

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Requirements for IP-Enabled Services Providers)	WC Docket No. 07-243
)	
Local Number Portability Porting Interval and Validation Requirements)	WC Docket No. 07-244
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues)	
)	
Final Regulatory Flexibility Analysis)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200

**REPORT AND ORDER, DECLARATORY RULING,
ORDER ON REMAND, AND NOTICE OF PROPOSED RULEMAKING**

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By the Commission: Chairman Martin and Commissioners Copps, Tate and McDowell issuing separate statements; Commissioner Adelstein approving in part, concurring in part and issuing a statement.

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Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that “promote competition in the local telecommunications market.”¹⁰¹ The extension of the LNP obligations to interconnected VoIP providers may spur consumer demand for their service, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.¹⁰²

3. Local Number Portability Obligations

30. As we discuss in detail above, imposing LNP and numbering administration support requirements on interconnected VoIP providers and their numbering partners is consistent with both the language of the Act and the Commission’s policies implementing the LNP obligations. To ensure that consumers enjoy the full benefits of LNP and to maintain competitively neutral funding of numbering administration, we impose specific requirements to effectuate this policy.

31. *Porting Obligations of an Interconnected VoIP Provider and its Numbering Partner.* As discussed above, section 3 of the Act defines local “number portability” as “the ability of *users* of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁰³ We find that the “user” in this context is the end-user customer that subscribes to the interconnected VoIP service and not the interconnected VoIP provider.¹⁰⁴ To find otherwise would contravene the LNP goals of “allowing customers to respond to price and service changes without changing their telephone numbers.”¹⁰⁵ Thus, it is the end-user customer that retains the right to port-in the number to an interconnected VoIP service or to port-out the number from an interconnected VoIP service.¹⁰⁶

32. As discussed above, both an interconnected VoIP provider and its numbering partner must facilitate a customer’s porting request to or from an interconnected VoIP provider. By “facilitate,” we mean that the interconnected VoIP provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the

¹⁰¹ 47 U.S.C. § 157 nt. The Act necessarily has many goals. One is the development of the Internet, set forth in section 230 of the Act, which provides that “[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2). But the Act specifies other important goals, discussed *supra*, including the preservation of an efficient numbering administration system that fosters competition among all communications services in a competitively neutral and fair manner. Especially here, where extending LNP obligations is likely to encourage consumers to use interconnected VoIP services as a result of our facilitation of porting, we find no conflict between our actions and the underlying goals expressed in the Act.

¹⁰² See *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, GN Docket No. 04-54, 19 FCC Rcd 20540, 20578 (2004) (“[S]ubscribership to broadband services will increase in the future as new applications that require broadband access, *such as VoIP*, are introduced into the marketplace, and consumers become more aware of such applications.”) (emphasis added).

¹⁰³ 47 U.S.C. § 153(30) (emphasis added).

¹⁰⁴ See, e.g., ALTS Reply, WC Docket No. 04-36, at 10 (claiming that an interconnected VoIP provider may attempt to prevent porting by claiming that it is the end user associated with the number); see also *Time Warner Cable Order*, 22 FCC Rcd at 3517-20, paras. 9-14 (affirming that wholesale providers of telecommunications services are telecommunications carriers for purposes of sections 251(a) and (b) of the Act); *id.* at para. 16 (agreeing that a number should be ported to the LEC that wins the customer at the customer’s request).

¹⁰⁵ *First Number Portability Order*, 11 FCC Rcd at 8368, para. 30.

¹⁰⁶ See, e.g., *NANP Order*, 11 FCC Rcd at 2591, para. 4 (finding that numbers are a public resource and not the property of carriers).

interconnected VoIP customer (*i.e.*, the “user”), subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number. We recognize that when an interconnected VoIP provider obtains NANP telephone numbers and LNP capability through a numbering partner, the interconnected VoIP provider does not itself execute the port of the number from a technical perspective. In such situations, the interconnected VoIP provider must take any steps necessary to facilitate its numbering partner’s technical execution of the port.¹⁰⁷

