

Exhibit No. _____
Issue: Suspension of LNP Requirements
Witness: Ron Williams
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Western Wireless
Case No. TO-2004-0401 (KLM LNP)
Date: July 2, 2004

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

CASE NO. TO-2004-0401

REBUTTAL TESTIMONY

OF

RON WILLIAMS

**ON BEHALF OF WWC HOLDING COMPANY, INC.
(WESTERN WIRELESS dba CellularOne)**

FILED

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NP

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OF
RON WILLIAMS

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1 **I. QUALIFICATIONS AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Ron Williams. My business address is 3650 131st Avenue South East,
4 Bellevue, Washington 98006.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed as Director – InterCarrier Relations by Western Wireless Corporation.
7 My duties and responsibilities include developing effective and economic
8 interconnection and operational relationships with other telecommunications carriers,
9 including the establishment of local number portability (“LNP”) arrangements and
10 interconnection agreements. I work with other departments within Western Wireless
11 to assess company interconnection and LNP needs and interface with carriers to
12 ensure arrangements are in place to meet the operational objectives of the company.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

14 A. I have a BA in Accounting and a BA in Economics from the University of
15 Washington. I also have a MBA from Seattle University.

16 **Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**

17 A. I am testifying on behalf of WWC Holding Company ("Western Wireless"), which
18 provides commercial mobile radio services ("CMRS") in the state of Missouri under
19 the brand name CellularOne.

20 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE IN THE FIELD OF**
21 **TELECOMMUNICATIONS?**

22 A. I have ten years experience working for GTE (now Verizon), including six years in
23 telephone operations and business development, and four years in cellular operations.
24 I also have two years experience in start-up CLEC operations with FairPoint

1 Communications. Since August 1999, I have worked for Western Wireless, first as
2 the Director of CLEC operations and, more recently, in my current position in
3 Industry Relations and as a project lead for implementation of LNP and
4 interconnection with other carriers.

5 **Q. HAVE YOU TESTIFIED BEFORE ON BEHALF OF WESTERN WIRELESS?**

6 A. Yes, I have testified as the Company's witness in several interconnection arbitration
7 proceedings. Recently, I have testified in LNP suspension matters in Nebraska, New
8 Mexico, and South Dakota.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. The purpose of my testimony is to challenge KLM's request for suspension of
11 federally mandated number portability obligations. My testimony will address the
12 following issues:

- 13 ▪ **What are KLM's obligations to implement LNP and what are the**
14 **standards for suspension of those obligations?**
- 15 ▪ **Are there any real operational or technical roadblocks to KLM's**
16 **implementation of number portability as required by FCC rules?**
- 17 ▪ **Is there any evidence of undue economic burden associated with KLM's**
18 **implementation of local number portability?**
- 19 ▪ **What is the issue with respect to transport costs and what is the impact**
20 **on KLM to resolve this transport issue?**
- 21 ▪ **Does KLM make a valid claim that LNP in their service area is not in the**
22 **public interest?**

23 My testimony addresses the standards that should apply in resolving this Petition and
24 presents the positions of Western Wireless on the issues identified above. For each of
25 the issues, I will identify the applicable standard, establish the facts relevant to a

determination, and recommend to the Missouri Public Service Commission ("Commission") an appropriate resolution.

Q. HAS THE FCC ALREADY ADDRESSED THE SAME ISSUES RAISED IN THIS PETITION?

A. The FCC has asserted jurisdiction over issues related to CMRS number portability by citing its authority under Sections 1, 2, 4(i) and 332 of the Communications Act.¹ I know that many rural ILECs applied to the FCC for a waiver, and a waiver was granted in January this year. I am attaching the FCC order on rural intermodal LNP implementation as Exhibit 1. This case raises the same issues that have already been addressed by the FCC under its jurisdiction.

Q. HAS THE FCC RECENTLY DECIDED ANY OTHER RURAL LNP IMPLEMENTATION WAIVER OR SUSPENSION REQUESTS?

A. Yes. Within the last two months the FCC issued at least three orders denying LNP implementation suspensions for rural wireless and rural wireline carriers. In an order released May 10, 2004 the FCC denied waiver and extension requests for three rural wireless carriers who had claimed they did not receive sufficient notice to implement LNP and that their rural status constituted special circumstances.² Similarly, on May 13, 2004 the FCC denied a waiver petition for temporary suspension made by Northeastern Pennsylvania Telephone Company (NEP); a rural LEC with eight

¹ *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 155 (1996); *see also* *Mem. Op. and Order and Further Notice of Proposed Rulemaking*, ¶ 8, CC Docket No. 95-116, FCC 03-284 (rel. Nov. 10, 2003) "*Intermodal Porting Order*" – attached as Exhibit RW-1.

