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SUMMARY

The New Jersey Division of Rate Counsel (“Rate Counsel”) welcomes the opportunity to contribute to the efforts of the Federal Communications Commission (“FCC” or “Commission”) to determine whether interconnected Voice over Internet Protocol (“VoIP”) providers should be granted direct access to telephone numbers and its general approach to numbering issues.

The FCC’s efforts to ensure consumer protection and public safety goals are met are commendable. However, it is not clear why the FCC continues to resist classifying interconnected VoIP services. Rate Counsel continues to support an unambiguous declaration by the FCC that VoIP is a telecommunications service subject to regulatory oversight.

If the FCC continues to avoid the classification of VoIP service, Rate Counsel recommends that direct access to numbers be granted to interconnected VoIP service providers under the same conditions that other providers currently have access. VoIP providers should be required to provide documentation that they are providing service in the area for which they are seeking resources and their acceptance of resources should make them subject to any monetary penalties that the FCC can now place on other carriers. VoIP providers must provide data, contact information, utilization and other required reports to state entities that have been delegated authority to manage numbering resources. Finally, interconnected VoIP providers must bear their share of the costs of number pooling, administration and assignment.

Inquiry, the FCC seeks comment on various broader issues regarding its numbering resource policies,² specifically regarding issues raised by “de-coupling” geography from telephone numbers.³

As explained by the FCC, “[t]elephone numbers are a valuable and limited resource; access to and use of numbers must be managed judiciously to ensure that they are available as needed and to protect the efficient and reliable operation of the telephone network.”⁴ Rate Counsel supports direct access by interconnected VoIP providers on the condition that those providers are subject to the same requirements as are other providers. Differences in technology should play no part in the rights and responsibilities that voice telephone service providers have with respect to numbers. Indeed, Rate Counsel urges the FCC to classify interconnected VoIP service as a telecommunications service. Doing so would have the consequence of providing access to numbering resources while subjecting interconnected VoIP service providers to all of the responsibilities that other providers have.

Rate Counsel responds to many but no means all of the various questions about which the FCC seeks comment, and, for those topics left unaddressed in these initial comments, Rate Counsel may respond in reply comments. Finally, Rate Counsel will review the forthcoming reports from the direct access trials and will comment as appropriate.

²/ *Id.*, at para. 4.

³/ *Id.*, at paras. 119-124.

⁴/ *Id.*, at para. 1.

II. Direct Access to Numbers

A. Background

The FCC states:

We anticipate that allowing interconnected VoIP providers to have direct access to numbers will help speed the delivery of innovative services to consumers and businesses, while preserving the integrity of the network and appropriate oversight of telephone number assignments.⁵

The FCC seeks to balance the goal of efficiently using numbering resources with efforts to “modernize [its] rules in light of significant ongoing technology transitions in the delivery of voice services, with the goal of promoting innovation, investment, and competition for the ultimate benefit of consumers and businesses.”⁶ The FCC is specifically proposing to allow VoIP providers to obtain telephone numbers directly from the North American Numbering Plan Administrator (“NANPA”) and the Pooling Administrator (“PA”), subject to certain requirements.

In its Order, the FCC establishes a limited technical trial of direct access to numbers, which entails the FCC granting Vonage Holdings Corporation (“Vonage”) and other interconnected VoIP providers that have pending petitions for waiver of section 52.15(g)(2)(i) of the Commission’s rules and that meet certain terms and conditions a limited, conditional waiver to obtain a small pool of telephone numbers directly from the NANPA and/or the PA for use in providing interconnected VoIP services. The purpose of the trial is to test “whether giving interconnected VoIP providers direct access to numbers will raise issues relating to number exhaust, number porting, VoIP interconnection, or intercarrier compensation, and if so, how

⁵ / *Id.*

⁶ / *Id.*

those issues may be efficiently addressed.”⁷ The FCC is requiring trial participants to file regular reports throughout and at the end of the six-month trial, and has indicated that state commissions and other interested parties will have an opportunity to comment on the reports that industry submits. Rate Counsel looks forward to reviewing those results.

