Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Numbering Policies for Modern Communications	)	WC Docket No. 13-97
IP Enabled Services	)	WC Docket No. 04-36
Telephone Number Requirements for IP-Enabled Service providers	)	WC Docket No. 07-243
Telephone Number Portability	)	WC Docket No. 95-116
Developing a Unified Intercarrier Compensation Regime	)	WC Docket No. 01-92
Connect America Fund	)	WC Docket No. 10-90
Numbering Resource Optimization	)	WC Docket No. 99-200
Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15 (g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources	)	
Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission's Rules	)	
Reliability and Continuity of Communications Networks, Including Broadband Technologies	)	PS Docket No. 11-60

REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments to the Federal Communications Commission (FCC) in the above-captioned dockets in response to Comments filed that addressed the FCC Notice of Proposed

Rulemaking of April 18, 2013, regarding direct access to numbering resources by Voice over Internet Protocol (VoIP) providers (the VoIP NPRM).[1] The VoIP NPRM sought input on a range of issues regarding the long-term approach to VoIP providers and numbering resources under the North American Numbering Plan (NANP) implemented by the North American Numbering Council (NANC). The VoIP NPRM set July 19, 2013, and August 19, 2013, respectively, for filing Comments and Replies.

The Pa. PUC appreciates an opportunity to file Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter pending before the Pa. PUC. Moreover, these Pa. PUC Reply Comments could change in response to later events, including Ex Parte filings or the review of other filed Initial and Reply Comments and legal or regulatory developments at the state or federal level. Finally, the Pa. PUC's participation in this proceeding is without prejudice to the ongoing appellate litigation that is pending between the Pa. PUC, other parties, and the FCC before the U.S. Court of Appeals for the 10th Circuit at Docket Nos. 10-1099, *et seq.*

Summary of the Pa PUC Reply Comments

- The FCC should classify VoIP providers and services as modified common carriers and telecommunications and require a state certificate, for carriers subject to VoIP regulation, or a Recognition of Registration (ROR) in those states where the provision of retail VoIP services is not regulated or is regulated lightly.

The Pa. PUC reiterates the following from its initial comments filed in this matter:

- A Recognition of Registration (ROR) requirement should be imposed as part of the FCC's delegation of numbering power to the states; those doing business without an ROR would continue to obtain numbers from the current wholesale telecommunications-retail VoIP relationships.

[1] *In re Numbering Policies for Modern Communications, et al.*, WC Docket No. 13-97 *et al.*, (FCC, Rel. April 18, 2013), Notice of Proposed Rulemaking, Order and Notice of Inquiry, FCC 13-51.

- Numbering requirements imposed on VoIP providers and services should be the same as those imposed on traditional carriers who get direct access to numbers. This ensures regulatory parity and prevents unequal treatment on access to numbers based on technology. For example, numbering utilization thresholds should be no less than 75% or the highest number utilization demonstrated among wireline, wireless, and VoIP providers, before the provider accesses new numbering resources.

- An ROR requirement is consistent with the public interest in conserving numbers, with the convenience of regulatory parity, and with the necessity to save numbers and prevent unnecessary or avoidable numbering relief.

Detailed Discussion

A. Legal Relationship between the FCC and the States on VoIP Numbering.

The Pa. PUC agrees with the California Public Utility Commission (CPUC) that the FCC has authority to delegate numbering to the states under Section 251(e)(1) of the Telecommunications Act of 1996 (TA-96).[2] Federal court precedent prohibits the FCC from delegating its statutory authority to the states or a private entity under TA-96. *See United States Telecom Association v. FCC,* 359 F.3d 554, 564-568 (D.C. 2004) (*USTA II)* absent clear congressional statements permitting it.