33. We also find that interconnected VoIP providers and their numbering partners may not enter into agreements that would prohibit or unreasonably delay an interconnected VoIP service end user from porting between interconnected VoIP providers, or to or from a wireline carrier or a covered CMRS provider.¹⁰⁸ Because LNP promotes competition and consumer choice, we find that any agreement by interconnected VoIP providers or their numbering partners that prohibits or unreasonably delays porting could undermine the benefits of LNP to consumers. Additionally, because we determine that the carrier that obtains the number from the NANPA is also responsible for ensuring compliance with these obligations, such porting-related restrictions would contravene that carrier’s section 251(b)(2) obligation.¹⁰⁹ If an interconnected VoIP provider or its numbering partner attempts to thwart an end user’s valid porting request, that provider or carrier will be subject to Commission enforcement action for a violation of the Act and the Commission’s LNP rules.¹¹⁰ Further, no interconnected VoIP provider may contract with its customer to prevent or hinder the rights of that customer to port its number because doing so would violate the LNP obligations placed on interconnected VoIP providers in this Order.¹¹¹ To the extent that interconnected VoIP providers have existing contractual provisions that have the effect of unreasonably delaying or denying porting, such provisions do not supersede or otherwise affect the porting obligations established in this Order.¹¹²

34. *Scope of Porting Obligations.* The Commission’s porting obligations vary depending on whether a service is provided by a wireline carrier or a covered CMRS provider.¹¹³ As described above, interconnected VoIP providers generally obtain NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers. As a result, the porting

¹⁰⁷ See, *e.g.*, Letter from Ann D. Berkowitz, Associate Director – Federal Regulatory Advocacy, Verizon, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 04-36, at 2 (filed Oct. 23, 2007) (Verizon Oct. 23, 2007 *Ex Parte* Letter) (stating that a VoIP provider’s refusal to unlock a ported number from the 911 database until 90 days after the customer cancelled the VoIP service effectively obstructed the number port because the winning carrier could not provide service to its customer using the former VoIP provider’s number unless the 911 database was updated to reflect the service provider change).

¹⁰⁸ Cf. *Intermodal Number Portability Order*, 18 FCC Rcd at 23711-12, para. 36 (finding that requiring interconnection agreements between wireless and wireline carriers solely for the purposes of porting numbers could undermine the benefits of LNP).

¹⁰⁹ To the extent that carriers with direct access to numbers do not have an LNP obligation, that exemption from LNP only extends to the exempt service and not to that carrier’s activities as a numbering partner for an interconnected VoIP provider.

¹¹⁰ See, *e.g.*, *Wireless Number Portability Order*, 18 FCC Rcd at 20975, para. 11 (interpreting the Act’s number portability definition to mean that “customers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them”).

¹¹¹ See, *e.g.*, *id.* at 20975-76, paras. 13-17 (finding that any contract provisions that consumers may not port their numbers are to be without effect on the carrier’s porting obligation).

¹¹² See, *e.g.*, *id.*; see also Letter from Lawrence E. Strickling, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, at 2 (filed Mar. 13, 2006) (observing that the Commission has expressly stated that contract disputes are not a basis for refusing to port a number).

¹¹³ See *supra* Part II.A (discussing the LNP obligations for wireline carriers and covered CMRS providers).

obligations to or from an interconnected VoIP service stem from the status of the interconnected VoIP provider's numbering partner and the status of the provider to or from which the NANP telephone number is ported.¹¹⁴ For example, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a wireline carrier for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) a wireless carrier whose coverage area overlaps with the geographic location of the porting-out numbering partner's rate center; (2) a wireline carrier with facilities or numbering resources in the same rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).¹¹⁵ Similarly, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a covered CMRS provider for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) another wireless carrier; (2) a wireline carrier within the telephone number's originating rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).¹¹⁶

35. We also clarify that carriers have an obligation under our rules to port-out NANP telephone numbers, upon valid request, for a user that is porting that number for use with an interconnected VoIP service.¹¹⁷ For example, subject to a valid port request on behalf of the user, a wireline carrier must port-out a NANP telephone number to: (1) an interconnected VoIP provider that partners with a wireless carrier for numbering resources, where the partnering wireless carrier's coverage area overlaps with the geographic location of the porting-out wireline carrier's rate center; or (2) an interconnected VoIP provider that partners with a wireline carrier for numbering resources, where the partnering wireline carrier has facilities or numbering resources in the same rate center as the porting-out wireline carrier.¹¹⁸ Similarly, subject to a valid port request on behalf of the user, a wireless carrier must port-out a NANP telephone number to: (1) an interconnected VoIP provider that partners with a wireless carrier; or (2) an interconnected VoIP provider that partners with a wireline carrier for numbering resources, where the partnering wireline carrier is within the number's originating rate center.¹¹⁹

36. We decline to adopt new porting intervals that apply specifically to ports between interconnected VoIP providers and other providers through a numbering partner.¹²⁰ The intervals that

