

# Recommended Draft Policy ARIN-2019-12

## M&A Legal Jurisdiction Exclusion

**Status:** Last Call

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Current Text (27 January 2020)

### **AC Assessment of Conformance with the [Principles of Internet Number Resource Policy](#):**

This policy enables fair and impartial number administration as it provides clear guidance regarding the impact of merger, acquisition or reorganization activity to the community. It is technically sound and has community support.

#### **Problem Statement:**

Merger and acquisition activity sometimes results in a surviving legal entity that is not in ARIN service region, but may prefer to continue the pre-existing relationship with ARIN.

Example: Imagine a case where a global company has decided to discontinue service in the ARIN service region (shuttering ARIN region offices laying off ARIN region employees, and canceling ARIN region customers) and repurpose the network resources and number resources in the rest of its global footprint. During restructuring the company concentrates its holdings in its European subsidiary, and then dissolved its US legal entity.

Imagine a case where a global company has decided to divest its service in the ARIN region (selling all ARIN region offices, all ARIN region network assets, all ARIN service region customers, all number resources used in the ARIN (associated with previous noted sale of network and customers), but retaining ARIN issued resources in use outside of the ARIN service region. During restructuring the company concentrates its holdings which are not in us in the ARIN service region in its European subsidiary, and then sells off its US legal entity (including the network, customers, addresses in use, etc) dissolved its US legal entity.

#### **Policy Statement:**

Add the following to section 8.2

Mergers, acquisitions, and reorganization activity resulting in the surviving entity ceasing to have a real and substantial connection with the ARIN region shall be permitted to continue holding any numbering resources issued (directly or indirectly) by ARIN prior to the merger, acquisition or reorganization activity, but shall not qualify for any additional numbering resources (directly or indirectly) from ARIN, unless and until it once again has a real and substantial connection with the ARIN region as required by the Numbering Resource Policy Manual.

**Timetable for Implementation:** Immediate

## **Anything Else:**

This proposal may be overtaken by a more general approach to ARIN membership legal jurisdiction exclusion

To clarify scope, a legal entity present within the ARIN service region, and a current ARIN RSA executed with that entity, is necessary to receive allocations or assignments from ARIN. Therefore in the scenario postulated in the problem statement, the organization would have to re-establish itself within the ARIN service region to receive additional resources from ARIN, while it can continue to hold the allocations or assignments made prior to any merger, acquisition, or reorganization activity.

## **Staff and Legal Review (5 March 2020)**

### **Summary (Staff Understanding)**

ARIN staff understands this policy to mean that the surviving entity of a Number Policy Resource Manual (NRPM) section 8.2 Mergers, Acquisitions, and Reorganizations transfer will be permitted to continue holding any number resources issued by ARIN prior to said transfer regardless if they cease to have a real and substantial connection to the ARIN region. In addition, they will not qualify to receive any additional number resources from ARIN unless they once again establish a real and substantial connection with the ARIN region. A real and substantial connection would be decided in accordance with the ARIN NRPM.

### **Comments**

#### **ARIN Staff Comments**

ARIN would implement this policy as it is written and currently using NRPM section 9 to determine “real and substantial connection” to the ARIN region. ARIN would manage these number resources the same as any other number resource currently managed by ARIN. A new Registration Services Agreement would need to be signed by the surviving entity.

#### **ARIN General Counsel – Legal Assessment**

No material legal issues in the current proposal.

#### **Resource Impact**

Implementation of this policy would have minimal resource impact. It is estimated that implementation would occur within 3 months after ratification by the ARIN Board of Trustees. The following would be needed in order to implement:

- Staff training
- Updated guidelines and internal procedures
- Standard documentation updates
- Development of internally managed reporting schemes

**Proposal/Draft Policy Text Assessed:** [27 January 2020 Version](#)