² In the Matter of Numbering Resource Optimization and Telephone Number Portability, Petitions of Advantage Cellular Systems, Inc., Corr Wireless Communications, LLC, and Plateau Telecommunications, Inc. for Limited Waiver and Extension of Porting and Pooling Obligations, CC Docket No. 99-200, 95-116, FCC 04-1291 (released May 10, 2004).

1 exchanges.³ NEP is planning to implement LNP in conjunction with a switch
2 replacement and argued that “it did not anticipate that intermodal porting would be an
3 ‘imminent’ requirement until the Commission’s Intermodal LNP Order released in
4 November 2003.” NEP also stated that service feature issues arose during
5 implementation planning that would mean that NEP would not meet the May 24,
6 2004 deadline for LNP implementation. In denying NEP’s request, the FCC
7 responded:

8 “We are not persuaded by NEP’s claims that special circumstances exist
9 warranting a waiver of the May 24, 2004 porting deadline in order to
10 accommodate NEP’s switch delivery and deployment schedule, and
11 provide additional time to resolve any service feature issues. We find
12 that NEP has not presented “extraordinary circumstances beyond its
13 control in order to obtain an extension of time.” NEP has not shown that
14 challenges it may face are different from those faced by similarly
15 situated carriers who are able to comply. Generalized references to
16 limited resources and implementation problems do not constitute
17 substantial, credible evidence justifying an exemption from the porting
18 requirements. NEP has known since 1996 that it would need to support
19 LNP within six months of a request from a competing carrier. Although
20 wireless LNP was delayed, all carriers have been on notice since July
21 2002 that wireless and intermodal LNP would become available
22 beginning in November 2003. Thus, NEP has had sufficient time to
23 follow through with these mandates and prepare for LNP.”⁴

24 In this situation, which is similar to the instant petition, the FCC decision delivered a
25 clear and consistent message: The standards are very high for obtaining a waiver of
26 LNP obligations, the onus is on individual carriers to do all in their power to meet the

³ In the Matter of Telephone Number Portability, Petitions of The North-Eastern Pennsylvania Telephone Company for Temporary Waiver of its Porting Obligations, CC Docket No. 95-116, FCC 04-1312 (released May 13, 2004) – attached as Exhibit RW-2.

⁴ See supra ¶10

1 obligations, and difficulties which are similar to those faced by other carriers do not
2 constitute special circumstances worthy of any suspension. LNP is an FCC mandate
3 and it is clear the FCC expects enforcement of its implementation.

4 **II. WHAT IS THE OBLIGATION OF KLM TO IMPLEMENT LNP AND WHAT**
5 **ARE THE STANDARDS FOR SUSPENDING THAT OBLIGATION?**

6 **Q. IS KLM UNDER AN AFFIRMATIVE OBLIGATION TO IMPLEMENT LNP?**

7 A. Yes. All LECs have known since 1996 that they would be required to provide LNP.
8 Section 251(b)(3) of the Communications Act of 1934, as amended ("Act"), requires
9 all LECs to provide LNP.⁵ In its rules implementing the LNP requirements of the
10 Act, the FCC recognized that the public interest would be served by requiring carriers
11 to implement LNP in all areas, but conditioned the requirement to implement LNP in
12 rural areas on a carrier receiving a bona fide request ("BFR") from another carrier.⁶

13 **Q. DID WESTERN WIRELESS SEND A BONA FIDE REQUEST TO KLM REQUESTING THE**
14 **IMPLEMENTATION OF LNP?**

15 A. Yes, just recently. In October and November 2003, Western Wireless sent bona fide
16 requests for LNP to many LECs that have overlapping service areas with Western
17 Wireless. Western Wireless has always planned to pursue LNP in additional
18 overlapping serving areas and is now in the process of issuing bona fide requests to a
19 second group of carriers which includes KLM.

20 **Q. WHAT IS THE STANDARD FOR GRANTING KLM'S REQUEST FOR A SUSPENSION OF ITS**
21 **LNP OBLIGATIONS?**

⁵ 47 U.S.C. § 251(b)(3).

⁶ 47 C.F.R. § 52.26.