The Pa. PUC shares the conclusion of the CPUC that the major underlying question regarding direct access to numbers is whether the FCC may lawfully allow entities which do not provide "telecommunications service" to obtain numbers from the NANP. The Pa. PUC agrees with those Comments, including those of the CPUC and the New Jersey Office of the Ratepayer Advocate (NJ Comments),[3] that the FCC should

[2] *In re: Numbering Policies for Modern Communications, WC Docket No. 13-97,* Docket Nos. WC 13-97, Comments of the California Public Utility Commission (July 19, 2013), pp. 1-30.
[3] *In re: Numbering Policies for Modern Communications, WC Docket No. 13-97,* Docket Nos. WC 13-97, Comments of the New Jersey Office of the Ratepayer Advocate (July 19, 2013), pp. 1-11.

classify VoIP as telecommunications. This ensures that VoIP providers can obtain direct access to numbering resources on the same terms and conditions as other carriers.

The CPUC classification may require the FCC and stakeholders to revisit prior precedent preempting the application of state law on VoIP providers. That might would likely be necessary given the FCC's recognition in its *VoIP NPRM* that it "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 251 of the [1996 Federal Telecommunications] Act."

Following classification, the Pa. PUC would add that the FCC precondition direct access to numbers on terms and conditions similar to those already provided for telecommunications providers. Joint jurisdiction enables the FCC to utilize the states' resources and expertise in administering the NANP. In this case, the requirements could be worked out with the states where a VoIP Numbering pilot is underway.

Given the importance of regulatory parity and federalism, the Pa. PUC does not agree with AT&T that information sufficient to identify and hold accountable carriers with direct access to numbers in 51 jurisdictions constitutes a barrier to entry.[4] As the Pa. PUC has stated previously, the resulting concentration of power in one regulatory agency, particularly for intrastate telecommunications tied to direct numbers, runs counter to the very considerations giving rise to joint federal-state jurisdiction.[5]

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[4] *In re: Numbering Policies for Modern Communications, WC Docket No. 13-97,* Docket No. WC 13-97, Comments of AT&T (July 19, 2013), pp. 1-32, esp. iii and 2.

[5] *In re: Connect America Plan,* WC Docket No. 10-90, Comments of the Pa. PUC and Accompanying Legal Memorandum (August 24, 2011), pp. 1-58, particularly 1, n. 5. *Accord,* William E. Thro, *That Those Limits May Not Be Forgotten: An Explanation of Dual-Sovereignty,* 12 Widener L.J. 567 (2003) (*Federalism).*

Equally important, as the Pa. PUC noted previously in the earlier Vonage Petition, the problem with a "one stop shop" is that giving *retail* VoIP providers and service direct access to numbers may conflict with the states' delegated numbering authority. The states would lack a regulatory vehicle like state certification to ensure that providers of *retail* VoIP services are complying with numbering conservation efforts like *wholesale* and *retail* telecommunications carriers. The states will lack basic information on where providers of *retail* VoIP services are located, who they are serving, and what they are doing with their numbers.[6] The Pa. PUC questions how AT&T's "one stop shopping" can work if authorization occurs at the FCC, and the states, who have numbering authority delegation and conservation enforcement, have insufficient information about which provider has what numbers.

B. State Recognition of Registration by the States and the FCC.

1. *VoIP as Telecommunications.*

The classification of VoIP as telecommunications as suggested by the CPUC, New Jersey, and other comments might appear to solve the direct access problem on a regulatory basis. Such a classification would mesh with a requirement imposed under the FCC's numbering delegation authority in Section 251(e) that no carrier gets direct access to numbers without a Recognition of Registration (ROR) with the state commission.

In those instances where the states do not regulate VoIP or do so very lightly, the states can act pursuant to the FCC's numbering authority delegation requirements. In those cases, the FCC could impose a rule that only those providers with a ROR can get direct access to numbers using its Section 251(e) numbering delegation authority. Those without could use the current wholesale telecommunications-retail VoIP structure. In

[6] *In re: Numbering Optimization,* CC Docket No. 99-200, Petition of Vonage For a Limited Waiver of the FCC's Regulations, Comments of the Pa. PUC (October 6, 2011), pp. 1-8, particularly pp. 7-8.

those instances where there is little or no regulation and the VoIP provider and its wholesale telecommunications interconnection provider are one and the same, the ROR requirement as a precondition to getting numbers under delegated authority could be required of the entity. In those instances where there is little or no regulation and the VoIP provider and the wholesale telecommunications provider are distinct corporate entities, either within a holding company or as independent corporate entities, a ROR mandated tied to Section 251(e) could be imposed on both entities before they get direct access to numbering resources. Those choosing not to do that would continue with the current wholesale telecommunications-retail VoIP structure similar to today's practice.

