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 Services Providers	) WC Docket No. 07-243
	)
Telephone Number Portability	) CC Docket No. 95-116
	)
Developing a Unified Intercarrier Compensation Regime	) CC Docket No. 01-92
	)
Connect America Fund	) WC Docket No. 10-90
	)
Numbering Resource Optimization	) CC 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	)

REPLY COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL
AND
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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August 19, 2013

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SUMMARY

The initial comments support the proposal of the Federal Communications Commission ("FCC" or "Commission") to grant interconnected Voice over Internet Protocol ("VoIP") providers direct access to telephone numbers, but differ in positions regarding legal issues, the role of state regulators, numbering optimization, the methodology for recovering numbering costs from companies, and the FCC's authority regarding IP interconnection agreements. Several comments, with which the New Jersey Division of Rate Counsel ("Rate Counsel") and the National Association of State Utility Consumer Advocates ("NASUCA") (collectively, "Consumer Advocates") fully concur, urge the FCC to classify VoIP as a telecommunications service, in part, as a way for the FCC to end its typically convoluted approach to making and implementing policy.

Consumer Advocates support the FCC's proposal to allow interconnected VoIP service providers to obtain and assign telephone numbers directly if the VoIP provids are accountable to state regulators and to the FCC through a certification process, and provided that states have authority to pursue numbering optimization measures in order to forestall premature area code exhaust.

Consumer Advocates support the contribution of interconnected VoIP providers to the cost of numbering administration, but oppose AT&T's, CenturyLink's and Verizon's requests to modify the FCC's method for allocating such costs among industry members.

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I. INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel") and the National Association of State Utility Consumer Advocates ("NASUCA")[1] (collectively, "Consumer Advocates")[2] hereby submit reply comments regarding the proposal of the Federal Communications Commission's ("FCC" or "Commission") to allow direct access to numbering resources by interconnected Voice over Internet Protocol ("VoIP") providers.[3]

Initial comments generally support direct access by interconnected VoIP providers to numbers,[4] but diverge as to the way in which this access should be implemented. One exception is COMPTEL, which tempers its support with the following apt observation:

> As an initial matter, COMPTEL has a number of interconnected VoIP providers as members, but does not agree that changing the existing numbering rules (to

[1] NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. NASUCA did not submit initial comments in this proceeding.

[2] Rate Counsel submitted initial comments in this proceeding.

[3] *Numbering Policies for Modern Communications; IP-Enabled Services; Telephone Number Requirements for IP-Enabled Services Providers; Telephone Number Portability; Developing a Unified Intercarrier Compensation Regime; Connect America Fund; Numbering Resource Optimization; 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*, WC Docket Nos. 13-97, 04-36, 07-243, 10-90, CC Docket Nos. 95-116, 01-92, 99-200, Notice of Proposed Rulemaking, Order and Notice of Inquiry, 28 FCC Rcd 5842 (2013) ("Direct Access NPRM and NOI" or "Notice"), at para. 1.

[4] SmartEdgeNet, LLC, dba Edge Communications ("SEN") applauds the FCC for proposing direct access to numbering resources by VoIP providers. SEN, at 2-3. See also, CenturyLink,at 2-3. Telcordia Technologies, Inc., doing business as iconectiv ("Telcordia" or "iconectiv"), at 5, takes a neutral stance, but states that it "does not anticipate any database-related call routing or tracking problems arising from allowing VoIP providers to have direct access to numbers" and that "as long as VoIP providers, like all other carriers with access to numbering resources, ensure that their numbering and routing data is accurately input and timely updated in existing industry databases, call routing and tracking should not be a problem." HyperCube Telecom, LLC ("HyperCube") states that if the FCC makes direct access to numbers available to interconnected Voice Over Internet Protocol providers, "such direct access should be subject to reasonable conditions necessary to protect the public by preserving scarce numbering resources and ensuring the robustness and integrity of the telecommunications network." HyperCube, at i.