B. VoIP Providers Must Assume the Responsibilities of Direct Access to Numbering Resources.

The crux of the problem for the FCC is that interconnected VoIP providers are not required to undergo the same types of certification of service that traditional telephone carriers must. Section 52.15(g)(2)(i) requires entities that request numbers to provide evidence that they are authorized to provide service in the area for which they are requesting numbers by submitting a certification of service from a state authority, for example.⁸ The tension, as described by the FCC is:

. . . the Commission has not addressed the classification of interconnected VoIP services, and thus retail interconnected VoIP providers in many, but not all, instances take the position that they are not subject to regulation as telecommunications carriers, nor can they directly avail themselves of various rights under sections 251 and 252 of the Act.⁹

In order to provide interconnected VoIP service, a provider must offer consumers NANP telephone numbers; otherwise, a customer on the PSTN would not have a way to dial the interconnected VoIP customer using his PSTN service. Interconnected VoIP providers often cannot obtain telephone numbers directly from the numbering administrators as they cannot provide the evidence of certification required by section 52.15(g)(2)(i)—they typically do not hold state certifications or Commission licenses. Thus, these providers generally obtain

⁷ / *Id.*, at para. 2.

⁸ / *Id.*, at para. 5-6.

⁹ / *Id.*, at para. 6 (cites omitted).

NANP telephone numbers by purchasing wholesale services from a competitive local exchange carrier (CLEC), and then using these services to interconnect with the PSTN in order to send and receive certain types of traffic between the VoIP provider's network and the carrier networks.¹⁰

A casual observer would surely think such a situation is unfair and inefficient. However, VoIP providers have fought long and hard at the federal and state levels to provide voice telecommunications service without being subject to the responsibilities that should be required of users of the public switched telephone network and numbering resources.¹¹ Rate Counsel is sympathetic to various CLECs' position, as characterized by the FCC, that "granting non-carriers direct access to telephone numbers is fundamentally unfair to certified carriers who have duly complied with existing regulations . . ." ¹²

Certainly, the FCC should be commended for its efforts to "ensure consumer protection, public safety, and other important policy goals in orders addressing interconnected VoIP services,"¹³ however, tying itself in knots to do so "without classifying those services as telecommunications services or information services under the Communications Act"¹⁴ has been time-consuming, created regulatory uncertainty, and puts consumers at risk. Rate Counsel continues to urge the FCC to unambiguously declare that VoIP is a telecommunications service subject to regulatory oversight.

¹⁰ / *Id.*, at para. 7.

¹¹ / Numerous states have enacted legislation that eliminates or greatly limits public utility commission oversight of VoIP. *See, e.g., id.*, at para. 20 and footnote 65.

¹² / *Id.*, at footnote 62. However, Level 3's concern that interconnected VoIP direct access to numbering will erode its own revenue stream and wholesale services business should be afforded no weight. *See, id.*, at para. 65. The FCC cannot be responsible for protecting revenue streams.

¹³ / *Id.*, at para. 7.

¹⁴ / *Id.*

The FCC has not made the core determination of whether VoIP services are telecommunications services or information services – that issue has been pending for many years in the *IP-Enabled Services* proceeding.¹⁵ The FCC has many open proceedings on these issues and has not moved to resolve them.¹⁶ The FCC stated in its *AT&T IP Telephony Order*: “The Commission has recognized the potential difficulty in determining the jurisdictional nature of IP telephony. We intend to address this issue in our comprehensive *IP-Enabled Services* rulemaking proceeding and do not address it here.”¹⁷

The FCC has adopted numerous regulatory obligations and consumer protections for all interconnected VoIP services (nomadic and fixed). These include application of FCC requirements related to the Communications Assistance for Law Enforcement Act (CALEA); disability access and Telephone Relay Service (TRS); E911 services; protection of Customer Proprietary Network Information (CPNI); and contributions to the Federal Universal Service Fund. Interconnected VoIP Service Providers are also subject to other traditional telecommunications regulations placed on local carriers, such as number portability and interconnection duties. On May 13, 2009, the FCC adopted a Report and Order in WC Docket

^{15/} *In the Matter of IP-Enabled Services*, FCC WC Docket No. 04-36, Notice of Proposed Rulemaking, Rel. March 10, 2004 (“*IP-Enabled Services NPRM*”), at para. 43.

^{16/} See, e.g., *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC WC Docket No. 02-361, Order, Rel. April 21, 2004 (“*AT&T IP Telephony Order*”).

