

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

In the Matter)
)
Telephone Number Requirements for) WC Docket No. 07-243
IP-Enabled Services Providers; Local)
Number Portability Porting Interval)
and Validation Requirements)
)
)

**REPLY COMMENTS OF THE
VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON Coalition”)¹ respectfully submits these reply comments regarding telephone number requirements for IP-enabled services providers. The VON Coalition reiterates its support for the Commission’s goal of enabling voice competition by streamlining and speeding the telephone number porting process. Swift and efficient number portability is a key to enabling VoIP competition, which in turn can enable broad consumer benefits.²

However, changes to or adoption of additional LNP and N11 number requirements for Interconnected VoIP providers at this time is neither necessary

¹ The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over Internet. The coalition, which includes BT Americas, CallSmart, Cisco, CommPartners, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Microsoft, New Global Telecom, PointOne, Pulver.com, Skype, T-Mobile USA, USA Datanet, and Yahoo! works to advance regulatory policies that enable Americans to take advantage of the full promise and potential of VoIP. The Coalition believes that with the right public policies, Internet based voice advances can make talking more affordable, businesses more productive, jobs more plentiful, the Internet more valuable, and Americans more safe and secure. Since its inception, the VON Coalition has promoted pragmatic policy choices for unleashing VoIP’s potential. <http://www.von.org>.

² Spurring VoIP enabled competition can save consumers an astounding \$110 billion over the next five years – putting real money back into consumers’ pockets through the power of competition at a time when families really need it. Micra report available online at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf.

nor justified for achieving broad consumer benefits. Numerous comments filed in response to the Notice of Proposed Rulemaking (“NPRM”) are in agreement with this principle.

I. Achieving the Commission’s Goal of Spurring Competition Does Not Require Additional LNP Rules for Interconnected VoIP.

Among the comments filed in response to the NPRM, there is seemingly broad agreement that changes to, or adoption of, additional LNP requirements for Interconnected VoIP providers are unnecessary at this time.

However, in order to ensure that the Commission’s stated number portability goal to “facilitate greater competition among telephony providers”³ is met, the Commission must vigilantly ensure that: 1) its goals are not undermined by retention marketing efforts that thwart competition and run directly counter to Commission precedent; and 2) new barriers to porting (e.g., requiring interconnection agreements to port numbers) are not permitted.

A. Interconnection agreements are unnecessary for porting to occur.

The VON Coalition agrees with Charter, the California Public Utility Commission, and NCTA that an interconnection agreement is not a prerequisite for porting to occur and would be counter to the very goals of enabling number porting. As others have pointed out, in finding that wireless carriers need not enter

³ See *Telephone Number Requirements for IP-Enabled Services Providers*, Report And Order, Declaratory Ruling, Order On Remand, And Notice Of Proposed Rulemaking, WC Docket No. 07-243, FCC 07-188 (rel. Nov. 8, 2007) (“*VoIP LNP Order*”) ¶ 2, “Consumers will now be able to take advantage of new telephone services without losing their telephone numbers, which should in turn facilitate greater competition among telephony providers by allowing customers to respond to price and service changes.” See also *id.* at ¶ 16, “In this Order, we undertake several steps to help ensure that consumers and competition benefit from LNP as intended by the Act and Commission precedent.” See also *id.* at ¶ 17, “Allowing customers to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act, while helping to fulfill the Act’s goal of facilitating “a rapid, efficient, Nationwide, and world-wide wire and radio communication service.”

into Section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers, the Commission found that “number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port.”⁴ The Commission’s prior finding is equally applicable here.

We ask the Commission to closely watch efforts, including a recent effort in Missouri, which would prevent Interconnected VoIP providers from porting numbers to its service without an interconnection agreement.⁵ The Commission should not tolerate unilateral carrier action or state rules that prevent Interconnected VoIP providers from porting numbers to its service.

B. LNP triggered retention marketing efforts run counter to the Commission’s stated competition goals and Commission precedent.

The Commission should reaffirm its existing rule that a carrier executing a change for another carrier “is prohibited from using such information to attempt to change the subscriber’s decision to switch to another carrier.”⁶ The Commission

⁴ *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23711-12, ¶¶ 36-37 (2003).

⁵ See, e.g., *Application or Petition of Alma Communications Company, d/b/a Alma Telephone Company for Modifications of the Federal Communications Commission Requirements to Implement Number Portability and Dialing Parity for Indirectly Interconnected Voice over Internet Protocol Providers* (filed at Missouri PUC Dec. 19, 2007) (seeking elimination of FCC local number portability and dialing parity requirements until the issues pertaining to call rating, call routing, and call transport to VoIP providers not directly interconnected to rural LECs are addressed by the FCC).