> accommodate the small number of interconnected VoIP providers without direct access to numbers) will provide a meaningful catalyst to achieving the innovation and efficiency that Internet Protocol ("IP") technology has to offer consumers and the industry. As COMPTEL addresses in its comments filed in response to the Transition Task Force's Public Notice regarding proposed transition trials, which we hereby incorporate by reference, VoIP interconnection is the instrumental missing factor in bringing about these objectives. Given the limited resources of the Commission, and the priorities of promoting innovation and the IP transition, COMPTEL believes the Commission should prioritize facilitating VoIP interconnection by completing its review of the *USF/ICC Transformation FNPRM* and confirm that Sections 251/252 apply to the interconnection and exchange of managed VoIP traffic.[5]

Consumer Advocates, as a general matter, concur with the spirit of COMPTEL's position – namely that the FCC should address fundamental policy issues prior to focusing on the myriad of technical details that the numbering trials raise.[6]

The California Public Utilities Commission and the People of the State of California ("CPUC") raise a question regarding a legal concern that also must be addressed: "The CPUC does not dispute the FCC's exclusive authority over the NANP. The underlying question, however, is whether the FCC may lawfully allow entities that are not 'telecommunications carriers' or which do not provide telecommunications service" to obtain numbers from the NANP."[7] COMPTEL's and CPUC's comments underscore the serious drawback of the FCC failing to classify VoIP as a telecommunications service. Rather than develop "roundabout" policy to ensure that consumers are protected and competition can evolve, the FCC should

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[5] COMPTEL, at 2, citations omitted. COMPTEL states: "It is the inability to get agreements with these major ILECs, in accordance with the Act, for VoIP interconnection– *not* the inability to obtain numbers from NANPA and PA – that is preventing consumers from experiencing the innovation of IP technology." COMPTEL, at 5, cite omitted, emphasis in original.

[6] See also, *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Consumer Advocates Reply Comments, August 7, 2013, which we incorporate by reference.

[7] CPUC, at 7, citation omitted.

simply declare that VoIP is a telecommunications service.

II. DIRECT ACCESS TO NUMBERS

A. The FCC should declare VoIP to be the telecommunications service that it is rather than continue to pursue its "convoluted" route to adopting certain obligations and opportunities.

Consumer Advocates have repeatedly urged the FCC to determine that VoIP is a telecommunications service. In this regard, the CPUC aptly observes:

> The *IP-Enabled Services* docket remains open, but the FCC to date has not determined how IP-enabled services or VoIP services should be classified – whether as common carriers under Title II of the Communications Act, or as information service providers. Instead, the FCC has relied on its ancillary authority under Title I of the Communications Act to extend to VoIP providers a number of mandates that apply to common carriers, such as those pertaining to provision of 9-1-1 service, CALEA compliance, disabled access, and universal service and Local Number Portability obligations.[8]
>
> The FCC's solution to this problem is not, as California and numerous other parties have urged for the past several years, to address directly the classification of VoIP and IP-enabled services. Rather, in the *NPRM*, the FCC proposes "*for purposes of this part*" to deem VoIP providers to be "telecommunications carriers," and VoIP service to be telecommunications service." (Emphasis added.) This proposal suggests a convoluted way to provide VoIP providers, again, the benefits of Title II classification without actually classifying VoIP providers as Title II telecommunications carriers.[9]

[8] Id., at 4-5, cites omitted.

[9] Id., at 8, cite omitted, emphasis in original. In a similar vein, NTCA – The Rural Broadband Association ("NTCA") states: "Permitting noncarriers to step into the shoes of carriers calls into question the statutory framework from which the Commission derives its authority over communications in the first instance, and puts essential public policy objectives at risk. The regulatory classification of VoIP has presented an industry-splitting conundrum for many years." NTCA, at 2.

Similarly, COMPTEL asserts that "the Commission must confirm, at least with regard to facilities-based "managed" VoIP providers, that these interconnected VoIP providers are telecommunications carriers,"[10] and explains its rationale further:

> Therefore, as the PSTN continues to transition to an all IP network, and traditional (TDM) services are phased out, it is important for the Commission to confirm that managed VoIP is a telecommunication service -- not only so that the Commission maintains its direct authority to impose critical statutory provision with regard to those providers, but also to ensure its ancillary authority over certain interconnected VoIP providers that it may not classify as telecommunication carriers, such as OTT providers.[11]

Consumer Advocates concur with COMPTEL that is it is important for the Commission to confirm that VoIP is a telecommunications service.