2. VoIP as Information Service.

If the FCC classifies VoIP as information service, the wholesale interconnection requirement is still appropriate. In that case, the states or the FCC should still require a ROR. That is because the requirements imposed on traditional carriers governing access to numbers should be consistent with regulatory parity. Of course, this approach would be a second best approach. This classification would also have to mesh the FCC interstate authority over "information service" with the numbering authority delegated to the states. In that event, the FCC should tie the ROR mandate to the states' numbering authority, a condition that would remedy the current practice of partnering with wholesale telecommunications carriers. However, carriers should be free to continue this practice although, in that instance, it would be the wholesale provider that would be subject to the certificate/ROR mandate.

C. Numbering Utilization

Under the current regulations, the FCC has a utilization threshold of 75%. A carrier must show that it has used 75% of the numbers in its inventory before it can

obtain new numbers. The Pa. PUC agrees with the CPUC Comments[7] which note that, in the pending petition to the FCC for direct access to numbers, Vonage has offered "to maintain at least 65 percent number utilization across its telephone number inventory." The VoIP NPRM proposes Commission oversight at 90-day reporting intervals. There is no proposal on what number utilization is appropriate.

The Pa. PUC also agrees with the CPUC Comments that a higher threshold than 65% is appropriate, particularly in light of the FCC's current established threshold of 75% utilization of numbering resources. The Pa. PUC urges the FCC to give serious consideration to California's 75% or higher threshold. CPUC has been proposing a higher threshold of at least 75%, multiple times, beginning with their 1999 petition for numbering authority. The Pa. PUC agrees with the CPUC recommendation that the FCC adopt a threshold of no less than 75% for all entities getting direct access to numbers, including VoIP providers. The Pa. PUC would add that a higher threshold should apply to number pooling where parties obtain numbers in blocks of 1,000 as opposed to 10,000.

A higher threshold is critical to addressing the CPUC's observation that VoIP providers may not be subject to the geographical constraints of traditional providers. A higher threshold is warranted because wireless providers that are not subject to the geographical constraints as traditional providers have threshold utilizations much higher than 75% even under the existing rules. If anything, the CPUC Comments support the establishment of a much higher utilization threshold based on whatever industry segment i.e., traditional, wireless, or VoIP, has the highest utilization threshold.

To avoid disruption, however, the Pa. PUC agrees with CPUC that the FCC could phase in a higher threshold, over time, especially if the FCC adopts other measures that would ensure more accurate tracking of number use. Again, as noted earlier, a

[7] *In re: Numbering Policies for Modern Communications,* WC Docket No. 13-97, Comments of the California Public Utility Commission (July 19, 2013), pp. 1-30.

certification/ROR mandate tied to interconnection agreement approval would address many of the legitimate concerns raised in the CPUC Comments, including the possibility that VoIP providers may have an unfair advantage in the market given their access to numbers and minimal accountability compared to other traditional or certificated carriers. The Pa. PUC would add that approval of agreements or dispensation of numbers on such a disparate basis pursuant to FCC rules or decisions raises a very real question whether the states could even do that given the mandate for competitive neutrality in Section 253.

D. Geographic Decoupling.

Geographic decoupling would result in a process where all numbers would be assigned on a nationwide basis. The FCC's resolution of the important issues tied to VoIP direct access to numbers i.e., state accountability, FCC oversight, and information sufficient to ensure that VoIP providers or services are using numbers efficient, warrant no geographic de-coupling given the time that will be necessary to work out direct access to numbers alone.

The Pa. PUC shares the concern that if numbers are totally decoupled from geography, states would no longer have any ability to monitor number use within state boundaries, nor to ensure that number conservation measures are being followed. There is a shared concern that the public suffers when numbers are used inefficiently because such use leads to a need for more area codes. Geographic decoupling would only further that challenge if done at the same time the FCC addresses the direct access to numbering resources by VoIP providers or services.

