

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON D.C. 20554**

In the Matter of:	)	
	)	
SBC IP Communications, Inc.	)	
Petition for Limited Waiver of	)	CC Docket No. <b>99-200</b>
Section 52.15(g)(2)(i) of the	)	
Commission's Rules Regarding Access to	)	
Numbering Resources	)	

**REPLY COMMENTS OF THE  
MICHIGAN PUBLIC SERVICE COMMISSION**

Pursuant to the Federal Communications Commission's ("FCC") procedural schedule established in the above docket, the Michigan Public Service Commission ("MPSC") hereby submits its reply comments.

**I. INTRODUCTION**

On July 16, 2004, the FCC requested comments regarding SBC IP Communication Inc.'s ("SBCIP") petition for a limited waiver of Section 52.15(g)(2)(i) of the FCC's rules regarding access to numbering resources.<sup>1</sup> SBCIP is requesting to receive numbering resources, to provide telecommunication service to residential and business customers, without federal or state certification.

The current waiver request was filed with the FCC three weeks after SBCIP received Special Temporary Authority ("STA") to obtain numbering resources for a limited, non-commercial trial of Voice over Internet Protocol ("VoIP") involving only

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<sup>1</sup> SBC Communications Inc., Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Communication's Rules Regarding Access to Numbering Resources, CC Docket No. 99-200, July 7, 2004.

employees of SBC companies.<sup>2</sup> The current petition is requesting numbering resources to extend its service to residential and business customers.

Comments were received from the Public Utilities Commission of Ohio (“PUCO”), Iowa Utilities Board (“IUB”), Pennsylvania Public Utility Commission (“PaPUC”), New York State Department of Public Service (“NYDPS”), AT&T Corp. (“AT&T”), PointOne, Time Warner Telecom (“Time Warner”), Vonage Holdings Corp. (“Vonage”), BellSouth Corporation (“BellSouth”), and Sprint Corporation (“Sprint”).

## II. DISCUSSION

### **Waiver of Section 52.15(g)(2)(i)**

Section 52.15(g)(2)(i) reads “The applicant is authorized to provide service in the area for which the numbering resources are being requested” and is accomplished by the Pooling Administrator (“PA”) and the North American Numbering Plan Administrator (“NANPA”) by requesting copies of either the carriers federal or state certificate.<sup>3</sup> States believe this is a preemption of their delegated responsibility to ensure wireline carriers abide by federal numbering regulations.

Many companies, such as Level 3 Communications, Time Warner, and ACD, providing VoIP telecommunications service are certified by state commissions, ensuring that quality of service regulations and interconnection agreements between carriers are adhered to. In Michigan, the licensing process is not onerous, and provides both the carrier and the MPSC with assurances that the Michigan Telecommunications Act is used as the basis for providing telecommunication service to Michigan consumers.

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<sup>2</sup> FCC Order, *In the Matter of Administration of the North American Numbering Plan*, CC Docket 99-200 (DA 04-1721), June 17, 2004.

<sup>3</sup> Industry Numbering Committee (INC), Central Office Code (NXX) Assignment Guidelines, Section 4.2.1.

To issue a waiver of Section 51.12(g)(2)(i) would encourage telecommunications carriers serving customers through VoIP provisions to assume there is no need for certification or to adhere to their current certificate. Certifying telecommunications carriers provides safeguards for both the carrier and the consumer. If certifying provided no benefit, the FCC would have chosen not to certify wireless telecommunications and paging carriers, and state commissions would have long ago dispensed with the procedures for certifying local exchange carriers (“LECs”) and competitive local exchange carriers (“CLECs”).

### **Classification of VoIP**

Throughout its petition, SBC describes SBCIP as “an information service provider”<sup>4</sup> which will “deploy innovative new services using a more efficient means of interconnection between IP networks and the Public Switch Telephone Network (PSTN).” The MPSC agrees with the PaPUC and the NYDPS that the petitioner fails to provide justification for classifying its service as an information service.<sup>5</sup>

In a letter to the FCC, regarding AT&T’s Phone-to-Phone IP Telephone Services, SBC states “AT&T is flagrantly violating the Commission’s rules by refusing to pay access charges on plain old long distance that AT&T chooses to transport over an Internet Protocol (IP) network for some distance between points on the public switched telephone network.”<sup>6</sup> Yet, SBC attempts to define its own VoIP service offering as “information.”