Initial comments support the proposition that VoIP providers should bear burdens as well as reaping benefits of being in this market.[12] Consumer Advocates disagree with SEN's assertion that "of course, interconnected VoIP providers are not the ones responsible for paying intercarrier compensation since they are not telecommunications service providers."[13] It is untenable that VoIP providers would be allowed to pick and choose among burdens and benefits.

But FCC's reluctance to classify VoIP as a telecommunications service harms consumers. Consumer Advocates concur wholeheartedly with COMPTEL that more pressing matters than this numbering trial merit the FCC's attention and Consumer Advocates echo COMPTEL's

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[10] COMPTEL, at 4.

[11] Id., at 8.

[12] CPUC, at 9.

[13] SEN, at 14.

dismay about the FCC's Consumer and Governmental Affairs Bureau's failure to apply its anti-slamming rules to VoIP:[14]

> As an example of a "gap" in the Commission's decision-making, we draw attention to a recent order out of the Consumer and Governmental Affairs Bureau that concluded that the Commission's anti-slamming rules do not apply to VoIP. We do not agree with the outcome of that order since relevant statutory provisions and rules relate to telecommunications carriers, and Verizon FiOS Digital Voice Service meets the statutory definition of a telecommunication service. Nevertheless, the Commission has failed to specifically address VoIP services in the context of slamming. It is because of gaps such as this that COMPTEL recommends caution in this rulemaking. If such a basic consumer protection as the Commission's anti-slamming rules could have been overlooked, what other (more subtle) rules are in jeopardy that ensure a level competitive playing field and/or consumer protection. It is because of this that we recommend that the Commission proceed cautiously with this rulemaking, fully considering the information from the trials, including seeking comments on the results of those trials, prior to considering additional rule changes in this proceeding.[15]

Consumer Advocates urge the FCC to ensure that consumer protection measures are in place and barriers to competition eliminated before the FCC facilitates VoIP providers'direct access to numbering unless the providers are prepared to meet obligations that are imposed on other carriers. The Public Service Commission of Wisconsin, Oregon Public Utility Commission, Idaho Public Utilities Commission, Nebraska Public Service Commission and Minnesota Department of Commerce ("Joint Commenters") aptly state:

> The conditions for direct access to numbering resources, and the consequences for not complying with these requirements, need to be the same for all providers on a technology neutral basis. VoIP providers should not enjoy the benefits of direct access to numbering resources without the same obligations that are imposed on all other carriers. VoIP providers that are concerned with their ability to comply

[14] Rate Counsel, at 8.

[15] COMPTEL, at 16, citations omitted.

with these requirements would continue to have the option of obtaining numbers from a responsible numbering partner.[16]

Consumer Advocates agree.

B. VoIP providers should be held accountable to the FCC and to state regulators through a certification process.

State and federal regulators should ensure that VoIP providers possess the technical, financial, and managerial qualifications to offer service prior to allowing them direct access to numbers. Initial comments generally support some type of mechanism and oversight to ensure accountability by VoIP providers that obtain direct access to numbering to regulators. Consumer Advocates concur with comments that indicate that the Form 477 is insufficient to provide the requisite accountability:

> The Commission needs to maintain the certification requirement of section 52.15(g)(2)(i). To the extent the Commission finds state commissions are unable to fulfill the role of issuing the necessary certifications, the Commission needs to adopt a process whereby it provides the requisite certification. For purposes of granting certification, *at a minimum*, the Commission must establish a process whereby the provider must demonstrate the financial, managerial, and technical capabilities to provide service and certify compliance with numbering administrative rules. The Commission seeks comment on whether FCC Form 477 provides sufficient documentation, and the answer is a resounding "no." Providers do not demonstrate their financial, managerial and technical capabilities to provide service and certify compliance with numbering regulations in the FCC Form 477. These safeguards are critical for protecting this limited resource, as well as the consumers who rely on the numbers, and the integrity of the databases. Moreover, the Commission could use the certification process to obtain commitments that reaffirm its forfeiture authority over the provider, as well as the

[16] Joint Commenters, at 14. CenturyLink also emphasizes the balance of rights and responsibilities: "As the Commission deliberates on the wisdom of allowing interconnected VoIP providers to have direct access to numbering resources post-trials, it is important that all parties sharing the same status (i.e., having direct access to numbers) are treated comparably. Being able to directly access phone numbers and assign them to customers carries with it rights and responsibilities, and all those that engage in the activity should feel the weight of those rights and responsibilities in equal measure." CenturyLink, at 6.