1 A. Congress established a very high standard to be met for a LEC to obtain a suspension
2 of its LNP obligations. Section 251(f)(2) of the Act permits state commissions to
3 suspend a carrier's LNP obligations only:

4 to the extent that, and for such duration as, the State commission
5 determines that such suspension or modification —
6 (A) is necessary: (i) to avoid significant adverse impact on users of
7 telecommunications services generally; (ii) to avoid imposing a
8 requirement that is unduly economically burdensome; or (iii) to
9 avoid imposing a requirement that is technically infeasible; and
10 (B) is consistent with the public interest, convenience, and
11 necessity.⁷
12

13 Further, the FCC has stated: "Congress intended exemption, suspension, or
14 modification of the section 251 requirements to be the exception rather than the
15 rule.... We believe that Congress did not intend to insulate smaller or rural LECs
16 from competition."⁸

17 **Q. IF CONGRESS DID NOT INTEND TO INSULATE RURAL TELEPHONE COMPANIES FROM**
18 **COMPETITION, THEN HOW SHOULD THIS COMMISSION DETERMINE WHETHER OR**
19 **NOT TO SUSPEND KLM'S LNP OBLIGATIONS?**

20 A. KLM bears the burden of demonstrating that it meets the statutory standard for a
21 suspension of its LNP obligations. Although Section 251(f) of the Act provides that
22 rural carriers may obtain a suspension of their LNP obligations, the FCC has
23 concluded that a suspension is only appropriate under unique and compelling
24 circumstances:

25 Thus, we believe that, in order to justify continued exemption once a
26 bona fide request has been made, or to justify suspension or
27 modification of the Commission's section 251 requirements, a LEC

⁷ 47 U.S.C. § 251(f)(2).

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 F.C.C.R. 15499, 16118 (1996) ("*LNP First Report and Order*").

1 must offer evidence that application of those requirements would be
2 likely to cause undue economic burdens beyond the economic burdens
3 typically associated with efficient competitive entry. State
4 commissions will need to decide on a case-by-case basis whether such
5 a showing has been made.⁹

6 **Q. IN THE ABSENCE OF THE IMPLEMENTATION DELAY ALREADY GRANTED TO RURAL**
7 **LECS BY THE FCC, WHAT ARE THE PREVAILING GUIDELINES FOR**
8 **IMPLEMENTATION OF LNP AND HOW DO THEY RELATE TO KLM'S SITUATION?**

9 KLM's testimony indicates two possible scenarios for implementing LNP in their
10 network. One scenario involves a modest investment in switch software to upgrade
11 their existing switches for LNP capability. The other scenario involves a complete
12 replacement of KLM's switching system for reasons unrelated to the implementation
13 of LNP. The FCC produced guidelines that suggest 60 days is sufficient time to
14 perform an LNP software upgrade and 180 days is sufficient for a switch
15 replacement. Local Number Portability requirements were established for all LECs in
16 Section 251(b)(3) of the Telecom Act in 1996¹⁰. Specific to the Petitioners in this
17 case, the FCC conditioned the requirement to implement LNP in rural areas on a
18 carrier receiving a BFR from another carrier.¹¹ While a rural carrier has six months
19 from receipt of a BFR to implement LNP, the FCC guidelines for switch preparation
20 indicate a much shorter time may be necessary:¹²

21 After the deadline for deployment of number portability in an MSA in
22 the 100 largest MSAs, according to the deployment schedule set forth
23 in the appendix to this part, a LEC must deploy number portability in

⁹ *LNP First Report and Order* at 16118.

¹⁰ 47 U.S.C. § 251(b)(3).

¹¹ 47 C.F.R. § 52.23(c).

¹² 47 C.F.R. § 52.23(b)(2)(iv).

1 that MSA in additional switches upon request within the following
2 time frames:

- 3 (A) For remote switches supported by a host switch equipped for
4 portability ("Equipped Remote Switches"), within 30 days;
5 (B) For switches that require software but not hardware changes to
6 provide portability ("Hardware Capable Switches"), within 60
7 days;
8 (C) For switches that require hardware changes to provide
9 portability ("Capable Switches Requiring Hardware"), within
10 180 days;
11 (D) For switches not capable of portability that must be replaced
12 ("Non Capable Switches"), within 180 days.

13 The language in the Act is clear: While LNP proceeded by decree for the majority of
14 telephone subscribers, number portability would be triggered by a Bona Fide Request
15 process in the rest of the country. Further, the BFR process established an
16 implementation interval (maximum) of 180 days.

17 The FCC reiterated this rule with respect to intermodal LNP on November 10, 2003
18 (Attached as Exhibit 3):

19 "Therefore for wireline carriers operating in areas outside of the 100
20 largest MSAs, we hereby waive, until May 24, 2004, the requirement
21 that these carriers port numbers to wireless carriers that do not have a
22 point of interconnection or numbering resources in the rate center
23 where the customer's wireline number is provisioned."¹³

24 Then, again, on January 16, 2004 the FCC spelled out the date that the
25 implementation of LNP should occur for the Petitioner in this docket:

26 "Accordingly, IT IS ORDERED that, pursuant to authority contained
27 in sections 1, 4(i), 251, and 332 of the Communications Act of 1934,
28 as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, we GRANT a limited
29 waiver of the wireline-to-wireless porting requirement, until May 24,

¹³ In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, FCC 03-284 at 29 (rel. November 10, 2003) "*Intermodal Porting Order*" – attached as Exhibit RW-1.