^{17/} *Id.*, at para. 20. Indeed, the United States District Court for the Western District of New York referred a dispute between Frontier Telephone of Rochester, Inc. and USA Datanet Corp. regarding the applicability of access charges case to the jurisdiction of the Commission for clarification and consideration in the context of other ongoing telecommunications proceedings in 2005. Specifically, the District Court stayed the case until the Commission issued rules “that ought to resolve the central issue in this case.” *Frontier Telephone of Rochester, Inc., v. USA Datanet Corp.*, Decision and Order, 05-CV-6056 CJS, (W.D.N.Y. August 4, 2005), at 2. The District Court referred to the Notice of Proposed Rulemaking, in WC Docket No. 04-36 and to the VarTec petition. *Id.*, at 4-5. The Court reasoned that the potential cost from delay was minimal because “the FCC has been actively considering the issue for more than a year, and it appears that a decision [in the *IP-Enabled Services* proceeding] will be forthcoming in a matter of months, as opposed to years.” *Id.*, at 13. Yet the issues at the heart of that dispute remain unresolved.

No. 04-36, concerning requirements on interconnected VoIP providers when discontinuing service. The order holds interconnected VoIP service providers to the same rules and requirements with respect to discontinuance obligations, including providing the same notice to consumers that applies to nondominant wireline telecommunications carriers. After filing notice with the FCC, VoIP service providers would be allowed to discontinue service after 30 days absent further FCC action. The FCC concluded that:

Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Thus, in this Report and Order (Order), we take steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice.¹⁸

The FCC also stated:

Most relevant here, the Commission has extended a number of consumer protection and public safety requirements to interconnected VoIP service. For example, in 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act, and its authority under section 251(e), to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers. In 2006, in the *2006 Interim Contribution Methodology Order*, the Commission established universal service contribution obligations for interconnected VoIP providers based on the permissive authority of section 254(d) and its ancillary jurisdiction under Title I of the Act. In 2007, the Commission extended the customer privacy requirements of section 222 to interconnected VoIP providers using Title I authority. Also in 2007, the Commission used its Title I authority to extend the section 255 disability access obligations to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services. The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and its Title I jurisdiction, thus requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services. Additionally in 2007, the Commission extended local number portability (LNP) obligations and numbering administration support

^{18/} *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *Report and Order*, rel. May 13, 2009, at para. 2.

obligations to interconnected VoIP providers and their numbering partners pursuant to sections 251(e) and 251(b)(2) of the Act and Title I authority.¹⁹

Most recently, on February 21, 2012, the FCC released a Report and Order that extends network outage reporting requirements to providers of interconnected VoIP service.²⁰ The FCC stated: “In short, given the long-term upward trend in VoIP subscription and use, the growing dependence on VoIP for 9-1-1 communications, our prior experience with voluntary reporting, and the statutory mandate that VoIP providers provide 9-1-1, we adopt mandatory outage reporting of interconnected VoIP service, as detailed below.”²¹ The FCC’s decision regarding mandatory outage reporting, however, contrasts sharply with the FCC’s refusal to address complaints regarding VoIP slamming.²²

If the FCC declines to classify interconnected VoIP at this time, it should ensure that direct access to numbering resources is subject to conditions that protect states’ ability to manage numbering resources. Direct access to numbering by interconnected VoIP providers will reduce inefficiencies that arise from going through a “middleman”²³ but Rate Counsel is skeptical that direct access will create more choice and innovation for consumers given that the interconnected

¹⁹ *Id.*, at para. 5 (cites omitted).

²⁰ *In the Matter of The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Report and Order, rel. February 21, 2012.

²¹ *Id.*, at para. 46.

²² *See, e.g.*, *In the Matter of Verizon Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, IC No. 11-S3251566, *Order*, DA 13-1294, released May 31, 2013. The FCC explains its inaction as follows: “The carrier switch to Verizon pertains to Verizon’s FIOS Digital Voice service, which is a VoIP (voice over Internet Protocol) service. The Commission’s carrier change rules have not been extended to VoIP service. We find that Verizon did not violate our carrier change rules.” *Id.*, at para. 4, footnotes omitted. Among other things, the FCC includes the following footnote: “See generally 47 C.F.R. §§ 64.1100(b)(d). We note that the Commission has sought comment on whether it is necessary to extend slamming regulations to VoIP or other IP-enabled service providers. See *Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11 paras. 71-72 (2004).” *Id.*, at footnote 13.

