In the Matter of

Administration of the North American Numbering Plan

Millicorp Petition for Limited Waiver Of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources

SmartEdgeNet, LLC Petition for Limited Waiver Of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources

REPLY COMMENTS OF BANDWIDTH.COM, INC., LEVEL 3 COMMUNICATIONS, LLC, AND COMPTEL

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CC Docket 99-200

REPLY COMMENTS OF BANDWIDTH.COM, INC., LEVEL 3 COMMUNICATIONS, LLC, AND COMPTEL

Bandwidth.com, Inc. (“Bandwidth.com”), Level 3 Communications, LLC (“Level 3”), and COMPTEL (collectively, “Joint Commenters”) submit these reply comments in response to the Comments filed on May 8, 2012 on the recent petitions of SmartEdgeNet, LLC (“SEN”), filed March 6, 2012 (“SEN Petition”), and Millicorp, LLC (“Millicorp Petition”) (collectively, “Petitions”), for limited waiver of section 52.15(g)(2)(i) of the Commission’s rules to allow the requesting Voice over Internet Protocol (“VoIP”) providers direct access to numbering resources from the North American Numbering Plan Administrator and the Pooling Administrator.
I. IF NON-CARRIERS RECEIVE NUMBERS, THERE SHOULD BE A REVIEW OF EACH PROVIDER’S QUALIFICATIONS BASED UPON A DEFINED LEGAL STANDARD

The Comments filed by the California Public Utilities Commission and Securus Technologies, Inc. emphasize the need for the Commission to consider fully the broader implications of the Petitions and other previously filed waiver petitions. The Petitions filed by Millicorp and SEN bring to fifteen (15) the total number of waiver petitions pending at the Commission requesting direct access to number resources.¹ The petitions include smaller, lesser-known companies, such as Millicorp and SEN, but also many larger companies, including Qwest Communications Corporation and Frontier Communications of America, Inc. If the Commission is going to go down the path of providing numbers directly to non-carriers—and Joint Commenters have never advocated taking that step—the comments of Securus emphasize the need for a review process, similar to the state certification process, where the Commission can measure a provider against a defined standard to determine whether it is qualified to obtain

¹ See also, RNK, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed February 7, 2005; Nuvio Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed February 15, 2005; UniPoint Enhanced Services d/b/a PointOne Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed March 2, 2005; Dialpad Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources, filed March 1, 2005; Vonage Holdings Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources, filed March 4, 2005; VoEX, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources, filed March 4, 2005; Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed March 28, 2005; CoreComm-Voyager, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed April 22, 2005; Net2Phone Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed May 6, 2005; WilTel Communications, LLC Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed May 9, 2005; Constant Touch Communications Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed May 23, 2005; Frontier Communications of America, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources, filed August 29, 2006.
direct access to number resources. Joint Commenters do not intend to get in the middle of the dispute between Securus and Millicorp, but the Securus comments highlight the fact that a waiver petition is not the appropriate process to consider whether a particular provider is qualified to have direct access to phone numbers. Because the “public interest” standard is broad and ambiguous, the Commission should address in a rulemaking what legal standard must be met, and what standard information must be provided, if in fact non-carrier VoIP providers are to obtain direct access to number resources.

Other petitioners, like Vonage, have recommended a number of different potential qualification standards, which inevitably fall short of the clear direction provided in a typical state’s certification rules and applications. Most recently, Vonage has suggested reliance on “the FCC’s ability to evaluate the qualifications of Vonage and other petitions.” But it is not clear what legal standard the Commission is to apply to determine which providers qualify for direct access to number resources. The standard should be a clearly defined, specific, and definitive one, and the information offered to meet that standard should be public and transparent. The current state certification and federal licensing processes include these protections today.

Vonage, for example, highlights that it is a public company as a relevant factor. Previously, Vonage has pointed to the fact that it is an interconnected VoIP provider as another

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2 Ex Parte Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, CC Docket 99-200, at 8 (May 7, 2012) (“Vonage May 7 Ex Parte”). (Joint Commenters intend to file a separate, more comprehensive response to the Vonage May 7 Ex Parte.)

3 While Vonage claims it has a good compliance record, and record of management of numbers it has received indirectly, as well as a willingness to agree to conditions that it has drafted, these very points are should make Vonage comfortable simply stepping up to the role of being a carrier, as opposed to expending resources to carve out special exceptions to the current rules. Id. Because the current system, where only carriers have direct access to numbers, is working smoothly and efficiently, the waiver petitions are proposed solutions in search of a problem.

4 Id.
place to “cut off the line” and limit those non-carriers entitled to obtain numbers directly.\(^5\)

Neither being a public company nor an interconnected VoIP provider represents a meaningful test. The fact is that there is no clear legal standard as to which companies should be permitted direct access to phone numbers. The Commission should develop such standards, or rules, through a rulemaking proceeding. In the meantime, the lack of any clear standard could make the dispute between Millicorp and Securus more difficult to resolve. While Millicorp and other VoIP providers may not be similarly situated, what is the legal standard, the dividing line that makes one particular VoIP provider qualified but another not qualified?