1 2004, for local exchange carriers with fewer than two percent of the
2 nation's subscriber lines in the aggregate nationwide that operate in the
3 top 100 Metropolitan Statistical Areas and have not received a request
4 for local number porting from either a wireline carrier prior to May 24,
5 2004 or a wireless carrier that has a point of interconnection or
6 numbering resources in the rate center where the customer's wireline
7 number is provisioned."¹⁴

8 There is nothing vague or indefinite about the LNP obligations imposed on the
9 Petitioners. This eventuality has been foreseeable for the eight years since the
10 Telecom Act was passed in February 1996. The FCC released its *Intermodal Porting*
11 *Order* more than 6 months ago. Clearly, the time that has already been provided to
12 KLM should be sufficient to meet their obligations.

13 **Q. SHOULD THE FACT THAT MANY SIMILARLY SITUATED LECs ARE NOT SEEKING A**
14 **DELAY OR SUSPENSION OF LNP IMPLEMENTATION MERIT CONSIDERATION IN THIS**
15 **PROCEEDING?**

16 **A.** Yes. The decision by many other independent telcos to prepare for implementation
17 rather than seek a delay or suspension is clear evidence that the implementation of
18 number portability by the May 24, 2004 deadline was achievable and implementation
19 with six months notice is achievable. Similarly situated rural LECs with similar
20 switch equipment are implementing LNP. My staff and I have been in contact with
21 many LECs in our serving area to work through questions or concerns in support of
22 their specific implementation efforts.

23 **Q. HAVE OTHER STATE COMMISSIONS RULED ON LEC LNP SUSPENSION REQUESTS?**

24 **A.** Yes. I am not familiar with all state commissions, but I do understand that the
25 Pennsylvania Commission concluded that "rural residents have as much right to

¹⁴ In the Matter of Telephone Number Portability, Small LEC Petitions for relief of the intermodal porting deadline of November 24, 2004, CC Docket No. 95-116, FCC 04-12 at 12 (rel. January 16, 2004). (See Exhibit RW-3)

1 competitive choices as their more numerous urban counterparts” and that as a result,
2 rural LEC suspension Petitioners “must present competent evidence that such relief is
3 necessary under Section 251(f)(2).”¹⁵ In response to requests for suspension of LNP
4 obligations, several state commissions have rejected rural LEC technical and/or
5 financial arguments in support of their LNP suspension requests.¹⁶ Notably, the
6 Michigan Public Service Commission denied LNP suspension to two small rural
7 LECs stating:

8 “The Commission is unconvinced that the burdens will
9 disproportionately affect the Petitioners as compared with other
10 carriers. Indeed, the Petitioners have been on notice since 1996 to
11 prepare for implementation of LNP and replacement of new switches
12 should have been completed prior to the implementation date Any
13 deferment of the FCC’s number portability requirements beyond that
14 time [May 24, 2004] would be anti-competitive and anti-consumer.”¹⁷

¹⁵ *Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action Pursuant to Section 251(f)(2) and 253(b) of the Telecommunications Act of 1996*, Docket Nos. P-00971177 and P-00971188, 1997 Pa. PUC LEXIS 146 at ¶44 (Pennsylvania Public Utility Commission, July 10, 1997).

¹⁶ See, e.g., *Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Order Dismissing Petition Without Prejudice*, Docket No. P-100, Sub 133r (North Carolina Utilities Comm’n, Oct. 7, 2003)(LNP suspension petition dismissed for failure to meet burden of proof); *Iowa Telecommunications Services*, Docket No. SPU-02-18 (SPU-02-19), 2003 Iowa PUC LEXIS 141 (Iowa Utilities Board, April 15, 2003)(LNP suspension petition denied for failure to meet burden of proof); *In the matter of the application of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless number portability obligations pursuant to §251(f)(2) of the federal Telecommunications Act of 1996, as amended*. Opinion and Order in Case Nos. U-13956 and U-13958). (Michigan Public Service Commission, February 12, 2004).

¹⁷ *In the matter of the application of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless number portability obligations pursuant to 251(j)(2) of the Federal Telecommunications Act of 1996 as amended*. (Opinion and Order in Case Nos. U-13956 and U-13958.) (Michigan Public Service Commission, February 12, 2004.)

