

UTILITIES AND TELECOMMUNICATIONS ALERT

FCC RELEASES NPRM GRANTING INTERCONNECTED VOIP PROVIDERS DIRECT ACCESS TO NUMBER RESOURCES, INITIATES VONAGE DIRECT ACCESS TRIAL AND OPENS NOI ON THE GEOGRAPHIC ASSOCIATION OF NUMBERS

On April 18, the Federal Communications Commission (“Commission”) released a Notice of Proposed Rulemaking (“NPRM”), Order, and a Notice of Inquiry (“NOI”) concerning access to telephone number resources. The NPRM proposes to allow interconnected Voice over Internet Protocol providers (“IVPs”) to obtain telephone numbers directly from the North American Numbering Plan Administrator and the Pooling Administrator. The Order grants a limited 6-month trial to Vonage and invites the fourteen other IVPs who previously filed for a waiver petition to participate in similar trials. The NOI seeks comment regarding long-term numbering issues, including the geographic association of number resources.

Eckert Seamans has actively participated in this proceeding on behalf of COMPTEL and a variety of carriers for more than a year. Regulated carriers should be particularly interested in becoming engaged in this proceeding as it will determine the parallel regulatory structure applicable to IVPs. Today, IVPs are already largely exempt from state regulation. Depending on the manner in which the Commission chooses to regulate IVPs in this docket, they could gain a competitive advantage over carriers in a variety of areas, including IP interconnection, intercarrier compensation, and number portability.

NOTICE OF PROPOSED RULEMAKING

Will New Rules Give a Competitive Advantage to Interconnected VoIP Providers?

In response to petitions filed by Vonage and other IVPs, the Commission proposes to modify its rules to allow IVPs to obtain direct access to numbering resources. If IVPs obtain such direct access, they will be able to compete head-to-head with common carriers, but potentially under less burdensome regulatory obligations.

The NPRM offers carriers an opportunity to comment on rules that will establish critical IVP regulatory obligations for years to come. The NPRM inquires how this proposed change would impact call routing, interconnection, local number portability, number cost allocation, and intercarrier compensation. Specifically, the NPRM solicits comment on:

Numbering Issues: what type of documentation IVPs should provide in order to access numbering, and whether they should make the same “financial, managerial and technical capacity” showing that carriers make today at the state level. The NPRM asks what numbering administration requirements should apply; how the Commission should enforce its numbering rules; whether access to numbers should be limited to pooling rate centers to avoid number exhaust; and additional methods to address number exhaust.

Call Routing: rules to ensure that calls are correctly routed when IVPs have direct access to numbers, and whether direct access will hinder or prevent call completion.

Intercarrier Compensation: the impact to intercarrier compensation from direct access to numbering, including impacts on IVP switched access and intercarrier compensation charges to carriers.

IP Interconnection: the effect that direct access to numbering will have on IP interconnection, and the current status of IP interconnection for IVPs today. This proceeding could determine whether IVP interconnection agreements must be publicly filed and whether they will be available on a nondiscriminatory basis to other providers and carriers.

Local Number Portability: rules to require porting both to and from IVPs, regardless of how the IVP obtains its numbers. The NPRM also seeks comment on the key issue of whether there should be any geographic limitations to the number portability requirement.

Expansion Beyond IVPs: whether it should expand direct access to numbers beyond IVPs to include, for example, one-way VoIP.

Competition: what the impact of allowing IVPs direct access to number resources would be on competition. This request offers carriers an opportunity to request that the Commission provide a level playing field for both carriers and IVPs alike.

Commission decisions in this proceeding will have a direct impact on carriers' ability to compete on even terms with IVPs and will influence IP Transition decisions, including decisions relating to IP interconnection and the AT&T and NTCA Petitions.

ORDER ESTABLISHING SIX-MONTH TRIAL FOR VONAGE AND POTENTIALLY OTHER PROVIDERS

The Vonage Numbering Trial Will Have a Direct Impact on the NPRM

In response to Vonage's open-ended waiver request, the Order establishes a limited six-month trial of direct access to numbering resources for Vonage and other IVPs with pending direct access petitions, as long as they agree to accept the Order's terms and conditions. In order to qualify for a trial, an IVP must file a plan with both the Commission and any relevant state commission within 30 days from the Order's release date. Vonage's trial is limited to approximately 145,000 numbers (120,000 ported and 25,000 new numbers). Other IVPs would be limited to 5% of their active phone numbers.

Trial participants must file monthly reports with the Commission that are subject to public comment. Carriers can take this opportunity to file comments on these monthly reports to bring to the Commission's attention any technical, operational or regulatory issues that arise during the

trial(s). Additionally, the Wireline Competition Bureau is required to issue a report at the end of the trial. Carriers and other interested parties will have an opportunity to provide comment on that report.

Vonage and other IVPs will have to agree to comply with the conditions the Commission established in the 2005 *SBCIS Waiver Order*, as well as additional conditions agreed to by Vonage. Vonage will maintain 65% number utilization across its number inventory, offer IP interconnection to other carriers, ensure its carrier partners comply with intercarrier compensation and other requirements, and comply with applicable laws. In the event the trial leads to problems, the Commission can end the trial and require the return of all numbers.

Trials by Vonage and potentially other IVPs will have a significant impact on the concurrent rulemaking proceeding. Carriers with an interest in influencing the Commission's rules governing IVPs should take the opportunity to file comments on the monthly and final reports required of trial participants.

NOTICE OF INQUIRY ON WHETHER NUMBERS SHOULD REMAIN ASSOCIATED WITH GEOGRAPHIC LOCATIONS

The NOI seeks comment on a variety of broader numbering issues related to the IP Transition. Specifically, the NOI examines the transition from geographic-based compensation and whether telephone numbers should remain associated with geographic areas. The NOI also inquires about the impact of removing the geographic relationship of number resources on public safety, including 911 and PSAPs. In addition, the NOI seeks comment on how any change would impact disability access, routing, and interconnection.

Comments are due 30 days after the NPRM is published in the Federal Register. Replies are due 60 days after publication. We'll keep you apprised when the comment and reply comment dates become available. Please do not hesitate to contact Jim Falvey (202.659.6655), Justin Faulb (202.659.6677), or any other member of the Eckert Seamans Utilities and Telecommunications Practice Group if you are interested in participating in filing comments at any stage of this proceeding.

*This Utilities and Telecommunications Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice. If you have any questions please contact **James C. Falvey** at 202.569.6655, or contact any one of our other Utilities and Telecommunications Group attorneys at Eckert Seamans.*