authority delegated by the FCC to the States.

NARUC's resolution also argues forcefully that before acting the FCC has to build a record to assure the imposition of "[a]ny additional routing, interconnection, and compensation conditions that will mandate the seamless flow of traffic and efficient number utilization."

CONCLUSION

Because of the critical importance of the broad complex issues raised by these petitions, the paucity of record evidence on the issues raised, the deficit in the record on the probable impact on consumers, the security and reliability of the network and interconnection duties generally, and the inability of commenters to divine the direction the FCC may be leaning to tailor their comments effectively to protect their interests, NARUC respectfully requests the FCC dismiss these waiver requests in favor of a rulemaking proceeding.

Respectfully Submitted,

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Appendix - Resolution Concerning Access to Numbering Resources and Adherence to Numbering Rules by Voice over Internet Protocol and IP-Enabled Service Providers

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has long recognized that telephone numbers are a limited resource which must be utilized in the most efficient way to accommodate new entrants and new technologies into the competitive telecommunications marketplace; *and*

WHEREAS, NARUC previously adopted resolutions concerning the availability of telephone numbers to Voice over Internet Protocol (VoIP) and Internet Protocol (IP)-enabled service providers at its November 2007 Annual Convention and July 2007 Summer Committee Meetings; *and*

WHEREAS, Poor management of numbering resources can lead to unnecessary exhaust of area codes requiring relief proceedings and development of implementation plans which are costly and can have a negative impact on consumers and commerce; *and*

WHEREAS, Pursuant to § 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Federal Communications Commission (FCC) has exclusive jurisdiction over the North American Numbering Plan (NANP) although the FCC may and has delegated some of that authority to the States; *and*

WHEREAS, The FCC has delegated day-to-day responsibilities for administering numbering resources to the North American Numbering Plan Administrator (NANPA) and the National Pooling Administrator (PA); *and*

WHEREAS, Under the FCC's Part 52 numbering rules only carriers with FCC licenses, State certifications or FCC waivers may apply to the NANPA or the PA for direct access to numbering resources; *and*

WHEREAS, All eligible carriers seeking numbering resources directly from the NANPA or the PA are subject to the FCC's Part 52 numbering rules, including the filing of Number Resources Utilization and Forecast (NRUF) information, as well as meeting the requisite number utilization requirements; *and*

WHEREAS, Consumers have increased access to VoIP and other IP-enabled services which can benefit consumers by providing more choices of competitive voice service alternatives, however this increase in the number of providers creates a greater demand for numbering resources; *and*

WHEREAS, Most VoIP and IP-enabled service providers do not obtain FCC licenses, seek State certification, or obtain FCC waivers to gain direct access to numbering resources, but instead partner with eligible carriers to indirectly gain access to numbering resources; *and*

WHEREAS, Neither the NANPA nor the PA have a mechanism to directly monitor utilization of numbers by unlicensed and non-certificated VoIP and other IP-enabled service providers which may not have an incentive to efficiently utilize numbering resources and, thereby, increases the difficulty for States monitoring numbering resources utilization; *and*

WHEREAS, There is currently no consistent or stated FCC rule or policy regarding the assignment of numbers to unlicensed or non-certificated service providers; *and*

WHEREAS, In 2005, the FCC granted a waiver of the certification requirements to SBC Internet Services Inc. (SBCIS), an affiliate of an incumbent local exchange carrier, that enabled SBCIS to gain direct access to numbering resources, even though it was not an FCC licensed or State certificated service provider; *and*

WHEREAS, The FCC imposed a number of conditions on SBCIS requiring it to adhere to the same requirements as FCC licensed and State certificated service providers, including requirements that SBCIS comply with: (1) all numbering utilization and optimization requirements; (2) all numbering authority delegated by the FCC to States; (3) all industry numbering guidelines and practices; (4) all numbering request requirements and timelines; and (5) all facilities readiness requirements; *and*

WHEREAS, Neither the 2005 SBCIS Waiver nor the 2007 NARUC Resolutions appeared to recognize the detrimental impacts of expanding number resource access to non-carrier VoIP and IP-enabled service providers, including:

