

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
SBC IP Communications, Inc.)	CC Docket No. 99-200
Petition for Limited Waiver of)	
Section 52.15(g) of the)	
Commission's Rules Regarding Access to)	
Numbering Resources)	

REPLY COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") submits these Reply Comments in response to the Commission's Notice inviting comment on the petition of SBC IP Communications, Inc. ("SBCIP") in which SBCIP seeks limited waiver of Section 52.15(g)(2)(i) of the Commission's Rules ("Petition").¹ According to the Petition, SBCIP, a voice over Internet protocol ("VoIP") provider, lacks the necessary authorization required by Section 52.15(g)(2)(i) to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA").

I. Introduction

JSI is a consulting firm offering regulatory and financial services to more than two hundred incumbent local exchange carriers ("ILECs") throughout the United States. Among its consulting services, JSI assists these ILECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund data to the National Exchange Carrier Association

¹ See Comment Sought on SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources: Public Notice, CC Docket No. 99-200, DA 04-2144 (rel. July 16, 2004) ("Notice").

(“NECA”), and routinely prepares and files tariffs with the Commission on behalf of a number of these ILECs. JSI also provides consulting services for competitive local exchange carriers (“CLECs”), which provide competitive local exchange services across the nation.

JSI, along with the majority of commenters in this proceeding, urge the Commission to find that the Petition fails to meet the FCC’s waiver standard because alternative ways exist for VoIP providers to obtain numbering resources.² Further, no immediate need for waiver exists at this time since SBCIP has been granted Special Temporary Authority to obtain up to 10,000 numbers directly from the Pooling Administrator for a period of nine months to test its proposed form of interconnection with the Public Switched Telephone Network (“PSTN”).³ Because the facts do not support a waiver of Commission Rules, the request must be denied.

If the Commission determines, however, that facts presented in the SBCIP Petition justify waiving Section 52.15(g)(2)(i), the Commission must also address how VoIP providers would comply with the numerous other numbering-related obligations that are required of all users of numbering resources.⁴ As demonstrated herein, regardless of whether VoIP providers are ultimately classified as information service providers (“ISPs”) or telecommunications carriers, if they are able to obtain the benefit of direct access to numbering resources they must also comply with the corresponding obligations such as interconnection, intercarrier compensation and numbering requirements. Additionally, JSI urges the Commission to require all entities which

² See, e.g., Opposition of Time Warner Telecom (“Time Warner Comments”) at 5 (“this waiver request, based on facts that are identical to a large class of VoIP providers, does not make out the unique or extraordinary circumstances required to justify a waiver of the Commission’s numbering rules”); Comments of AT&T at 3; Comments of the Iowa Utilities Board at 1-2.

³ See *Administration of the North American Numbering Plan: Order*, CC Docket 99-200 at para. 5 (rel. June 17, 2004) (“STA Order”).

⁴ See Comments of the New York State Department of Public Service (“NYDPS”) at 2 (“The NYDPS is concerned that voice over Internet protocol (VoIP) providers such as SBC-IP are seeking the benefits ascribed to telecommunications carriers without taking on the corresponding obligations. This would seem unfair to carriers that comply with both state and federal requirements”).

connect to the PSTN, including VoIP providers, to contribute to the Universal Service Fund to ensure that vital wireline telecommunications services continue to be available in rural areas.⁵

II. SBCIP's Waiver Has Broad Implications

On the surface, SBCIP's Petition appears to be limited to seeking waiver from one FCC Rule for the benefit of one VoIP provider. This is far from the reality of the situation. If granted, the waiver would start an avalanche that would smother current telecommunication rules. As demonstrated by commenters, if the Commission were to grant the Petition, it would encourage other VoIP providers to seek waivers for obtaining numbering resources.⁶ Other waiver requests from "enhanced service providers" ("ESPs") such as ISPs and other end users such as payphone providers and large corporations would likely follow.⁷ These "me too" petitions would unnecessarily burden Commission staff who would have to process the requests.⁸ Additionally, the FCC's efforts to conserve numbering resources would be thwarted if the Commission granted some of these petitions and allowed end users to receive numbers directly from NANPA or the pool administrator.⁹

⁵ JSI also urges the Commission to require all entities that connect to the PSTN to "transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority." 47 C.F.R. § 64.3001.

⁶ See Time Warner Comments at 6; Comments of PointOne at 2 (a VoIP provider seeking grant of SBCIP's waiver and all similarly situated unregulated VoIP providers).