1 There is an Order expected to be released by the Arizona Corporation Commission
2 mandating that Arizona Telephone Company implement LNP, including replacement
3 of obsolete switches serving very rural areas.¹⁸

4 **Q. HAVE OTHER STATES DEALT WITH LNP SUSPENSION PETITIONS IN A DIFFERENT**
5 **MANNER?**

6 **A.** Yes. Texas is a good example. The Texas Commission Staff was actively involved
7 in negotiating with rural telephone companies to shorten or withdraw their suspension
8 requests. The Staff was successful in resolving all ten original petitions¹⁹ but not
9 before they submitted the following testimony in the docket:

10 "I recommend the denial of the petitions of Valor and KTC to suspend
11 implementation until March 15, 2005 of the FCC's Intermodal Order ...
12 I have determined that the Companies have failed to provide sufficient
13 information and demonstrate the stated factors pursuant to FTA
14 §251(f)(2) to justify an extension ... The Companies further failed to
15 demonstrate that implementation of intermodal LNP prior to March 15,
16 2005 would be inconsistent with the public interest, convenience and
17 necessity of Texas customers. I further conclude that the Companies
18 have failed to take steps to comply with the Intermodal Order in a timely
19 manner after receiving bona fide requests (BFR) for intermodal porting.
20 As a consequence I recommend that the Companies be held accountable
21 for non-compliance with FTA § 251(f)(2), if they are not LNP capable
22 by May 24, 2004. Thus, the Companies would be subject to applicable
23 FCC enforcement proceedings and/or state commission enforcement
24 action, if applicable.²⁰

¹⁸ See Arizona Corporation Commission Docket T-02063A-04-0010, *In the Matter of the Emergency Petition of Arizona Telephone Company for Suspension of the Local Number Portability Obligations of Section 252(B)*.

¹⁹ See Texas SOAH Docket No 473-04-3034 PUC Docket 29278 "Petition of Wes-Tex Telephone Cooperative, Inc. et al, for Suspension of Wireless Number Portability Implementation."

²⁰ Prefiled Direct Testimony of Stephen Mendoza, Telecommunications Division, Public Utility Commission of Texas in the matter of *Petition of Wes-Tex Telephone Cooperative, Inc. et al, for Suspension of Wireless Number Portability Implementation* SOAH Docket No. 473-04-3034, PUC Docket No. 29278, April 30, 2004. p.4, ll. 5-21 and p.5, ll. 1-8.

1 **III. ARE THERE ANY OPERATIONAL OR TECHNICAL ROADBLOCKS TO**
2 **KLM'S IMPLEMENTATION OF NUMBER PORTABILITY AS REQUIRED**
3 **BY FCC RULES?**

4 **Q. WHAT HAS KLM IDENTIFIED AS TECHNICAL ROADBLOCKS TO THE**
5 **IMPLEMENTATION OF NUMBER PORTABILITY?**

6 In their Petition and through discovery responses, KLM has not identified any
7 technical infeasibility as a basis for their requested suspension of LNP obligations.

8 **Q. WHAT ABOUT KLM'S CONCERN REGARDING THE ROUTING OF TRAFFIC TO**
9 **TELEPHONE NUMBERS THAT HAVE BEEN PORTED TO WIRELESS CARRIERS?**

10 A. KLM implies that routing local traffic originating on their networks and destined for a
11 number ported to a wireless carrier is not a feasibility concern. KLM has
12 characterized this routing issue as a potential economic burden. Western Wireless
13 believes there are economical ways to accomplish this routing that would not
14 constitute an undue economic burden.

15 **Q. WHY IS KLM RAISING A CONCERN REGARDING INTERMODAL PORTING AND ITS**
16 **LOCAL ROUTING OBLIGATIONS?**

17 A. *Under some circumstances, when there is no physical interconnection between a LEC*
18 *and a wireless carrier, the LEC will need to route a call to the carrier that services the*
19 *ported number via a third party 'transit' provider. For example, this routing could use*
20 *common shared facilities to the LATA tandem as a means to deliver this traffic to the*
21 *appropriate terminating carrier. This is no different than the manner in which*
22 *wireless carriers terminate calls to many LEC exchanges in Missouri today.*

23 **Q. WHAT WOULD HAPPEN IF THIS TYPE OF ROUTING OF LOCAL CALLS DID NOT OCCUR?**

24 A. A call that was local before a number ported would either not be completed or would
25 be required to be dialed as a toll call after the number was ported. Imagine a scenario

1 where your neighbor had to dial toll to reach your telephone number just because you
2 changed your service provider. It would make no sense.

3 **Q. IS THIS TYPE OF SEPARATE RATING AND ROUTING OF TRAFFIC A NEW PRACTICE?**

4 A. No. This practice is permitted under industry guidelines associated with the
5 assignment of telephone numbers by the North American Numbering Plan
6 Administrator (NANPA)²¹. In fact, Western Wireless has several implementations of
7 this throughout its service area.