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<sup>4</sup> SBCIP petition, pg. 1

<sup>5</sup> An “information service” is “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any capability for the management, control, or operation of the telecommunications system or the management of telecommunications services.”

47 U.S.C. §153 (20).

<sup>6</sup> SBC, Letter to FCC, WC Docket 02-361, March 12, 2004.

Most VoIP service providers engage the PSTN to provide real-time, point-to-point transmission of voice communications and approach potential customers marketing their VoIP offering as a replacement for their basic local telephone service. The IUB commented that “if the VoIP carriers are successful in avoiding common carrier status, they will be able to pick and choose customers” which should be a concern both in the context of numbering, but also competitively. The MPSC does not believe the use of softswitches and IP technology is a “new breed”<sup>7</sup> of telecommunications as other carriers, and SBC itself, have been using softswitches and IP technology to transport voice traffic for many years. The upgrade of facilities and functions does not define a new technology, it is simply an evolutionary process necessary to compete with other telecommunications carriers.

Functionally, the SBCIP form of VoIP mirrors classic basic local telephone service as seen by the customer. Although the voice is packetized for transport through both the PSTN and the IP backbone, unless there is distortion on the line which would degrade the service, the customer uses the service as they always have to enable real-time transmission and reception of voice messages.<sup>8</sup> The expectation is that SBC will market SBCIP as a replacement for their wireline telephone service.

### **Access to Numbering Resources**

Currently, there are two ways that telecommunications carriers using VoIP technology can access numbering resources:

1. petition and be granted a state certificate to provide telecommunications service or

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<sup>7</sup> SBCIP petition, pg 7

<sup>8</sup> National Association of Regulatory Utility Commissioners (NARUC), Comments, CC Docket No. 04-36, May 28, 2004.

2. to acquire them through a certified carrier.

As noted above, some telecommunications carriers providing VoIP offerings are petitioning states for basic local exchange certifications. SBC should not be allowed to bypass the normal process for acquiring numbering resources and open the floodgates to other VoIP providers doing the same.

The MPSC does agree that VoIP providers acquiring numbering resources through certified carriers, as intermediate numbers, is not the preferred approach. Intermediate numbers become a lost commodity as neither the carrier of record nor the intermediate carrier (in this case, a VoIP provider) feel a responsibility to ensure usage is recorded properly on the Numbering Resource Utilization and Forecast (“NRUF”) forms. Carriers many times record the numbers as “active” without knowing their true status and intermediate carriers, that are not certified by either the federal government or the states, are not allowed to enter NRUF data.<sup>9</sup>

The MPSC agrees with the IUB and AT&T that waiver of a statute is not necessary to ensure that VoIP providers have access to numbering resources. In Michigan, there is no indication that certified carriers are withholding services, or numbering resources, from VoIP companies. In fact, the MPSC has received inquiries from carriers asking how to provide service to VoIP companies.

### **Numbering Exhaust Issues**

SBC asserts that it will be providing service via its softswitch and gateways<sup>10</sup> noting that those technologies are more efficient than end office switches. However, it should be understood that each of these softswitches require local routing numbers (“LRN”) to ensure the ability to port and pool telephone numbers, and each LRN requires

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<sup>9</sup> Section 52.15(g)3(iv)

<sup>10</sup> SBCIP petition, pg 5

that a Central Office Code (CO Code) be allocated to provide Local Exchange Routing Guide (“LERG”) information. Although, in some cases, thousand blocks will be returned to the PA, pooling inventories are not used to determine the need for area code relief. Area code relief is based on CO Codes, and as more CO Codes are allocated for LRN purposes, more area code relief will be seen nationwide.

An additional concern raised by the PUCO is the current practice of VoIP companies providing customers with “virtual” telephone numbers, without a limit, to allow local calling in other area codes.<sup>11</sup> Such a practice is in violation of current numbering regulations, for certified carriers, but is being used by VoIP companies as a competitive edge over wireline and wireless service. Although the MPSC has not witnessed an increase in numbering resource usage due to the practice of virtual numbers, it is a concern that highly metropolitan areas will again be involved with surges in numbering requests that can only be addressed through conservation tactics and area code relief.