⁷ See Comments of Vonage Holdings Corp ("Vonage Comments") at 8 ("Until the Commission resolves the issue of the legal classification of VoIP providers under federal law, information service providers, like SBCIP, are end users of telecommunications services" and citing Fortune 500 companies and America Online as examples of other end users that might seek direct assignment of numbers).

⁸ See, e.g., Comments of the Pennsylvania Public Utility Commission at 2 ("a waiver could trigger a flood of similar waiver requests whose resolution could distract the Commission from addressing the matter in more detail in the pending IP Services docket").

⁹ The depletion would be accelerated if the end users required a large quantity of numbers for LRNs (as has been requested by some ISPs) or if "specialty numbers" were auctioned to the highest bidder similar to the way that URLs have been auctioned. See Comments of the Iowa Utilities Board at 2-3.

SBCIP considers itself an ISP offering VoIP services.¹⁰ This is SBCIP's own designation; neither the industry nor the FCC has endorsed it.¹¹ If SBCIP were to classify itself as a telecommunications provider, it could obtain numbering resources directly from NANPA or the pooling administrator, but would have to be certified with a state commission and comply with all obligations required of telecommunications carriers. By considering itself an ISP, SBCIP believes that it can obtain numbers merely by obtaining waiver of one rule and voluntarily agreeing to comply with a few numbering obligations while ignoring the host of other obligations that are required of entities obtaining numbering resources. To properly consider the Petition, JSI believes that the Commission must consider the potential impact on the telecommunications network, specifically interconnection, intercarrier compensation, and numbering obligations. As demonstrated herein, many of these regulations would either have to be waived or interim rules fashioned until the FCC promulgates rules pursuant to its VoIP NPRM.¹² Granting this waiver, thus allowing SBCIP and potentially other "me too" applicants to obtain numbers without certification as telecommunications carriers, creates more gaps in requirements than are already present. Developing interim rules to address the interconnection, intercarrier compensation, and numbering rules will both detract from developing final rules and prejudice the outcome of pending proceedings.

¹⁰ See Petition at 6 ("SBCIP provides only interstate information services and is not a common carrier").

¹¹ The FCC has initiated a proceeding to address the regulatory status of VoIP service providers. See *IP-Enabled Services: Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28 (rel. March 10, 2004) ("VoIP NPRM").

¹² See Comments of AT&T at 7 ("The relief requested by SBCIP would in any event require the Commission to fashion alternative interconnection and compensation rules for VoIP providers on an interim basis without reason . . .").

III. Granting the Petition would Harm the Telecommunications Network by Diluting the Interconnection Requirements of Carriers.

The Petition seeks to short-circuit the entire VoIP NPRM process. If numbers are provided to SBCIP, the question arises as to how telecommunications providers should treat SBCIP - as a telecommunications provider or an ISP. Current interconnection rules require telecommunications providers to connect directly or indirectly with each other.¹³ If VoIP providers are considered ISPs, there is no requirement for telecommunications carriers to interconnect with ISPs that do not offer telecommunications services under Section 251 of the Act.¹⁴ Likewise there is no obligation for ISPs or any other end user to connect to telecommunications providers. SBCIP states they will connect to tandems once they obtain telephone numbers.¹⁵ Since there is no requirement for interconnection, these tandem arrangements are commercial arrangements outside interconnection rules. SBCIP also fails to provide any proof of its claim that having direct access to numbers will enable SBCIP to “work more effectively” with carriers in negotiating these commercial interconnection arrangements.¹⁶

As an affiliate of an RBOC, SBCIP has a privileged status. As one commenter questioned, “what assurance would be given that non-RBOC affiliated VoIP providers would be able to interconnect with the RBOCs?”¹⁷ Another commenter raised the issue of problems that

¹³ See 47 U.S.C. § 251(a).

¹⁴ See 47 C.F.R. § 51.100 (b); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: First Report and Order*, 11 FCC Rcd 15,499 (1996) (“we conclude that enhanced service providers that do not also provide domestic or international telecommunications, and are thus not telecommunications carriers within the meaning of the Act, may not interconnect under section 251”).

¹⁵ See Petition at 5.

¹⁶ *Id.*

¹⁷ See Vonage Comments at 4 (“arguably, RBOCs have no obligation to allow *other* VoIP providers to interconnect with the PSTN on a trunk-side basis at a tandem switch”).

occurred when recipients of telephone numbers failed to interconnect with independent LECs.¹⁸ JSI is concerned that similar problems would occur if SBCIP or other VOIP providers are not required to interconnect with independent carriers. The requirement for all telecommunications carriers to interconnect with each other helps to ensure that all calls are completed. Granting SBCIP's waiver without requiring VoIP providers to interconnect could cause an increase in incompleting calls.