> provider's obligation to share in the costs associated with numbering administration.[17]

Consumer Advocates urge the Commission to dismiss SEN's unpersuasive attempt to dodge regulatory accountability:

> SEN believes that a documentation requirement is unnecessary, and that interconnected VoiP providers should not be required to prove their eligibility prior to receiving numbering authority. Self-certification, similar to the blanket authority available for all entities that seek to provide domestic telecommunications services, should be sufficient as a practical matter. So long as the current rules with respect to number hoarding, warehousing, and area code administration remain in place, nothing is gained by requiring interconnected VoiP providers (or telecommunications service providers, for that matter) to prove their eligibility to provide the underlying service that telephone numbers make possible.[18]

Joint Five Commenters express concern that because VoIP providers may not require state certification, commissions may not have accurate contact information and urge the Commission to ensure that the VoIP provider has provided contact information to the state before it can request numbering resources.[19] In addition, Joint Commenters propose that the VoIP provider must also provide states with "an overview" of the services it will provide to residents and that states should be given the authority to direct the PA to withhold numbers unless and until the VoIP provider has given the state commission contact information and

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[17] COMPTEL, at 14-15, cites omitted. CenturyLink proposes various alternatives: "In CenturyLink's opinion, utilizing the information currently-provided from Form 477 or requiring a sworn certification of service provisioning meets the objective of minimizing regulatory burdens. Alternatively, a registration process such as was proposed in the NANC 2005 Report might be utilized. To make the gathering of the important information as simple as possible a registration system similar to that in use by some states to gather information about wireless service providers and interexchange carriers could be used for VoIP service providers." CenturyLink, at 9

[18] SEN, at 16, footnote omitted. See also, SEN, at 17, 19.

[19] Joint Five Commenters, at 6. Level 3 states that it "agrees that providers should be required to provide contact information to state or federal authorities as appropriate." Level 3, at 9.

planned retail offerings.[20] Consumer Advocates concur with Joint Commenters that VoIP providers should be required to provide state PUCs with complete contact information and a description of the services they intend to provide.[21] The Pennsylvania Public Utility Commission, the New York Public Service Commission, and the Indiana Utility Regulatory Commission (" Joint Three Commissions") "support VoIP providers being required to provide accurate contact information to effectively monitor the numbering system within each state's geographic boundaries" and also "support imposing a filing obligation on VoIP providers so that the states can maintain a more accurate assessment of number utilization and conservation and anticipate and limit area code exhausts." Consumer Advocates concur that states should be provided with information so that they can monitor number utilization and optimization measures.

Level 3 proposes that the FCC certify those VoIP providers that are not required by state PUCs to be certified, and similar to the process that exists in many states, the FCC would determine that the VoIP provider possesses the requisite technical, financial and managerial qualifications.[22] Consumer Advocates concur that the technical, financial, and managerial qualifications of VoIP providers should be ascertained before they are granted direct access to

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[20] Joint Commenters, at 6. The Michigan PSC states: "If the FCC were to adopt a certification/licensing requirement for VoIP providers, and delegated that authority to the states, this could provide a level of protection to not only the consumer, but also the interconnected VoIP providers as they interconnect with other carriers in order to provide service."

[21] Consumer Advocates also concur with the CPUC that "states 'lacking authority to provide certification for interconnected VoIP service,' be given 'a formal opportunity to object to the assignment of numbers to these providers,' as states do today with requests from telecommunications carriers." CPUC, at 10, citation omitted.

[22] Level 3, at 3. See also CPUC, at 19-20 (supporting individual certification of VoIP providers rather than "blanket" certification by the FCC for those states that do not certify VoIP providers).

numbers. Again the FCC could short-circuit the ambiguity that exists by simply declaring VoIP to be a telecommunications service.

