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November 12, 2019

Mr. Gary L. Widerburg
Commission Administrator
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

RE: Teleport Communications America, LLC's Request for Waiver - Logan Rate Center
(Docket No. 19-2558-04)

Dear Mr. Widerburg:

Teleport Communications America, LLC ("TCAL") respectfully submits this application of the "safety valve" for NXX-X acquisition in the state of Utah. By this letter, TCAL requests that the Public Service Commission ("Commission") of Utah overturn a denial by Somos, Inc. ("Somos", "Pooling Administrator" or "PA") of TCAL's application for one block of numbers and that the Commission specifically authorize the PA to immediately release the requested blocks to TCAL so that TCAL may serve its customer.

This request is based on the Federal Communications Commission ("FCC") Rules found at 47 C.F.R. § 52.15(g)(4) and pursuant to the Thousands-Block Number (NXX-X) Pooling Administration Guidelines ("TBPAG") and the Central Office Code (NXX) Assignment Guidelines published by the Industry Numbering Committee ("INC").

A Utah customer of TCAL has requested that TCAL provide 1,000 contiguous numbers for its place of business in the Logan rate center.¹ TCAL has developed a communications plan that the customer will implement, and consequently, the customer will assign the numbers within 180 days of the numbers being made available by TCAL to the customer's enterprise. The Logan rate center, in the 435 area code, converted to Number Pooling on June 16, 2003 as authorized by the Commission and the FCC. Consequently, normal numbering resource acquisition by a Number Pooling carrier, such as TCAL, is gained through an interface with the PA². On October 31, 2019, TCAL submitted a "Thousand Block Application Form Part 1A" and a "Months-to-Exhaust and Utilization Certification Worksheet – TN Level" ("MTE

¹ TCAL considers the customer's name proprietary and trade secret information. Accordingly, TCAL asks that the Commission not reveal the name of the customer beyond these discussions. See attached customer letter which has been printed on YELLOW paper (CONFIDENTIAL ATTACHMENT A) and a Motion to Deviate to file via paper.

² The federal rules in 47 C.F.R. 52.15 generalize responsibilities of NANPA and the PA under the heading "Central office code administration".

and Utilization”) to the PA³ for one thousand block of numbers. TCAL received a denial from the PA denying the request.⁴ The denial indicated that TCAL failed to meet the month-to-exhaust and utilization thresholds. Typically, the PA will apply the FCC rules and related INC Guidelines. These rules and guidelines require that a block or code holder requesting growth resources demonstrate that existing resources within the rate center will both exhaust within 6 months AND meet the 75% utilization level.

Although TCAL has an adequate supply of telephone numbers to satisfy incremental requests for numbers without receiving new blocks of numbers, TCAL’s existing telephone resources cannot satisfy its customer’s need for 1,000 contiguous numbers.

In setting its policy for the assignment of telephone numbers, the FCC designated NANPA and the PA to handle numbering resource administration.⁵ If a numbering resource administrator withholds numbering resources from a carrier, the FCC has specifically authorized state commissions to overturn those decisions for reasonable cause. That authority is specifically set out in the relevant FCC Rule, 47 C.F.R. § 52.15(g)(4), which states:

The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an Operating Company Number (OCN). The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA’s decision to the appropriate state regulatory commission. The state commission may affirm, or may **overturn, the NANPA’s decision to withhold numbering resources** from the carrier based on its determination that the carrier has complied with the reporting and numbering resource application requirements herein. The state commission also may **overturn the NANPA’s decision to withhold numbering resources** from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.”
(emphasis added)

³ Copies of the Part 1A and the MTE and Utilization worksheet are included as ATTACHMENT B.

⁴ A copy of the Part 3 denial is also included in ATTACHMENT B.

⁵ 47 C.F.R. § 52.15(a) states: “Central Office Code Administration shall be performed by the NANPA, or another entity or entities, as designated by the Commission.” 47 C.F.R. § 52.20(d) states: “The Pooling Administrator shall be a non-governmental entity that is impartial and not aligned with any particular telecommunications industry segment, and shall comply with the same neutrality requirements that the NANPA is subject to under this part.”

In addition, the FCC through the INC Guidelines provides that appropriate regulatory authorities may review the PA's decision to deny a request for numbering resources. See INC TBPAG Sections 3.7 and 12(c).

The FCC also clarified in the text of a NRO Order⁶ that carriers may now appeal to states using a "safety valve" mechanism (paragraphs 57-66). As is noted in the following, the FCC contemplated the need for, and gave structure to states to respond when denials failed to consider a "specific customer request":

We also agree with WinStar that a carrier should be able to get additional numbering resources when there is a verifiable need **due to the carrier's inability to satisfy a specific customer request**. We therefore clarify that states may also grant relief if a carrier demonstrates that it has received a customer request for numbering resources in a given rate center that it cannot meet with its current inventory. Carriers may demonstrate such a need by providing the state with documentation of the customer request and current proof of utilization in the rate center. States may not accommodate requests for specific numbers (i.e., vanity numbers), but may grant requests for customers seeking contiguous blocks of numbers. Any numbering resources granted for this reason may be initially activated only to serve the requesting customer for whom the application was made. If the customer request is withdrawn or declined, the requesting carrier must return the numbering resources to the NANPA or Pooling Administrator, and may not retain the numbering resources to serve other customers without first meeting our growth numbering resource requirements.⁷

An essential aspect of the "safety valve" provision is the accelerated response needed to comply according to the FCC's order. States should act upon such a request in most instances in 10 business days, as noted by the FCC:

Finally, we recognize that in many instances, the failure to address a request for additional numbering resources can **impair a carrier's ability to stay in or expand business**. We therefore direct states to act on carrier requests for a safety valve as expeditiously as possible. Although we do not establish a specific time limit for states to act on these requests,

⁶ *In the Matter of Numbering Resource Optimization, et al.*, CC Docket Nos. 99-200 and 96-98, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 ("Third NRO").

⁷ *Id.* at ¶ 64.

we believe that, in most instances, 10 business days from receipt of a request that the state determines to be sufficiently detailed and complete will be sufficient time to review and act upon safety valve requests. If a state does not reach a decision on a safety valve request within a reasonable timeframe, carriers may submit such requests to the Commission for resolution. In addition, carriers may appeal to the Commission safety valve decisions made by states, and we delegate authority to the Common Carrier Bureau to review such petitions as expeditiously as possible.⁸

TCAL respectfully requests that the Commission overturn the PA's decision expeditiously in the interest of our customer, as we are unable to satisfy the numbering needs of this customer without such an exception. Any correspondence with the PA in this matter may be brought to the attention of the Pooling Administrator who denied the TCAL request:

Ms. Margaret Harrell-Simington
Somos, Inc. Pooling Administrator
1800 Sutter Street
Concord, CA 94502
925-420-0346

Thank you for your time and please do not hesitate to contact me on (720) 472-3624.

Sincerely,

Cyndi Gallagher / by Doc w/permission

Cyndi Gallagher
Director – External Affairs

cc: Margaret Thomson, TCAL Legal (via email)
Casey Coleman, Utah Division of Public Utilities (via email) ccoleman@utah.gov

⁸ *Id.* at ¶ 66.