Further, SBCIP makes no commitment concerning interconnection or the capabilities of their network. JSI has serious concerns regarding how far SBCIP intends to reach with the proposed tandem interconnection,¹⁹ how it intends to route traffic, and whether SBCIP intends to have local interconnection points for termination of local traffic or just one point of interconnection for the entire country. If the Petition were granted, interim rules would need to be developed to address these issues or risk carriers refusing to interconnect with each other, an increase in the number of incomplete calls, and a rise in complaints to the FCC concerning lack of interconnection and compensation issues. Rather than fashioning interim rules in the context of a waiver request, which is "limited in duration,"²⁰ the public interest would be better served by the Commission resolving pending proceedings concerning interconnection²¹ and open issues in the VoIP NPRM.²²

¹⁸ Comments of the NYSDPS at 3 & n.12.

¹⁹ See Vonage Comments at 7-8 ("Is it SBCIP's proposal that interconnecting in one tandem will allow SBCIP to obtain telephone numbers throughout: (1) the rate center in which the tandem is located?; (2) the geographic footprint served by the tandem?; (3) throughout an entire NPA?; or (4) every NPA in the country?")

²⁰ Petition at 2 (SBCIP seeks waiver only until the FCC adopts permanent rules pursuant to its VoIP NPRM).

²¹ See, e.g., *In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling*, CC Docket No. 01-92 (filed July 18, 2002).

²² In considering adopting interim rules to address unbundling obligations of ILECs, the Commission found, "administrative resources will be best spent immediately addressing permanent rules, rather than perfecting a longer

IV. Failure to Resolve Intercarrier Compensation Issue Would Encourage Arbitrage.

In its VoIP NPRM, the Commission stated its belief that “any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.”²³ JSI agrees with the Commission and believes that any communication that originates at a location physically outside the wireline local calling scope of the customer is a toll call and subject to access. SBCIP and many other commenters agree.²⁴ Vonage and Point One, however, disagree that their service should be subject to access charges.²⁵

This discrepancy demonstrates that the current environment is ripe for arbitrage. Focusing efforts on SBCIP’s waiver rather than addressing critical intercarrier compensation matters in the VoIP NPRM and its intercarrier compensation docket, would further delay promulgation of permanent rules, thus increasing opportunities for arbitrage. JSI urges the

interim regime.” *Unbundled Access to Network Elements: Review of Section 251 Unbundling Obligations of Local Exchange Carriers: Order and Notice of Proposed Rulemaking*, WC Docket No. 04-313, CC Docket No. 01-338 at para. 24 (rel. Aug. 20, 2004).

²³ VoIP NPRM at para. 33.

²⁴ See Petition at 3, n.6 (“when interexchange traffic is delivered to an incumbent LEC for termination on the PSTN, the incumbent LEC is entitled to receive applicable access charges for that traffic under the Commission’s current rules – regardless of whether that traffic originated in an IP format or on a broadband network”); Comments of BellSouth Corporation at 8-9 (agreeing with SBCIP’s statement); Comments of the Public Utilities Commission of Ohio (“Ohio Commission Comments”) at 7 (“Ohio Commission believes that interconnection to the PSTN by a VoIP provider connotes a basis essential commitment to ensure that the PSTN is reasonably compensated for such access and that customers are reasonably treated, especially since these services are marketed as substitutes for traditional local exchange service”).

²⁵ See Vonage Comments at 3 (“permitting a direct allocation would do nothing to mitigate RLECs insistence that data services provided through these circuits is somehow not subject to the *ESP Exemption*”); See PointOne at 2 (noting that ESPs are exempt from paying access charges). PointOne asserts that if the Commission were to grant a waiver to all similarly situated VoIP providers, it would “enable VoIP providers to purchase trunk-side interconnection directly from the incumbent LECs at rates that accurately reflect the cost of providing such interconnection,” but it gives no assurance that it would accept tariffed rates as “accurately reflecting the cost of providing such interconnection” or submit to state commission arbitration proceedings if it sought to negotiate the rates. *Id.* at 3.

Commission to deny SBCIP's waiver request and promptly resolve at least one of the issues in its pending VoIP NPRM by declaring that VoIP providers are subject to access charges.