Consumer Advocates concur with the Michigan PSC's recommendation that if VoIP providers are given direct access to numbers that they consequently also must be subject to the same rules and regulations,[23] including monetary penalties.[24] NTCA explains the importance of oversight:

> These very basic licensing requirements are not terribly onerous – particularly for non-incumbent carriers – but provide an essential understanding of who is providing services in particular markets and visibility into where issues may be arising when, for example, calls fail to complete. To the extent a state will not (or cannot by law) certify a VoIP provider, the Commission should assume that responsibility. Such certifications provide some level of review of the providers' services and provide the regulator, and through the regulator, the public, the ability to monitor the market and operations to address market failures. Rather than put together a patchwork of insufficient obligations and new regulations that create new technical and jurisdictional issues (while limiting operational oversight) the Commission should continue to limit direct access of numbers to certified carriers.[25]

Consumer Advocates also concur with NTCA's recommendation that recipients of numbers be held accountable by regulations and rules in part because of the overarching public interest aspects of numbering resources:

> Requirements that should apply include NRUF requirements (as discussed above), call completion rules and metrics, cramming and slamming rules, Enhanced 911 ("E911") requirements and, to the extent they are not required already, contributions to the universal service fund. Just as importantly, applicants should also be required to consent to the enforcement authority of the Commission and the states in which the service is provided to ensure that there are "teeth"

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[23] Michigan PSC, at 5.

[24] Id., at 7. Similarly, CPUC recommends that the FCC impose penalties on VoIP providers on the same basis as the FCC imposes them on traditional providers. CPUC, at 20. See also, Joint Three Commissions, at 5.

[25] NTCA, at 4.

> connected with the application of such rules. The Commission should not be limited in its ability to demand accountability in the public interest and to swiftly sanction those gaining direct access to numbering resources if they fail to live up to the requirements of the Communications Act, which serve to protect consumers and the public interest.[26]

State regulators should have the authority to determine the way that VoIP providers register and the information that the public utility commissions ("PUCs") deem necessary to protect the public interest. For those states where PUCs have minimal or no oversight of VoIP services (typically as a result of legislative action), the FCC should ascertain the financial, managerial and technical qualifications of any VoIP providers that seek direct access to numbers. Basic contact information about VoIP providers should be provided to the FCC and to state PUCs because consumers and competitors contact both federal and state regulators with questions and concerns, and to assist the FCC and state PUCs with numbering optimization efforts.

C. A change in technology is not in and of itself sufficient rationale for modifying the FCC's oversight of industry practices or expediting the transition from TDM technology.

Consumer Advocates wholeheartedly agree with Joint Three Commissions that "[t]echnological change is no basis for rewriting federal law or federal rules imposed on carriers or providers."[27] AT&T asserts that allowing VoIP providers to have "direct access to numbering resources will be an important catalyst in furthering the ongoing transition" from TDM to IP,[28] and, in the context of discussing that transition, AT&T reiterates its recommendation that a date

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[26] NTCA, at 6.

[27] Joint Three Commissions, at 6.

[28] AT&T, at 23.

certain of 2018 be established to sunset the PSTN.[29] Consumer Advocates incorporate by reference the comments they submitted in the FCC's IP trial proceeding in which they explain their opposition to AT&T's proposed sunset date.[30]

D. Numbering exhaust and numbering optimization measures

Consumer Advocates concur with NTCA that "telephone numbers are a valuable and limited resource"[31] and support recommendations to pursue numbering optimization measures such as 100-block pooling and unassigned number pooling.[32] Consumer Advocates also concur with the Joint Five Commenters, that federal and state policies are driven by the outlook that number resources are finite resources and insist that a technology "transition" does not "necessitate actions to bypass, or to diminish adherence to, this long-held but still relevant rubric about the importance of effective number management."[33] Joint Five Commenters indicate that they have worked hard to preserve resources through the use of their delegated authority, but that with demand for numbers for machine-to-machine applications and for new providers entering the market, area codes will exhaust sooner.[34] Joint Five Commenters further note that "diligent

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[29] Id., at 26. AT&T also reiterates its proposal for a geographic IP trial and its opposition to a "backward-looking regulatory approach to IP interconnection, especially as a predicate to granting direct access to numbers," and gives an example 251/252 interconnection obligations. AT&T, at 27. Again, Consumer Advocates refer the FCC to Consumer Advocates' August 7th Reply Comments.