8 **IV. IS THERE ANY EVIDENCE OF UNDUE ECONOMIC BURDEN**
9 **ASSOCIATED WITH KLM'S IMPLEMENTATION OF LOCAL NUMBER**
10 **PORTABILITY?**

11 **Q. WHAT IS THE STANDARD FOR ESTABLISHING AN "UNDUE ECONOMIC BURDEN"?**

12 A. Section 251(f)(2) permits the Commission to suspend a LEC's LNP obligation if such
13 action is "necessary to avoid imposing a requirement that is unduly economically
14 burdensome."²² The Ohio Commission has held that the statutory phrase, "unduly
15 economically burdensome," means economic burdens "beyond the economic burdens
16 typically associated with efficient competitive entry."²³ The facts contained in
17 KLM's Petition do not meet the standard that would lead one to conclude that LNP
18 implementation constitutes an undue economic burden.

19 **Q. HAVE YOU HAD ANY EXPERIENCE IN DEALING WITH LNP IMPLEMENTATION?**

20 A. Yes, I have had experience implementing LNP on Western Wireless' own network.

²¹ The Central Office Code (NXX) Administration Guidelines (COCAG), published by the Alliance for Telecommunications Industry Solutions on behalf of the Industry Number Committee, permit a carrier to receive a rate center number assignment and designate a routing point for calls to those numbers that are outside the rate center to which they are assigned.

²² 47 U.S.C. § 251(f)(2)(A)(ii).

²³ *Western Reserve Petition* at 13.

1 This entailed the upgrading of switches, integrating systems, implementing LNP
2 in a CLEC and in a wireless network and providing for SOA (Service Order
3 Administration) and LNP queries. I worked on these issues from an operational,
4 technical, and cost aspect.

5 **Q. KLM CLAIMS THAT ITS' ECONOMIC BURDEN ARISES FROM THE FACT THAT ITS**
6 **CURRENT SWITCHES WILL LOSE MANUFACTURER SUPPORT AT THE END OF 2007.**
7 **CAN YOU CHARACTERIZE THIS IMPACT FOR THE COMPANY AND ITS CUSTOMERS?**

8 A. The investment necessary to make KLM's Mitel switching system LNP compliant is
9 **** ____ ****. This investment represents less than **** % **** of KLM's total switch
10 investment. While their current switch manufacturer may be withdrawing support for
11 this product at the end of 2007 (more than 40 months from now), this does not mean
12 the switch must be upgraded at that time. By KLM's own admission, early retirement
13 of the switch will impact their balance sheet and income statements much more
14 significantly than the modest investment necessary to make their switches LNP
15 capable. Further, KLM has conceded that any future switch replacement will include
16 LNP capability. Finally, KLM can recover the cost of this modest upgrade
17 investment over five years via the cost recovery methods made available in the FCC
18 rules.

19 **Q. ARE THE LNP MONTHLY RECURRING COST PROJECTIONS PROVIDED BY KLM A**
20 **REASONABLE APPROXIMATION OF THE COSTS?**

21 A. The recurring cost projections provided by KLM overstate two of the monthly
22 recurring charges for the operational costs of LNP. Both of these costs appear to be
23 charges assessed by service vendors for the processing of port transactions and
24 updating the national LNP database.

25 **Q. CAN YOU EXPLAIN HOW THESE RECURRING COSTS MAY BE OVERSTATED?**

1 A. Yes. KLM is claiming a monthly recurring cost for use of Neustar's "low tech
2 interface" which can be used to establish the 'port-in' of a number or release a
3 number to be 'ported out' once two carriers have agreed on the telephone number and
4 the date the number will be ported. Western Wireless believes it is not necessary for
5 KLM to use this 'semi-automated' approach to porting. The same vendor provides a
6 'help desk' method to accomplish the same process. That method has a cost of
7 **** ____ **** per port transaction. Using Western's estimate of 60 intermodal ports per
8 year (about 5 ports per month), the monthly cost should be reduced for this cost
9 category. KLM is also claiming a monthly recurring cost for "Verisign Porting
10 Charges" based on a minimum monthly fee. Western Wireless contends that the
11 Verisign functionality is, in part, redundant to the Neustar costs. The other features
12 that may be contained in the Verisign service are not justified if KLM's port volume
13 is in the range forecasted by Western Wireless.

14 **Q. HAVE YOU PREPARED AN ALTERNATIVE LNP COST ESTIMATE FOR KLM?**

15 A. Yes. I have attached Proprietary Exhibit 4A which reflects the modifications to KLM
16 costs that are consistent with my testimony. Also attached is Proprietary Exhibit 4B
17 which uses the costs identified in 4A, a forecast of KLM port volume, and the NECA
18 methodology that is used to derive a projected end user surcharge recovery fee for
19 LNP implementation. The methodology produces an estimated LNP cost recovery
20 from end users of **** ____ **** per month. It is KLM's discretion on whether to
21 recover LNP costs in this manner or absorb the costs as part of their ongoing
22 operations.