V. Numbering Requirements Must be Uniformly Implemented.

Numbering requirements must be applied uniformly to ensure all carriers comply with the rules in a competitively neutral manner.²⁶ If some providers are allowed to comply with just some of the numbering rules and not others, all carriers would have an incentive to recast themselves as the type of providers with the least regulation.²⁷ In its Petition, SBCIP offers to voluntarily comply with some of the NANPA requirements pertaining to obtaining and maintaining numbers but fails to address compliance with the overall administration of the numbering.²⁸

Current FCC Rules provide that numbers are to be issued only to “parties providing telecommunications service.”²⁹ Accordingly, SBCIP not only needs a waiver from becoming a certified telecommunications carrier by the applicable state, but by classifying itself as an ISP, it must also request a waiver to use telephone numbers for a non-telecommunications service.

²⁶ See *Administration of the North American Numbering Plan: Report and Order*, 11 FCC Rcd 2588 at para. 4 (1995) (“NANPA Order”) (“Numbers are the means by which businesses and consumers gain access to, and reap the benefits of, the public switched telephone network. These benefits cannot be fully realized, however, unless numbering resources of the NANP are administered in a fair and efficient manner that makes them available to all parties desiring to provide telecommunications services”).

²⁷ See, e.g., Ohio Commission Comments at 7 (“If the FCC does not ensure that these basic responsibilities are mandated on a non discriminatory basis on all local telecommunication service providers regardless of the medium used, deleterious consequences will result since ILECs and their competitors will be induced to migrate customers from the PSTN to VoIP to avoid these basic obligations, which in turn will result in under funding of the PSTN”).

²⁸ In its STA Order, the Wireline Competition Bureau required SBCIP to comply with “numbering requirements and industry guideline and practices” and cites Part 52 of the Commission’s Rules. STA Order at para. 5. In its Petition, SBCIP omits any reference to compliance with industry guidelines and selectively chooses certain sections of Part 52 for which it will comply. Petition at 10. See, Comments of the Iowa Utilities Board at 3 (“SBCIP claims its aforementioned ‘commitments’ are adequate to meet the FCC’s goals, but it appears that SBCIP is merely agreeing to comply with some, but not all, of the Commission’s existing regulations”).

²⁹ See NANPA Order at para. 4.

Other requirements not listed by SBCIP that would require waiver include: the requirement to obtain an OCN,³⁰ adhering to notice periods, listing information in NECA Tariff 4, entering numbers in the LERG,³¹ obtaining CLLI codes, complying with dialing parity rules and performing LNP queries.

Some VoIP providers are already in violation of numbering rules. For example, the Ohio Commission points out the current practice of Vonage assigning numbers to customers not physically located in the geographic area.³² JSI believes that this practice is in violation of NANPA rules in that it makes a toll call appear as a local call.³³

If SBCIP or any other VOIP provider were granted a waiver of any of these geographic numbering requirements, dialing parity, or any other numbering requirement, new rules would have to be crafted or risk the collapse of the numbering system. The compliance with all the numbering requirements must be mandated to all carriers who obtain numbers to prevent abuse and retain competitive neutrality.³⁴

³⁰ See Comments of BellSouth Corporation at 5.

³¹ The LERG requires telecommunications switches to be identified. The Petition states that SBCIP has softswitches and gateways but makes no reference to having a telecommunications switch.

³² See, Ohio Commission Comments at 3-4 (citing Vonage's practice and noting that VoIP providers "should also be required to follow the FCC's current requirements with regard to the non-geographic assignment of telephone numbers").

³³ In order for a CLEC partner of a VoIP provider to obtain an NXX, the NXX must be associated with a rate center where the CLEC provides or intends to provide service. See Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008 (July 23, 2004) at Section 4.1 ("[a]n initial code assignment will be based on a unique rate center consistent with regulatory restriction"). When the CLEC partner assigns the NXX to a VoIP provider who in turn assigns the NXX to a customer located outside of the authorized rate center, this rule is violated because the NXX is no longer associated with the unique rate center for which it was assigned.

³⁴ See Time Warner Comments at 7 ("The commission must consider whether voluntary assumption of these responsibilities by VoIP providers is sufficient").

VI. Conclusion

For the foregoing reasons, the Commission should immediately deny SBCIP's Petition and focus its efforts on resolving the issues for which it has sought comment in its VoIP NPRM. SBCIP's Petition is an attempt by the carrier to obtain the benefits of having access to numbers without taking on the obligations imposed on all entities that receive numbering resources such as interconnection, intercarrier compensation and numbering requirements. If the Commission were to seriously consider the request, limited Commission resources unnecessarily would be spent to determine whether and how such obligations pertain to SBCIP. The public interest would be better served if the Commission used its energies to resolve these and other issues it has pending before it in the context of the VoIP NPRM rather than in the context of SBCIP's limited waiver request.

Respectfully submitted,

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