[30] See Rate Counsel Initial Comments, July 29, 2013 (incorporated herein by reference); Consumer Advocates Reply Comments, August 7, 2013. We hereby incorporate these comments by reference.

[31] NTCA, at 2. See also, Level 3, at 10, stating that "[n]umbers holders are stewards of public resources, and partners with the Commission, the states, and each other in helping to advance the Commission's numbering policies."

[32] Joint Three Commissions, at 7.

[33] Joint Five Commenters, at 3.

[34] Id., at 4.

oversight" is still required and that all providers must help conserve numbers.[35] The numbering trials should not jeopardize state and federal efforts to optimize the use of numbers, which are a public resource.

Comcast argues that direct access to numbering resources for VoIP providers will allow the Commission to better track number utilization and may actually reduce waste in numbering resources.[36] Consumer Advocates agree because a requirement for VoIP providers to file Numbering Resource Utilization/Forecast ("NRUF") reports will provide more detailed and accurate information regarding numbering usage.[37]

Joint Five Commenters propose that the Commission adopt mandatory number pooling in all rate centers in the United States.[38] According to Joint Commenters, "significant numbering resources would be recovered, utilization rates within rate centers and area codes would likely improve and any concerns regarding VoIP access to number in non-pooling rate centers would be moot."[39] If the FCC is not willing to take that step, then Joint Five Commenters agree that limiting number assignment to pooling rate centers for VoIP providers may be the best option.[40] Consumer Advocates support the FCC's adoption of numbering optimization measures such as pooling in all rate centers. In the absence of such significant measures, however, Consumer Advocates' view of the merits of a policy whereby the FCC establishes a different numbering assignment treatment for VoIP providers (as a way to conserve scarce numbers) depends on the

[35] Id., at 5.

[36] Comcast, at 6.

[37] Id.

[38] Joint Commenters, at 6.

[39] Id., at 6-7.

[40] Joint Commenters, at 8.

path the FCC decides to pursue regarding its pending classification of VoIP. If the FCC classifies VoIP service as a telecommunications service, Consumer Advocates then would oppose different treatment for number assignment to VoIP providers. If, however, the FCC continues to postpone classifying VoIP service, Consumer Advocates support Joint Commenters' (and others')[41] recommendation to limit number assignment to VoIP providers to pooling rate centers. Consumer Advocates acknowledge that Comcast opposes the Commission's proposal to allow states to bar VoIP providers from obtaining numbers in non-pooling rate centers because, according to Comcast, such a policy "clearly would be anti-competitive because the restriction would apply only to VoIP providers and not their rivals."[42] If and when VoIP service is deemed to be a telecommunications service, then arguments about treating VoIP providers the same as their rivals would hold more force.

Consumer Advocates support the proposal that interconnected VoIP providers be required to give 30-days' notice to the relevant state commission of a request for numbers from the PA "to allow the state commission to advise the VoIP provider as to which rate centers have excess blocks in the pool" and to "allow the state commission the opportunity to determine, as it does today with other service providers, whether the request is problematic for any reason, such failure to submit timely NRUF reports, or the provider has not met the utilization threshold

[41] CPUC proposes that "VoIP number requests be steered to rate centers where the pools have twenty or more blocks, and no VoIP number requests should be accommodated in non-pooling rate centers" so as to optimize the use of numbering resources. CPUC, at 15.

[42] Comcast, at 7. CenturyLink states that it "opposes advocacy for the creation of a two-faceted model for accessing numbering resources: *i.e.*, that carriers could secure numbers from both pooled and non-pooled areas, but VoIP providers could only secure numbers from areas where pooling is in place." CenturyLink, at 8, cite omitted.

necessary to obtain additional numbers."[43] Consumer Advocates are not persuaded by AT&T's opposition to the 30-day requirement, which is based in part on AT&T's assertion that the FCC has limited the state's authority with regard to carriers' initial requests for numbering resources.[44] States collaborate with the FCC on numbering matters, with states exercising authority that the FCC has delegated to them.