- The impact on number exhaust as myriad of VoIP and IP-enabled service providers become Code Holders to obtain local routing numbers (LRNs);
- The impact on call routing issues raised by permitting VoIP and IP-enabled service providers that are not listed in the Local Exchange Routing Guide (LERG) to obtain numbers;
- The impact on State commission consumer protection capabilities;
- The uncertainty relating to whether VoIP and IP-enabled service providers have interconnection and compensation obligations;
- The impact on area code exhaust if VoIP and IP-enabled service providers were allowed access to numbering resources in rural rate centers still designated as "Pooling Excluded" by the PA; and
- The impact on area code exhaust if VoIP and IP-enabled service providers acquire numbering resources without regard for utilization and conditions in the local telecommunications market; *and*

WHEREAS, In "Pooling Excluded" rate centers there are no thousands-blocks of numbers available to VoIP and IP-enabled service providers, and assignment of NXXs in ten thousands-blocks of telephone numbers would likely lead to premature area code exhaust in rural areas; *and*

WHEREAS, The numbering resource management authority delegated by the FCC to the States has greatly contributed to the overall success in meeting number utilization and optimization goals, reducing area code exhaust, and facilitating the efficient and timely porting of numbers between service providers; *and*

WHEREAS, Granting to the States the ability to determine which rate centers in the respective State are available to unlicensed and non-certificated VoIP and IP-enabled service providers will promote conservation and optimization of number utilization; *and*

WHEREAS, On December 27, 2011, the FCC requested Comments to refresh the record on petitions for waiver, in CC Docket No. 99-200, from unlicensed or non-certificated VoIP and IP-enabled service providers to allow them to gain direct access to numbering resources from the NANPA and PA; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Winter Committee Meetings in Washington, D.C., reaffirms and clarifies its positions “Concerning Availability of Numbers to Voice over Internet Protocol Providers and IP-Enabled Services” previously stated in November 2007 and “Concerning Adherence to Numbering Rules by Voice over Internet Protocol and IP-Enabled Service Providers” previously stated in July 2007; and *be it further*

RESOLVED, That NARUC urges the FCC to issue a Notice of Proposed Rulemaking to address the waiver requests by VoIP and IP-enabled service providers, in CC Docket No. 99-200, in order to proceed in a non-discriminatory manner and to consider:

[1] Whether and on what conditions unlicensed or non-certificated VoIP and IP-enabled service providers should obtain numbering resources directly from the NANPA and the PA; *and*

[2] Delegating pooling authority to all States; *and*

[3] The broader implications of its decisions on numbering issues attributed to unlicensed and non-certificated VoIP and IP-enabled service providers, including their impact on: (i) Meeting number utilization and optimization goals; (ii) Reducing area code exhaust; (iii) Addressing critical routing issues; (iv) Carrier and service provider interconnection and compensation obligations; *and* (v) Facilitating the efficient and timely porting of numbers between service providers; *and be it further*

RESOLVED, That should the FCC decide ultimately to permit unlicensed and non-certificated VoIP and IP-enabled service providers direct access to telephone numbers at some future point, it not do so unless it first proceeds with a Notice of Proposed Rulemaking and at least requires such service providers to comply with:

[1] The FCC’s Part 52 numbering rules; *and*

[2] The same conditions the FCC previously imposed on SBCIS; and

[3] Any additional routing, interconnection, and compensation conditions that will mandate the seamless flow of traffic and efficient number utilization; *and be it further*

RESOLVED, That should the FCC decide ultimately to permit unlicensed and non-certificated VoIP and IP-enabled service providers direct access to numbering resources, it should also grant States the authority to determine which rate centers in the respective State are available for assignment to such service providers; *and be it further*

RESOLVED, That NARUC specifically stresses the importance of requiring all service providers (licensed and unlicensed, certificated and non-certificated, over-the-top and embedded alike) to comply with numbering utilization and optimization requirements, as well as the obligation to comply with all industry guidelines and practices approved by the FCC and all numbering authority delegated by the FCC to the States.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors February 08, 2012