The opening of every new area code causes public inconvenience and expense. A major component of the FCC's existing numbering scheme involves the states in overseeing number use, and the result has been much greater efficiency. If the FCC abandons that approach going forward, inefficiencies will abound. If the FCC only

partially decouples numbers from geography, that is, if it establishes a system for dispensing numbers by state or by area code, then states would retain their oversight role.

The Pa. PUC believes that the 911 Providers Comments support no geographic decoupling at this time. In the 911 Providers Comments opposing geographic decoupling, they note that the interim transition aspects of NG911 rely on legacy 911 infrastructure, which in turn is dependent upon geographic factors. Accordingly, there should be no expansion of geographic number portability boundaries for wireline service until such time as all wireline service providers can deliver: (1) 911 calls via Session Initiation Protocol (SIP) to the Next Generation 911 (NG911) Border Control Function (BCF); and (2) associated location information as part of the 911 call delivery concurrently with transition from the legacy 911 system infrastructure to the NG911 infrastructure. The Pa. PUC agrees with this comment.

E. Numbers, Regulatory Parity, and Competitive Neutrality.

The Pa. PUC agrees with the Comments of the New Jersey Office of the Ratepayer Advocate (NJ Comments)[8] that the current situation, in which VoIP providers must obtain numbers from a certificated provider whereas certificated providers can get their numbers directly, is unfair and inefficient. The Pa. PUC agrees that VoIP providers have fought long and hard at the federal and state levels to provide voice telecommunications service without the responsibilities associated with other users of the PSTN and numbers. Like the NJ Comments, the Pa. PUC is sympathetic to the various CLECs' position that granting non-carriers direct access to telephone numbers is fundamentally unfair to the certified carriers that have complied with existing regulations.

[8] *In re: Numbering Policies for Modern Communications,* Docket Nos. WC 13-97, Comments of the New Jersey Office of the Ratepayer Advocate (July 19, 2013), pp. 1-8.

The Pa. PUC suggests that the best way to "ensure consumer protection, public safety, and other important policy goals in orders addressing interconnected VoIP services," is by classifying those services (VoIP providers and services) as telecommunications services under TA-96.

In short, the Pa. PUC agrees with the NJ Comments that the FCC must unambiguously declare that VoIP is telecommunications or a telecommunications service under TA-96, particularly as defined in Section 153, 47 U.S.C. § 153. Moreover, the exception to the exclusion in the definition of information services in Section 153, wherein changes in protocol for the provisioning of telecommunications or management of a telecommunications system, makes VoIP telecommunications.

This is also consistent with the observation in the NJ Comments that 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 subject to other traditional telecommunications regulations such as number portability and interconnection.

In particular, on May 13, 2009, the FCC adopted a Report and Order in WC Docket 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 non-dominant wireline telecommunications carriers. After filing notice with the FCC, VoIP service providers would be allowed to discontinue service after thirty days absent further FCC action.

The requirements of competitive neutrality imposed on the states in Section 253 and the provisions governing approval of interconnection agreements under Section 252 militate in favor of classifying VoIP providers and services as telecommunications, albeit without the full panoply of mandates imposed on traditional common carrier providers of telecommunications. This approach respects state laws addressing the regulation or non-regulation of retail VoIP but in a way that is consistent with the FCC's precedent on wholesale telecommunications, numbering delegation to the states, and reasonable conditions guiding the states' review and approval of interconnection agreements.

However, the Pa. PUC agrees with AT&T's comments on the need for an "alternative process" for VoIP although the Pa. PUC would add that this need arises from the FCC's prior preemption of state laws. But for preemption, the states' certification processes would have controlled and there would be no need for an alternative process. Since there is a need for an alternative process, however, the Pa. PUC's comments focus on what alternative process might work. Unlike AT&T, the Pa. PUC proposed an ROR solution that reflected the joint jurisdiction of the FCC and the states. The Pa. PUC does not agree with AT&T that a single-agency "alternative process" is appropriate. This approach eliminates the states' roles in the guise of having efficiency trump the joint jurisdiction of the FCC and the states. The Pa. PUC proposal does not do that.