The Commission already has a clear standard incorporated into Section 52.15(g)(2)(i) of the Commission’s Rules: in order to obtain numbers a provider must become a carrier, taking on the existing obligations and other rights of other carriers. The Commission should maintain this clear standard by denying the Petitions, as well as the thirteen previously filed.

II. THE CALIFORNIA COMMISSION’S NUMBER EXHAUST CONCERNS ARE A VALID REASON TO DENY THE PETITIONS

The California Public Utilities Commission (“CPUC”), echoing the previous filing of the National Association of Regulatory Utility Commissioners (“NARUC”), urges the Commission to deny the Petitions and to conduct a rulemaking to safeguard against number exhaust. While some petitioners have claimed that all that is at issue in this proceeding is a tug-of-war over revenue between carriers and VoIP providers, the CPUC’s comments demonstrate again that there are critical public interest and consumer interests at stake in this proceeding. The CPUC’s comments highlight three fundamental issues relating to number exhaust.

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A. The NANPA, PA, and the State Commissions Cannot Manage the Administration of Numbers Granted to VoIP Providers

The state commissions are charged with the day-to-day administration of numbers and, as such, should be given due deference when contemplating whether to issue numbers to non-certificated carriers. It should bear great weight that the CPUC and NARUC agree that “neither the PA nor the NANPA have the ability to monitor number utilization by unlicensed and non-certificated service providers.”6 The CPUC has also highlighted its concerns about its own ability to manage numbers effectively if the Petitions and similar petitions were granted: “California is concerned that the uncertain regulatory status of VoIP service providers would eliminate or severely constrain the CPUC’s ability to ensure compliance with numbering rules,” and would lead to an increase in inefficient number use.7 The Petitioners, and previous petitioners, cannot meet their “heavy burden” to show that gaining direct access to numbers is in the public interest in light of these deep-seated concerns of state regulators closest to the task of number administration.

B. The Commission Should Be Focused on Working with the States to Control and Not to Accelerate Number Exhaust

The Commission has in the past worked in tandem with the states to ameliorate number exhaust issues and has had success doing so. The CPUC correctly recognizes that number exhaust is a serious issue that will not go away on its own, and could cost hundreds of billions of dollars to rectify once numbers are indeed exhausted.8 The CPUC also recommends that number

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6 CPUC Comments, at 4 (citing NARUC Comments and Request for Rulemaking, at 6 (Mar. 30, 2012)).
7 Id., at 3.
8 Id. at 6.
exhaust must be at the forefront of the Commission’s calculus when considering issues such as the waiver petitions:

In the late 1990’s and early 2000’s, the CPUC was at the forefront in successful efforts to persuade the FCC to adopt rules that would slow the rate at which carriers were drawing numbers and prompting the introduction of dozens of new area codes nationwide. The FCC responded to state efforts by issuing several decisions in CC Docket 99-200, which established categories of numbers, number utilization thresholds, sequential number use, and number pools. All those efforts bore fruit, with many states able to slow the draw on numbers and the need for new area codes.9

The Commission should continue on this path of making number conservation a high priority and not squander these past gains. Thus, the petitions should be denied. If there is a compelling reason to consider fundamentally revising the all of the tangential issues associated with the effective administration of the North American Numbering Plan, then those issues must be addressed in a new or existing rulemaking capable of assessing the full impact of these myriad petitions.

C. The CPUC Recommends a Rulemaking Instead of Ad Hoc Waivers

The CPUC—like NARUC, NTCA, NCTA, COMPTEL, and Joint Commenters—continues to recommend that a rulemaking is necessary to examine the impact of permitting VoIP providers to gain direct access to numbers. As the CPUC states, “it is time for the FCC to develop new rules that would benefit consumers and promote more efficient use of numbers.”10

The CPUC also recommends specific rule changes, including a series of rule changes designed to encourage number conservation.11

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9 Id. at 5.

10 Id. at 2.

11 Id. at 3.
Some providers, such as Vonage, have tried to pick and choose their way through the recommendations of state commissions such as California and Pennsylvania that have clearly recommended a rulemaking as the necessary next step. Vonage has tried to convert the CPUC’s recommended rule changes into waiver conditions, and has likewise tried to translate Pennsylvania’s opposition to waivers into waiver conditions. Vonage also picks and chooses which of California’s suggestions it will heed and carves out exceptions to the CPUC’s proposed rules. But it is premature to allow any provider to jump to the front of the line under the guise of self-imposed “conditions” when the consensus of the state regulators is that a rulemaking is the appropriate mechanism to set new rules.

III. CONCLUSION

The Petitions raise the prospect of detailed Commission review of little-known companies against an undefined legal standard as to which non-carrier companies are worthy to obtain direct access to phone numbers. Given the resounding opposition of the states tasked with administering number resources, the Commission should conserve its own resources and deny all pending petitions. Although Joint Commenters believe strongly that only carriers should have access to phone numbers, if the Commission is inclined to consider the issue further, it should

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12 Vonage May 7 Ex Parte Letter, at 4-5.

13 Id. at 4.
issue nondiscriminatory and generally applicable rules in a rulemaking proceeding.

Respectfully Submitted,

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