23 **Q. WHAT IS YOUR RECOMMENDATION ON KLM'S CLAIMS THAT THE COST OF LNP**
24 **IMPLEMENTATION IS UNDULY BURDENSOME?**

1 A. The bar has been set very high for granting an exception on the basis of the costs of
2 implementing local number portability. The KLM cost exhibit identifies non-
3 recurring switch upgrade costs for LNP that appear consistent with cost estimates
4 made by other carriers implementing similar upgrades to their Mitel switches.
5 KLM's estimated monthly recurring costs include some overstated costs that don't
6 stand-up to scrutiny. KLM has failed to demonstrate their costs are unduly
7 burdensome. Neither have they demonstrated that their costs are any different than
8 other rural wireless and wireline carriers that are implementing or have implemented
9 number portability.

10 **V. WHAT IS THE ISSUE WITH RESPECT TO TRANSPORT COSTS AND**
11 **WHAT IS THE IMPACT ON KLM TO RESOLVE THIS ISSUE?**

12 **Q. WHAT ARE THE ISSUES INVOLVING TRANSPORT COSTS ASSOCIATED WITH THE**
13 **ROUTING OF CALLS TO PORTED NUMBERS?**

14 A. In the Intermodal Porting order issued by the FCC in November 2004, the FCC
15 addressed the obligation to route traffic to ported numbers, but the FCC did not
16 address the issue of ultimate responsibility for the costs involved in routing traffic to
17 ported numbers.²⁴ It has been industry practice that carriers originating local traffic
18 have the obligation to deliver that traffic to the terminating carrier. Calls to a ported
19 number with the same rate center designation as the originating call are local calls.
20 Western takes responsibility for the cost of routing local calls to LECs today.
21 Western believes that LECs should have a reciprocal obligation to absorb the cost to

²⁴ In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, FCC 03-284 ¶¶ 39-40 (rel. November 10, 2003) "*Intermodal Porting Order*" – attached as Exhibit RW-1.

1 route local calls to Western Wireless. KLM takes the position that this routing, in the
2 absence of a direct point of interconnection would be "economically burdensome."
3 (Warriner Direct p.7, ll. 7-10).

4 **Q. HAS WESTERN WIRELESS PROPOSED A MEANS TO RESOLVE THIS ISSUE PENDING AN**
5 **FCC DECISION ON THE MATTER?**

6 A. Yes, in the "On-the-record" presentation hosted by the Commission on May 5, 2004,
7 Western Wireless extended the offer to reimburse KLM for indirect transit costs
8 associated with the routing of calls to numbers ported from KLM to Western
9 Wireless. The offer allowed for reimbursement at a rate equivalent to what Western
10 Wireless pays to SBC for similar transit routing from Western's network to KLM's
11 network. The offer was extended as an interim solution, until such time as the FCC
12 issued an order on the matter in the Sprint petition for declaratory ruling.²⁵ Further,
13 the offer was extended with the expectation and contingent upon KLM's timely
14 implementation of LNP.

15 **Q. WHAT IMPACT WOULD WESTERN'S OFFER HAVE ON KLM'S COST CLAIMS?**

16 A. The offer should be sufficient to cover KLM's costs of routing traffic to numbers
17 ported to Western Wireless assuming KLM uses the most economical means to route
18 that traffic. KLM's cost claims of a 'very costly' negotiated arrangement with a third
19 party carrier are unwarranted given the number of interconnection arrangements in
20 Missouri that could be adopted by KLM for transit purposes.

²⁵ See, In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002).

1 **Q. SHOULD MR. COPSEY’S ARGUMENTS CONCERNING TOLL ROUTING OF CALLS TO**
2 **PORTED NUMBERS CAUSE THE COMMISSION CONCERN?**

3 A. Yes, if KLM does not meet their routing obligations as an originator of local
4 telecommunications traffic to ported numbers. Mr. Copsey’s testimony (Direct p.9,
5 lls.12-16) implies that KLM will misroute calls to ported numbers as toll calls. This
6 would be in clear violation of the FCC’s rules:

7 “a wireless carrier porting-in a wireline number is required to maintain
8 the number’s original rate center designation following the port. As a
9 result, calls to the ported number will continue to be rated in the same
10 fashion as they were prior to the port.”²⁶

11 This is consistent with the Telecom Act’s definition of LNP:

12 “The ability of users of telecommunications services to retain, at the
13 same location, existing telecommunications numbers without
14 impairment of quality, reliability, or convenience when switching from
15 one telecommunications carrier to another.”²⁷

16 **Q. DOES KLM HAVE LNP ROUTING OBLIGATIONS THAT TRANSCEND ANY SUSPENSION**
17 **OF INTERMODAL LNP IMPLEMENTATION?**

18 A. Yes they do. In a Notice of Apparent Liability for Forfeiture, released by the Chief,
19 Enforcement Bureau of the FCC, the FCC maintains that:

20 Regardless of the status of a carrier’s obligations to provide number
21 portability, all carriers have the duty to route calls to ported numbers.
22 In other words, carriers must ensure that their call routing procedures
23 do not result in dropped calls to ported numbers.”²⁸

24 Granting a delay to KLM would seem to exacerbate any problem they may have with
25 respect to routing obligations. KLM may provide service in local calling areas that

²⁶ Intermodal Porting Order at ¶ 27.