⁶ *CPNI Third Report and Order*, “We reaffirm our existing rule that a carrier executing a change for another carrier ‘is prohibited from using such information to attempt to change the subscriber’s decision to switch to another carrier.’” ¶ 131. *Slamming Order*, 14 FCC Rcd at 1572-73, ¶ 106. The Commission’s rules are designed to prevent information obtained by a carrier’s wholesale operations with other carriers from being used to benefit its retail operations. See *CPNI Reconsideration Order*, 14 FCC Rcd. at 14450, ¶¶ 78-79 (stating,

has repeatedly and unequivocally held that carriers are flatly barred from using "carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns."⁷ However, Interconnected VoIP providers have observed retention marketing efforts that have occurred prior to carrier change. In order to ensure that the Commission's stated number portability goal to "facilitate greater competition among telephony providers"⁸ is not undermined by retention marketing efforts, the Commission should reaffirm that carriers are prohibited from using proprietary information received from its competitors as the party that executes carrier change requests to trigger efforts to induce consumers to cancel their orders for competitive voice services while their telephone number ports are still pending.⁹

The VON Coalition strongly supports the Commission's goal of enabling voice competition by streamlining and speeding the telephone number porting process, and is particularly concerned about efforts to use number portability requests to stifle VoIP competition. Spurring VoIP enabled competition can save consumers an astounding \$110 billion over the next five years – putting real money back into consumers' pockets through the power of competition at a time when families really need it.¹⁰ But allowing retention marketing -- regardless of whether it is in the voice

"where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b).")

⁷ *CPNI Reconsideration Order* ¶¶77-78.

⁸ See *VoIP LNP Order* ¶ 2

⁹ See *Bright House Networks, LLC, Comcast Corp. and Time Warner Cable v. Verizon*, EB-08-MD-002 (filed Feb.11, 2008) (alleging that Verizon is inappropriately using information generated by the Local Service Requests ("LSRs") submitted by competing carriers to port the customers' telephone numbers to the new carrier to initiate contact with those customers in an effort to convince them to stay with Verizon in contravention of Section 222(b) of the Act).

¹⁰ Micra report (available online at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf) found that VoIP competition can save consumers 110 billion over the next five years.

market or the video market – is counter to the goals of enabling vibrant competition and could slow vast VoIP driven benefits from reaching consumers. The Enforcement Bureau’s recommended conclusion that Verizon’s retention marketing practices are permissible is not supported by law or precedent, and is directly counter to Commission efforts to protect consumers and competition.¹¹ The Commission should act swiftly to clarify that carriers are prohibited from using proprietary information received from competitors as the party that executes carrier change requests to trigger efforts to induce consumers to cancel their orders for competitive voice services while their telephone number ports are still pending.

C. The Commission should not and need not undermine its Vonage decision asserting exclusive federal jurisdiction for VoIP.

Several commenters in this proceeding including NARUC, the Ohio Public Utility Commission, and the Connecticut Department of Public Utility Control note that VoIP providers do not obtain their numbers directly from the NANPA or the NPA but instead are allocated numbers as customers of CLECs who act as an intermediary. They note that accessing numbers through an intermediary party adds inefficiency, reduces accountability, and needlessly slows processing. As a result, they suggest that steps be taken to allow VoIP providers to obtain numbering resources directly from the numbering administrator.¹² We note that there are six pending petitions at the Commission from VoIP providers requesting direct access to numbers -- the same access to numbers that the Commission

¹¹ Enforcement Bureau Recommended Decision (File No. EB-08-MD-002, April 11, 2008), in the Matter of Bright House Networks, LLC, et al., v. Verizon California, Inc., et al.

¹² NARUC has adopted resolutions encouraging the FCC to “[M]odify or reinterpret its Part 52 numbering rules to allow interconnected VoIP providers to obtain numbering resources directly from the NANPA and the PA and to obtain service-provider access to the NPAC.” The Ohio PUC says, “As a result of the Ohio Commission’s proposal, interconnected VoIP providers would have the ability to obtain numbering resources directly from the numbering administrator.”

granted to SBCIS.¹³ In the SBCIS decision, the Commission found that “to the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order.”¹⁴ If the Commission does decide to grant VoIP providers direct access to numbers as commenters request, the Commission need not and should not delegate to states any new authority over VoIP providers as the Ohio Public Utility Commission and the Connecticut Department of Public Utility Control suggest in their comments.¹⁵ To do so would undermine one of the key goals of the Commission’s Vonage decision which, in asserting exclusive federal jurisdiction over VoIP, sought to clear “the way for increased investment and innovation in services like Vonage’s to the benefit of American consumers”¹⁶ by adopting a consistent national framework for VoIP.