²³ *Notice*, at para. 16.

VoIP providers are mainly the cable companies (operating, with the incumbent local exchange carriers, in a local telecommunications market characterized by duopoly).²⁴

The FCC notes that many states do not certify VoIP providers,²⁵ but Rate Counsel urges the FCC to adopt rules that require interconnected VoIP providers to provide documentation before receiving numbers and to demonstrate a plan to offer service.²⁶ Rate Counsel supports the FCC's proposal that a certification would also permit the FCC to use its forfeiture authority without first issuing a citation.²⁷ Rate Counsel urges the FCC to adopt its proposal that as a condition of gaining direct access to numbering resources, VoIP providers "consent to be subject to the same penalties, in terms of potential dollars" as traditional common carriers.²⁸ Furthermore, Rate Counsel supports the FCC's proposal to hold interconnected VoIP providers to the same requirements as other carriers, namely those related to number utilization and optimization and industry guidelines.²⁹

The FCC is correct that imposing utilization requirements and reporting obligations on interconnected VoIP providers directly will assist assessments of numbering utilization.³⁰

Interconnected VoIP providers must be held to the same standards including adherence to the

²⁴ / *Id.*, at para. 17. *See, e.g.*, Technology Transitions Policy Task Force Seeks Comment on Potential Trials, GN Docket No. 13-5, Initial Comments of the New Jersey Division of Rate Counsel, July 8, 2013, at 8-10, Figures 1-2. Nationwide, 55.5% of the residential wireline market is provided by ILEC switched access lines and 33.8% is served by non-ILEC interconnected VoIP service (i.e., cable companies). An additional 4.3% of the lines are non-ILEC switched access lines and 6.4% of the lines are ILEC, interconnected VoIP lines. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2012*, rel. June 2013, at Table 10.

²⁵ / *Id.*, at para. 20.

²⁶ / *Id.*, at para. 21.

²⁷ / *Id.*

²⁸ / *Id.*, at para. 38.

²⁹ / *Id.*, at para. 22.

³⁰ / *Id.*

numbering authority that has been delegated to state commissions with respect to access to data, filing of reports, and reclamation requirements.³¹ Interconnected VoIP providers must comply with similar processes to other providers in terms of demonstrating their ability to provide service and must provide state authorities corporate contact information.³²

The FCC should seriously consider the concerns raised regarding numbering exhaust. In rural rate centers, where number pooling is not ongoing, the FCC should consider allowing state commissions to direct interconnected VoIP providers to obtain numbers from particular rate centers (where number pooling is in effect, for example). The FCC asks whether this proposal is anti-competitive in that it may not enable interconnected VoIP providers to acquire numbers for customers that correspond with their specific geographic location.³³ In today's mobile world, more and more consumers do not have telephone numbers that are associated with geography. People move across the country and take their cell phones with them, for example.

Under no circumstances should the FCC grant direct access to numbering resources without also amending its numbering cost allocation rules.³⁴ The FCC asks whether "non-telecommunications carriers" should be responsible for the costs of number pooling, number portability and numbering administration.³⁵ It is Rate Counsel's position that interconnected VoIP service is a telecommunications service, but in any case, the FCC should not allow VoIP providers to be free riders by obtaining direct access without paying the requisite costs that other

³¹ / *Id.*

³² / *Id.*, at para. 33.

³³ / *Id.*, at para. 26.

³⁴ / *Id.*, at para. 68.

³⁵ / *Id.*

providers face. Interconnected VoIP providers must shoulder the responsibilities that come with the right to direct access.

III. CONCLUSION

Rate Counsel urges the FCC to classify interconnected VoIP service as a telecommunications service. In so doing, the FCC would bestow upon these providers all of the rights and responsibilities under which other carriers operate and additional consumer protections. If the FCC does not classify interconnected VoIP service as a telecommunications service, Rate Counsel supports direct access to numbers for VoIP providers only on the condition that they are subject to similar conditions under which other company's currently access numbers. State regulatory authorities, having been delegated authority to manage numbering resources, must have access to appropriate data, contact information and certifications from VoIP providers as well as the authority to determine which resources can be assigned (i.e. in pooling rate centers). Interconnected VoIP service providers should bear their share of the costs related to numbering administration and exhaust measures as appropriate.

Respectfully submitted,

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