Consumer Advocates also support a 75% utilization threshold for VoIP providers.[45] Joint Five Commenters make the excellent observation that VoIP providers need to not only report on the numbers they obtain directly from the PA going forward but should also be required to file reports regarding the numbers at their disposal that they have already obtained from a numbering partner.[46] Consumer Advocates also concur that if VoIP providers obtain direct access to numbers they must not be able to also obtain numbers through their numbering partner.[47]

Joint Five Commenters provide an excellent critique of the current NRUF data particularly the practice of including ported-out numbers as the original provider's number making it difficult for states to track the number of subscribers a provider is serving in a rate center.[48] Consumer Advocates support Joint Five Commenters' recommendation to create a separate category that tracks carrier-specific porting data for the NRUF report and also its

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[43] CPUC, at 17-18.

[44] AT&T, at 11, and footnote 29.

[45] CPUC, at 18. See also HyperCube, at 7, citations omitted (supporting the 30-days' notice as well as allowing state regulators to "reject requests for numbers in rate centers without pooling if the state commission finds that 'allowing direct access in non-pooling rate centers will contribute substantially to number exhaust'" and also supporting holding VoIP providers "to the same utilization standards as now apply to carriers with numbers").

[46] Joint Five Commenters, at 8.

[47] Id.

[48] Id., at 9.

recommendation that transfers of inactive numbers via the Number Portability Administration Center ("NPAC") be treated as intermediate, not assigned.[49] CPUC explains the problem with the ambiguous category of "intermediate" numbers and offers its preferred solution as well as an alternative solution:

> Some facilities-based carriers, whether they hold intermediate numbers in their inventories or allocate them to another service provider, treat all of their intermediate numbers as "assigned." Others do not. Accordingly, neither the NANPA nor the states have any real understanding of how many numbers are "intermediate" or are in fact "assigned." To compound the ambiguity, dispensing service providers have no responsibility to ensure compliance with number reporting and utilization rules. This leaves the intermediate numbers category a black hole where numbers cannot be tracked because under the existing rules, once those numbers are assigned to a secondary carrier, neither carrier has responsibility to account for efficiently using the numbers. California recommends that the FCC eliminate the category of "intermediate" numbers because the practice of accounting for those numbers is applied in grossly inconsistent ways. If, however, the Commission elects to retain that category, then the FCC should modify its rules so that the service provider to which numbers are dispensed would be responsible for their number use and reporting to the NANPA. In other words, the "end user" for numbering purposes should be defined as the retail end user.[50]

Consumer Advocates support the proposed elimination of the "intermediate" category because the category hinders states' and the FCC's numbering optimization measures. Consumer Advocates also concur with the Michigan PSC that intermediate numbers not be reported as assigned when they are transferred to carrier partners.[51] Consumer Advocates also support the Joint Commenter request that states have access to NPAC porting data.[52] With respect to the conditions that Vonage has offered if its request for direct access is granted, Joint Commenters

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[49] Id.

[50] CPUC, at 11.

[51] Michigan PSC, at 6.

[52] Joint Commenters, at 10.

observe that "Vonage's offers are meaningless if the Commission and states do not have access to the information necessary to verify compliance."[53] Ultimately, states must have access to contact persons at VoIP providers and to NPAC data to resolve porting issues.[54]

E. VoIP providers should bear their fair share of the cost of database administration, but the FCC should reject AT&T's and Verizon's proposals to change the FCC's cost allocation methodology.

Consumer Advocates agree with comments that VoIP providers should contribute to the cost of database administration,[55] but disagree with recommendations to modify the cost allocation methodology. In support of its request for a change in the FCC's cost allocation system, AT&T states:

> Under the existing rules, the Commission adopted a cost allocation scheme that required incumbent providers to pay a disproportionate share of costs of implementing number portability in order to protect nascent competitors. Whatever the merits of that scheme when it was adopted, there no longer is any basis for tipping the scales in favor of any segment of the communications marketplace. Rather, all providers that benefit from obtaining numbering resources and number portability should share equally in bearing the costs of numbering administration. Consequently, a head-to-toe reexamination of the existing scheme is long overdue.[56]

Verizon and Verizon Wireless ("Verizon") and CenturyLink also seek the FCC's re-examination of the way in which the costs to number portability are allocated to industry members based on revenues.[57]

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[53] Id., at 11.