II. Additional N11 Requirements for Interconnected VoIP are Unnecessary, Infeasible, and Unwarranted.

Among commenters, there is also broad support for the VON Coalition’s position that application of any additional N11 requirements is not trivial, creates unique challenges, is not always automatically warranted, is fundamentally problematic when technological solutions are not yet commercially available, and is especially challenging for nomadic Interconnected VoIP.

¹³ On March 11, 2005, the FCC requested comments on six petitions for limited waivers of Section 52.15(g)(2)(i) of the FCC’s rules regarding access to numbering resources from PointOne, Vonage, RNK, Dialpad, Nuvio, and VoEX. Each provider submitted an identical petition to the petition granted to SBCIS.

¹⁴ *Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 05-20 (rel. Feb. 1, 2005) (“SBCIS decision”) at ¶ 4.

¹⁵ Ohio indicates “it is imperative that the FCC authorize a state Commission registration process of interconnected VoIP providers for the purpose of numbering and number administration, similar to that which the Ohio Commission currently utilizes relative to commercial mobile radio service providers.”

¹⁶ *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (released November 12, 2004) (“Vonage Order”) at ¶ 2.

As the VON Coalition pointed out in its initial comments, while Interconnected VoIP has the potential to introduce additional competition, new services, and extraordinary new benefits to consumers, overly aggressive implementation timetables for N11 dialing capabilities, or rules that do not adequately consider the unique characteristics of nomadic Internet communication could further delay the extraordinary benefits of Interconnected VoIP from reaching consumers. Too aggressively implemented regulatory burdens could be sufficient to drain the upstarts' resources, slow them down, and drive more into bankruptcy – leaving consumers with fewer choices, higher prices, less robust services, and impacting the Commission's efforts to implement a successful broadband agenda.¹⁷

While some commenters support N11 dialing rules for the purpose of parity and ensuring that all services are regulated the same, there are also advantages to enabling consumers to choose between services with different dialing features. The California Public Utilities Commission suggests, for instance, that there are alternative approaches to N11 mandates, whereby the provider makes “full disclosure at the point of sale regarding what features are omitted in exchange for a lower price.”¹⁸ Specifically, California asserts that “providers allowed to not offer N11 and other benefits of numbering requirements” should inform prospective customers of the more minimal service being offered. Indeed, we would note that, around the globe, one of the most common approaches that regulatory bodies have

¹⁷ The FCC's recently released budget includes performance goals on broadband which include facilitating VoIP as a broadband driver. Specifically on page 20, the FCC is to: “Support and facilitate the deployment of IP-enabled services such as VoIP to increase consumer demand for broadband technologies. Initiate or adopt items that facilitate the deployment of IP-enabled services as another means of increasing access and competition in broadband services. Ensure that IP-enabled services and broadband platforms are treated in a way that encourages deployment of broadband technologies.”

¹⁸ Comments from the California PUC (page 6) suggest that “providers allowed to not offer N11” should inform consumers of the more minimal service being offered.

taken with regard to 3-digit abbreviated dialing requirements for Interconnected VoIP services (including nomadic) is to suggest consumer disclosure about the lack of availability of such features.

None of the commenters offered any analysis as to how any additional N11 requirements would advance the public interest in any material way. Those who advocated additional N11 obligations for Interconnected VoIP services justified the additional obligations solely on the basis of providing parity in obligations between services.¹⁹ For example, the Ohio PUC argues “that interconnected VoIP providers, as competitors in an increasingly multimodal market, should be subject to identical basic obligations for N11 code assignments as traditional providers, since their services are marketed as substitutes for traditional local exchange service.” However, automatically applying yesterday’s telephone rules designed for fixed wireline services to a diverse set of emerging new internet technologies, often offered by small businesses, utilizing a variety of different business models, and a diversity of underlying technologies presents unique implementation challenges.