Finally, the Pa. PUC is concerned that AT&T's proposed approach may be untenable when it comes to ensuring the delivery of 911 and N11.[9] AT&T's proposal for a separate approach for VoIP when it comes to N11[10] seems to be contradicted by its opposition to an "all IP" 911 network trial for NG911 in another proceeding. There,

[9] *In re: Numbering Policies for Modern Communications,* Docket Nos. WC 13-97, Comments of AT&T (July 19, 2013), pp. 1-32, particularly p. 2 and p. 14, n. 38. However, the APCO Filing in the *In re: IP Trials* proceeding documents in fairly considerable detail the challenges VoIP services and providers face compared to traditional 911 when it comes to providing reliable and secure 911 service in particular. *Compare In re: Numbering Policies for Modern Communications,* Docket Nos. WC 13-97, Comments of AT&T (July 19, 2013), pp. 1-32, particularly p. 2 and p. 14, n. 38 with *In re: IP Transition,* GN Docket No. 13-5, APCO Comments (July 8, 2013), pp. 1-8.
[10] *In re: Numbering Policies for Modern Communications,* Docket No. WC 13-97, AT&T Comments, p. 14

AT&T's opposes an "all IP" NG911 because standards have not yet been developed and doing so at this time puts the "trial cart" before the "standards horse."[11] The Pa. PUC questions how the FCC can grant AT&T's request for different number allocation rules for VoIP that of necessity involve 911 when, at least when it comes to NG911 for VoIP, there are no standards, and they will not be done for 12-18 months.[12]

Even if standards did exist, the APCO Comments in the *IP Trials* proceeding in GN Docket No. 13-5 reinforce the view that no single-agency alternative process can address the challenges facing VoIP 911 from a public safety delivery perspective.[13] These include, but are by no means limited to, packet congestion, reliability standards, and the inadequacy of "best efforts" and peering arrangements to provide service. Assuming, *arguendo,* that standards existed and no challenges existed, it is difficult to envision how a one-stop process by the FCC meshes with the accountability for, and delivery of, 911 and NG 911 at the state and local level. Recent filings by California and Indiana[14] on advanced 911 services demonstrate that more than one location for providing advanced 911 service is necessary.

If more than one intrastate PSAP is required in places where advanced 911 is implemented or on trial (and Indiana and California indicate that is the case), it is hard to see how AT&T's "one-stop shopping" and "separate rules" for VoIP N11 developed by the FCC when it comes to numbers are advisable. This is particularly because the lines of accountability and reliability would focus in one agency compared to the states.

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[11] *In re: IP Transition,* WC Docket No. 13-5, AT&T Comments, pp. 27-19 (a trial of NG911 is inappropriate until standards are developed and they will not be developed for another 12-18 months).
[12] *Compare In re: Numbering Policies for Modern Communications, WC Docket No. 13-97,* Docket Nos. WC 13-97, AT&T Comments, p. 14 with *In re: IP Transition,* GN Docket No. 13-5, AT&T Comments (July 8, 2013), p. 27
[13] *In re: IP Transition,* GN Docket No. 13-5, APCO Comments (July 8, 2013), pp. 1-8.
[14] *In re: IP Trials,* GN Docket No. 13-5, Comments of the California Public Utility Commission (July 8, 2013), pp. 6-7 (California has five NG 911 trials underway) and *IP Trials Proceeding,* GN Docket No. 13-5, Comments of the California Office of the Governor's Office of Emergency Services (July 8, 2013), p. 2 (California's implementation of an NG 911 ESINet solution was done using 37 Public Safety Answering Points (PSAPs) in 13 counties in the Northeast Portion of California alone); *In re: IP Trials,* GN Docket No. 13-5, Comments of the Indiana Regulatory Utility Commission (July 8, 2013), pp. 2-3 (Indiana's NG 911 for serving wireless and VoIP providers under a 2006 law used PSAPs in 19 counties).

The Pa. PUC thanks the FCC for providing an opportunity to file these Reply Comments.

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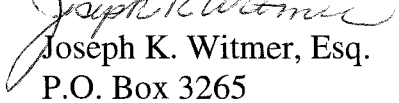

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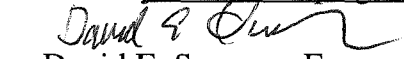

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