[54] Id., at 12.

[55] Id., at 6; HyperCube, at 6.

[56] AT&T, at 29.

[57] Verizon, at 4-7. CenturyLink observes that in 2006, it (then Qwest) submitted comments in support of BellSouth's Petition and in 2011, it filed comments in support of Verizon's Petition. CenturyLink, at 20, footnote 33, CenturyLink, at 21, footnote 34.

Consumer Advocates support a requirement that interconnected VoIP providers be required to contribute to the cost of numbering administration, but oppose the ILECs' recommendation that the FCC re-examine its methodology for allocating such costs. Under the present cost recovery mechanism, carriers pay for the costs of the NPAC using a revenue-based system: regardless of their share of the quantity of NPAC transactions, carriers with relatively higher interstate revenues pay a relatively higher share of the costs.[58] In summary, Consumer Advocates concur that VoIP providers should contribute to numbering costs but disagree with AT&T's, CenturyLink's, and Verizon's requests to change the cost allocation methodology.

F. Interconnection

Not surprisingly, the incumbent LECs oppose the Commission exercising authority over IP interconnection,[59] and their rivals urge the FCC to "clarify that, for incumbent LECs, IP interconnection is subject to sections 251 and 252 of the Act" and to "provide that all agreements for IP interconnection with an incumbent LEC or its affiliate should be filed publicly."[60] Consumer Advocates support recommendations for the FCC to unambiguously exercise its Section 251/252 authority over interconnection arrangements. States should clearly have the authority to address interconnection disputes. As Level 3 explains:

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[58] Consumer Advocates have previously opposed Verizon's and BellSouth's separate petitions seeking a change in the way that costs are recovered. See Reply Comments of Rate Counsel, filed August 15, 2011, Verizon and Verizon Wireless Petition, Petition for Declaratory Ruling to Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Provider, WC Docket No. 11-95, May 31, 2011; Reply Comments of NASUCA, February 6, 2006, In the Matter of BellSouth Corporation Petition to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs, RM-11299, Petition for Rulemaking, November 3, 2005.

[59] Verizon favors voluntary interconnection agreements. Verizon, at 14-15. CenturyLink asserts: "Particularly given the early state of the TDM-to-IP transition, any additional exercise of Commission authority over IP interconnection would be both premature and unwarranted." CenturyLink, at 17, cite omitted.

[60] Level 3, at 7, cites omitted.

> For disputes arising in states where the state commissions might decline to address a dispute involving a non-carrier interconnected VoIP provider, the Commission should serve as a backstop. To ensure that state commissions handle disputes where possible, the Commission should, as a matter of practice, ask the parties, when a dispute is brought, whether the state is involved. If it is, the Commission can simply defer to the state.[61]

III. CONCLUSION

Consumer Advocates continue to support an unambiguous declaration by the FCC that VoIP is a telecommunications service subject to regulatory oversight.

Consumer Advocates reiterate Rate Counsel's recommendations including, among others, support for the FCC to adopt (1) rules that require interconnected VoIP providers to provide documentation before receiving numbers and to demonstrate a plan to offer service; (2) its proposal that as a condition of gaining direct access to numbering resources, VoIP providers agree to be subject to the same penalties as traditional carriers; and (3) its proposal to hold interconnected VoIP providers to the same requirements as other carriers, namely those related to number utilization and optimization and industry guidelines.

VoIP providers should be required to provide documentation that they are providing service in any area and their acceptance of resources should make them subject to any monetary penalties that the FCC can now place on other carriers. VoIP providers must provide data, contact information, utilization and other required reports to state entities that have been delegated authority to manage numbering resources. Finally, interconnected VoIP providers must bear the costs of number pooling, administration and assignment.

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[61] Id., at 9.

Respectfully submitted,

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August 19, 2013