As Qwest points out in its comments, there are enormous differences between implementing N11 for a LEC with a centralized wire center and an Interconnected VoIP service that lacks such a geographic nexus. Qwest’s analysis of the technological differences between traditional LEC architecture and Internet architecture leads it to correctly conclude that “[i]t is not self evident that this LEC-infrastructure model could be modified or adapted to the variety of VoIP platforms; or if it could be adapted that such an adaptation would extend to nomadic uses. Frankly, it is highly unlikely that such could be accomplished.” Like Qwest, we are

¹⁹ Comments from California PUC, Nebraska PSC, and Ohio PUC.

aware “of no vendor who is currently able to support the range of VoIP N11 dialing arrangements reflected in the Notice, particularly in a nomadic context.”

As the Commission is well aware, nomadic Interconnected VoIP services often face extraordinary and unique challenges in implementing geographically related N11 dialing obligations. Only recently, the Commission provided additional time for nomadic Interconnected VoIP providers to comply with its 711 obligations citing the difficulties in “handling of 711 calls where the telephone number associated with an interconnected VoIP call does not correspond to the geographic location of the caller.”²⁰ And, just because an Interconnected VoIP provider has developed a solution for 911 or 711 does not mean that other solutions for other N11 services are readily achievable. Indeed nomadic Interconnected VoIP services face unique and often insurmountable challenges in implementing geographically constrained solutions. As the Ohio Public Utility Commission points out in its comments, “[t]o be certain, the provision of geographically related N11 services is far simpler for those VoIP providers who control their own IP network, as opposed to those who use the Internet.”²¹ These unique challenges stem from the fact that Interconnected VoIP services can often utilize “geographically independent telephone numbers”²² where the “number is not necessarily tied to the user’s physical location for either assignment or use, in contrast to most wireline, circuit-switched calls.”²³

As the Commission has previously found, Interconnected VoIP services have “no means of directly or indirectly identifying the geographic location of a ...

²⁰ 711 dialing decision of April 4, 2008, ¶¶ 3 and 10.

²¹ Ohio Public Utility Commission, at footnote 2.

²² *Vonage Order* at 7.

²³ *Id* at 9.

subscriber.”²⁴ In Minnesota Public Utilities Commission v. FCC, the Eight Circuit affirmed the FCC’s *Vonage Order* where the Commission found that Vonage’s service cannot be directly or indirectly tied to a specific geographic location. This is true both because “customers may use the service anywhere in the world where they can find a broadband connection,”²⁵ and separately, because the provider assigns telephone numbers to customers that are “not necessarily tied to” the user’s usual or “home” location.²⁶

Even when a VoIP provider routes these non-geographic numbers to a geographically appropriate N11 call center, the N11 call center may utilize the incoming caller-ID to query its own databases for data look up and routing. As was found for TRS providers responding to 711 calls, call centers may be unable to process a foreign telephone number without expensive upgrades. In the TRS case, the Commission recognized that “by extending the 711 abbreviated dialing requirement to interconnected VoIP providers, the order effectively placed TRS providers under a duty to handle and route these calls as prescribed by the Commission’s pre-existing emergency call handling rules.” Yet these 711 call centers, as the Commission recognized, lacked the ability to handle non-geographic numbers for critical communications. But, this record is devoid of any analysis of the costs and burdens that the Commission could be placing on additional types of N11 call centers by routing non-geographically relevant telephone numbers to these call centers.

²⁴ *Id.* at 23.

²⁵ *Id.* at 5.

²⁶ *Id.* at 9.

As a result, to the extent that the Commission finds it needs to require additional N11 requirements for parity reasons (and the VON Coalition does not believe that any additional requirements are necessary at this time), the Commission should first consider consumer notification and disclosure solutions. However, to the extent the Commission does require additional N11 obligations, the Commission must also, at a minimum, provide parity in implementation timeframes²⁷, recognize and account for the fact that nomadic Interconnected VoIP faces unique challenges, provide extra flexibility recognizing that the vast majority of Interconnected VoIP providers are small businesses, ensure it does not expand rules to services beyond Interconnected VoIP, and be careful not to stifle the creative service offerings in or yet to be in the marketplace.

Conclusion:

For these reasons, the Commission need not and should not adopt any additional LNP or N11 numbering requirements at this time.

Respectfully submitted,

_____/s/_____

THE VON COALITION

Dated: April 21, 2008

²⁷ In the Commission's Sixth Report and Order on N11 dialing, the Commission found that two years was a reasonable time period for implementing a new 3-digit dialing code obligation. *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Sixth Report and Order, CC Docket No. 92-105, FCC 05-59 (rel. Mar. 14, 2005) at ¶ 32 (regarding 811 dialing sequence).