¹¹⁴ We note that because interconnected VoIP providers offer telephone numbers not necessarily based on the geographic location of their customers – many times at their customers' requests – there may be limits to number porting between providers. The Act only provides for service provider portability and does not address service or location portability. *See First Number Portability Order*, 11 FCC Rcd at 8447, para. 181. Thus, for example, if an interconnected VoIP service customer selects a number outside his current rate center, or if the interconnected VoIP service customer selects a number within his geographic rate center and moves out of that rate center, and then requests porting to a wireline carrier in his new rate center, the customer would not be able to port the number. *See* 47 C.F.R. § 52.26(a). We expect interconnected VoIP providers to fully inform their customers about these limitations, particularly limitations that result from the portable nature of, and use of non-geographic numbers by, certain interconnected VoIP services.

¹¹⁵ *See supra* Part II.A (providing a summary of the various porting obligations).

¹¹⁶ *See id.*

¹¹⁷ To the extent that an interconnected VoIP provider is certificated or licensed as a carrier, then the Title II LNP obligations to port-in or port-out to the carrier are already determined by existing law. *See, e.g.*, 47 C.F.R. § 52.26(a).

¹¹⁸ *See id.*

¹¹⁹ *See id.* We clarify that carriers must port-out NANP telephone numbers upon valid requests from an interconnected VoIP provider (or from its associated numbering partner).

¹²⁰ We seek comment, however, on whether the Commission should adopt rules regarding porting intervals in the Notice adopted with this Order. *See infra* para. 59.

would be applicable to ports between the numbering partner and the other provider, if the port were not related to an interconnected VoIP service, will apply to the port of the NANP telephone number between the numbering partner and the other provider (or the other provider's numbering partner) when the end user with porting rights is a customer of the interconnected VoIP provider.¹²¹

37. We take seriously our responsibilities to safeguard our scarce numbering resources and to implement LNP obligations for the benefit of consumers. Consumers, carriers, or interconnected VoIP providers may file complaints with the Commission if they experience unreasonable delay or denial of number porting to or from an interconnected VoIP provider in violation of our LNP rules.¹²² We will not hesitate to enforce our LNP rules to ensure that consumers are free to choose among service providers, subject to our LNP rules, without fear of losing their telephone numbers.

38. *Allocation of LNP Costs.* Section 251(e)(2) provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."¹²³ Because interconnected VoIP providers benefit from LNP, we find that they should contribute to meet the shared LNP costs.¹²⁴ Further, similar to the Commission's finding in its *Cost Recovery Reconsideration Order*, we also believe that interconnected VoIP providers may find it costly and administratively burdensome to develop region-specific attribution systems for all of their end-user services, and thus we allow these providers to use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.¹²⁵

4. Numbering Administration Cost Requirements

39. Although interconnected VoIP providers do not have any specific numbering administration requirements (e.g., pooling requirements),¹²⁶ they do require the use of NANP numbering resources to provide an interconnected VoIP service, and thereby benefit from and impose costs related to

¹²¹ For example, if the interconnected VoIP provider's numbering partner is a wireline carrier and the porting-in provider is a wireline carrier, the wireline-to-wireline porting interval would apply to the port between the two carriers.

¹²² See 47 U.S.C. § 208; see also 47 U.S.C. § 503(b)(5) (granting the Commission authority to assess a forfeiture penalty against any person who is not a common carrier).

¹²³ 47 U.S.C. § 251(e)(2).

¹²⁴ In the Commission's *Cost Recovery Order*, the Commission determined that carriers not subject to rate regulation (e.g., competitive LECs and CMRS providers) may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with obligations under the Act. See *Cost Recovery Order*, 13 FCC Rcd at 11774, para. 36; *Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2609-10, para. 64. We find that this same recovery method is appropriate for interconnected VoIP providers. Further, the numbering partner may exclude revenues derived from providing numbering resources to interconnected VoIP providers (regardless of whether they hold themselves out as telecommunications carriers) in the numbering partner's revenue calculation on FCC Form 499-A pursuant to the carrier's carrier rule. Cf. *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7547-48, paras. 58-59. In any case, we do not expect both the interconnected VoIP provider and its numbering partner to contribute on the same revenues.

¹²⁵ See *Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2598, para. 37. Providers that submit an attestation certifying that they are unable to divide their traffic and resulting end-user revenue among the seven LNPA regions precisely will be allowed to divide their end-user revenue among these regions based on the percentage of subscribers served in each region. Providers may use their billing databases to identify subscriber location.

¹²⁶ See *supra* Part II.A.