### **7-digit Dialing in an Overlay Area Code**

The PUCO commented that Vonage is offering 7-digit dialing in Massachusetts’ overlay area codes. In addition, the MPSC found on the Vonage website that New York’s 212 area code is used as an example, which currently is being served by two overlay area codes. Mandatory 10-digit dialing in an overlay area code has been challenged and denied as anti-competitive.

The MPSC agrees with the PUCO, and the FCC, that dialing disparity is anti-competitive. The implementation of an area code overlay is a difficult decision, due to the consumer displeasure in dialing 10-digits to reach local telephone numbers. The use

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<sup>11</sup> [www.vonage.com/avail.php](http://www.vonage.com/avail.php)

of anti-competitive measures by an industry requesting access to numbering resources is not acceptable.

### **Numbering Issues Controlled by State Commissions**

State commissions have delegated authority over several numbering issues as provided by the FCC and state legislation. One fundamental responsibility is the determination of “safety valve” requests by carriers. Safety valve requests are submitted to state commissions when a carrier is in need of additional numbering resources, although they may still have a 25% inventory.<sup>12</sup>

VoIP providers, that are not certified carriers, will be unable to utilize the “safety valve” procedure as outlined by the FCC.<sup>13</sup> Therefore, they will not be able to provide service to customers requesting large quantities of numbering resources and will not be able to compete with either incumbent or competitive local exchange carriers on a business level.

States also certify telecommunications carriers as “eligible” (“ETC”) to apply and receive Universal Service funds (“USF”). Without state certification, or changes in the current statute, VoIP providers would not be able to receive reimbursement for providing service to high-cost rural areas, schools, libraries, or rural health care facilities. With proposals that numbering resources be used in the equation for contributions to the USF, VoIP customers would be contributing to the USF without VoIP companies being able to recover any of their costs for providing service.

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<sup>12</sup> Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, *In the Matter of Numbering Resource Optimization and Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, CC Docket No. 99-200, CC Docket No. 96-98, December 29, 2000 (released), ¶26.

<sup>13</sup> Third Report and Order and Second Order on Reconsideration, *In the Matter of Numbering Resource Optimization*, CC Docket 99-200 (FCC 01-362), ¶57-66.

In addition to the above listed delegated duties, each State works with the NANPA and the PA to ensure that numbering resources that are not activated within 6 months are reclaimed and the NYDPS reminded the Commission in its comments that States were delegated the authority to determine facilities readiness. The certification of telecommunications providers is not a stand-alone issue. A change, or waiver, in one section of the numbering rules will affect several other issues.

### **Mandatory versus Voluntary Compliance**

SBCIP states in its petition that it will “fully comply with all existing Commission numbering resource requirements” pertaining to thousands-block number pooling, NRUF, local number portability (“LNP”), and contributing to numbering costs.<sup>14</sup> It is a concern of the MPSC, in agreement with the PUCO and the IUB, that there is a long trail of companies that have agreed to work voluntarily on numbering conservation issues, however voluntary compliance has had a poor reputation in the past.<sup>15</sup>

Should a waiver be given and numbering resources allocated to SBCIP without state certification, there is no compelling reason for SBCIP to be compliant with FCC regulation or with State delegated authority. It is imperative that VoIP companies understand that the access to numbering resources, either as certified carriers or as end users, leads to responsibilities toward the FCC, state commissions, telecommunications service providers, and end users. The MPSC agrees with the IUB in its statement that “SBCIP should not be given credit for saying it will comply with the law.”

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<sup>14</sup> SBCIP petition, pg. 10

<sup>15</sup> Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Voluntary Unassigned Number Porting Trial, CC Docket No. 96-98, November 1, 2002.



### III. CONCLUSION

The MPSC strongly supports choice and competition, and provides a favorable regulatory climate that encourages VoIP providers to serve Michigan consumers. However, it is imperative that this petition be denied. Certification of telecommunication providers is a basic principle to ensure the protection of consumers, carriers, and the North American Numbering Plan.

Waiving Section 52.15(g)(2)(i) would affect at least four additional sections of the numbering regulations and create significant uncertainty in the administration of numbering resources. It is not enough to accept SBCIP's commitment that it will comply with numbering rules, since voluntary compliance has not had a glorious history.

SBCIP's petition is without merit and the MPSC respectfully requests that it be denied.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE  
COMMISSION**

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