



April 11, 2013

Chairman Genachowski,  
Commissioner Robert McDowell,  
Commissioner Mignon Clyburn,  
Commissioner Ajit Pai, and  
Commissioner Jessica Rosenworcel

Re: Written Ex Parte addressing the Orders on Circulation in Docket CC No. 99-200 – “Vonage Waiver Petition” - 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., Nuvo 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)(l) of the Commission’s Rules Regarding Access to Numbering Resources.*

Commissioners:

We write today because the Commission is about to take an action that is ill timed, ill-conceived, and will not only likely result in unintended and perhaps unexpected consequences, but also will make it more difficult for the Commission to deal with its own open proceedings on the transition to IP in a way that protects the public interest.

Rather than rush to judgment in a way that creates a race to the bottom, we urge the Commission to take a moment to consider the long-term consequences of granting a waiver that effectively prejudices an NPRM and undermines a long-standing framework that this Commission has depended on to prevent anti-consumer behavior.

Ever since the FCC granted a limited waiver to SBC-IS in 2005, it has been broadly accepted that the question of whether providers who are not certificated telecommunications carriers should be granted direct access to telephone numbers should be examined through a full NPRM. A full proceeding is necessary to examine the question of how State regulatory authorities will retain their ability to protect their constituents against bad actors and the consumer interests associated with telephone number usage. As Commissioner Michael Copps said in his separate statement in the SBC-IS Waiver Order in 2005:

*[I think it is important to acknowledge that numbering conservation is not an issue that the federal government can undertake by itself. States have an integral role to play. This is why Congress specifically provided the Commission with authority to delegate jurisdiction over numbering administration to our State counterparts. Consumers everywhere are growing frustrated with the proliferation of new numbers and area codes. As IP services grow and multiply, state and federal authorities will have to redouble our efforts to work together. After all, we share the same goals-ensuring that consumers get the new services they desire and ensuring that numbering resources are distributed in the most efficient and equitable manner possible.]*<sup>[1]</sup>

Assigning telephone numbers to providers who are not State certificated telecommunications carriers undermines the Congressionally established structure of the Telecom Act. State and Federal roles on consumer protection, interconnection, and number management are clearly defined in the Act specifically for "telecommunications carriers", which would be circumvented by lack of a defined legal authority over providers that have chosen not to be "telecommunications carriers."

The signatories to this letter are concerned that signaling its intent to allow direct assignment of numbers to non-carriers would trigger a "*Race To the Bottom*" in the American communications market - where providers of all kinds race to self-define their regulatory status to obtain desired privileges or avoid unwanted burdens of regulations (e.g. - number spoofing, harassing or fraudulent calling and the consumer complaints and enforcement that follow).

A glaring example of the flaw in this action is that the proposed NPRM is accompanied by a special "waiver/trial" for Vonage that would be conducted *simultaneously* with the NPRM. Ultimately, the FCC would be pressed to grant other Non-Carriers waivers to conduct "trials" because it is blatantly discriminatory to grant such privileges only to Vonage.

Whatever one's views on the apparent merits of any particular waiver request, we strongly object to apparently deciding the crucial issue first and then going back to open a rulemaking. This approach combines the inefficiencies of both procedural vehicles and none of the benefits. A rulemaking should precede any decision that has broad and wide-ranging impacts. A rulemaking should not be used to figure out if there are unintended consequences that should have been addressed *before* any waiver is granted or to quantify the impacts (both positive and negative) if the special advantage bestowed on one market participant is multiplied to cover all participants.

NARUC, in particular, has consistently pointed out that the relief sought in these waiver requests is broad and should be addressed in the context of a rulemaking proceeding. Regulators should never intervene in a competitive market to 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. However noble the intent, granting *any* waivers in this context is -- by definition -- market intervention on behalf of favored participants at the expense of competition and to the detriment of less favored competitors.<sup>[2]</sup>

States have always an obvious and logical role in 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 that 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 that are costly and can have a negative impact on both consumers and commerce.<sup>[3]</sup>

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[1] *In the Matter of Administration of the North American Numbering Plan*, CC Docket 99-200, Order, FCC 05-20, ¶ 3 (rel. Feb. 1, 2005) ("*SBCIS Waiver Order*") (Concurring Statement of Commissioner Michael J. Copps).

[2] NARUC AUGUST 30, 2012 REPLY COMMENTS CC DOCKET 99-200

[3] *Id.*

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.<sup>[4]</sup> We urge the Commission not to take this ill-advised approach.

Respectfully Submitted:

**AARP**

*/s/ Marti T. Doneghy, AARP Senior Legislative Representative*

**Common Cause**

*/s/ Michael Copps, Senior Advisor to Common Cause's Media and Democracy Reform Initiative*

**Consumer Federation of America**

*/s/ Mark Cooper, CFA Director of Research*

**Consumers Union**

*/s/ Delara Derakhshani, Policy Counsel, Consumers Union*

**Free Press**

*/s/ Matt Wood, Free Press Policy Director*

**Public Knowledge**

*/s/ Harold Feld, PK Senior Vice President*

**National Consumer Law Center**

*/s/ Olivia Wein, NCLC Attorney (Washington D.C. Office)*

**National Association of State Consumer Advocates**

*/s/ Charlie Acquard, NASUCA Executive Director.*

**National Association of Regulatory Utility Commissioners**

*/s/ Commissioner John Burke, Chairman, NARUC Committee on Telecommunications*

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<sup>[4]</sup> Id.