²⁷ 47 U.S.C. § 153(30).

²⁸ In the Matter of CenturyTel, Inc., CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., and CenturyTel of Inter Island, Inc. Apparent Liability for Forfeiture, DA 04-1304, Released May 13, 2004, ¶ 4.

1 are common to another local exchange carrier's rate center that has already
2 implemented number portability. In the event a number is ported in that rate center
3 (wireless-to-wireless or wireline-to-wireless), the FCC has made it clear that a carrier
4 is still obligated to route calls to ported numbers.

5 **VI. DOES KLM MAKE A VALID CLAIM THAT LNP IS NOT IN THE PUBLIC**
6 **INTEREST IN ITS SERVICE AREA?**

7 **Q. DOES KLM'S CLAIM OF LACK OF DEMAND FOR NUMBER PORTABILITY RING TRUE?**

8 A. No. The fact is, number portability has proven to be an enabler of competition
9 wherever it has been implemented. That is the case here in Missouri. SBC has
10 experienced a substantial loss of customers to competitors since the advent of number
11 portability. There is, however, a difference in what the FCC ordered to happen on
12 May 24, 2004. Instead of just adding more competitors to Missouri's urban markets,
13 intermodal LNP enables wireless carriers to compete effectively for customers in
14 areas that have not previously been exposed to competition. KLM has claimed an
15 estimated port volume of 3 customers over a six month period (Warriner Direct P.9
16 1.6). Western Wireless believes KLM is more likely to experience an intermodal port
17 volume of 300 ports over a five year period.

18 **Q. IS THERE ANY REASON WHY THE COMPETITIVE CHOICE, ENABLED BY NUMBER**
19 **PORTABILITY SHOULD BE DELAYED FOR THE CUSTOMERS OF KLM?**

20 A. No. Although KLM has sought relief from number portability requirements through
21 this proceeding, there is no reason why the competitive choice, enabled by number
22 portability, and already available to most people in Missouri, should be delayed for
23 KLM's customers.

24 **Q. ARE THERE ANY INDUSTRY PROJECTIONS FOR THE POTENTIAL OF SUBSTITUTION OF**
25 **WIRELINE SERVICE BY WIRELESS?**

1 A. Yes, many industry watchers are projecting that intermodal number portability will
2 open the door to increased competition and accelerated substitution of wireless for
3 wireline services. Here are some excerpts of a Cato Industry report summarizing the
4 impact of wireless substitution²⁹: “Wired Magazine recently reported that roughly
5 3% of homes have dropped their landlines and 8% are expected to follow suit in the
6 next five years.” “A more recent study by PriMetrica, Inc. suggested that roughly
7 half of U.S. households would be willing to dump wireline for cellular ...”. “And
8 now comes the number portability decision, . . . ‘I think it will certainly increase the
9 move toward substituting wireless for wire-line phones,’ notes Rebecca Arbogast, an
10 analyst with Legg Mason.” Finally, common sense tells us that demand for a service
11 greatly increases once the service becomes available.

12 **Q. IS WESTERN WIRELESS PROVIDING LNP IN MISSOURI?**

13 A. Yes. We have upgraded our network, implemented new processes, systems, and
14 hired supporting resources to implement LNP in Missouri. In other words, we have
15 absorbed the costs of implementing LNP under our FCC obligations. Further, we
16 believe it is unfair that carriers who we compete with, that are similarly obligated,
17 would be exempted from their obligations and thereby limit our ability to recoup the
18 LNP investments we have made by restricting our opportunity to leverage those
19 investments in a competitive marketplace.

20 **Q. HAS KLM MET THE PUBLIC INTEREST STANDARD FOR GRANT OF A SUSPENSION OF**
21 **LNP OBLIGATIONS?**

²⁹ “Number Portability Adds to Wireline Telecom Sector’s Perfect Storm,” Adam Thierer, Director of Telecommunication Studies, Cato Institute, Issue 66, November 20, 2003.

1 A. No. The public interest would not be served by suspending KLM's LNP obligations.
2 Section 251(f)(2) of the Act requires the Commission to determine that suspension of
3 a carrier's LNP obligations would be "consistent with the public interest,
4 convenience, and necessity."³⁰ The provision of LNP by LECs is a critical
5 component of a competitive local telephone market. Rural consumers are
6 increasingly choosing wireless service for their telecommunications needs and may
7 choose to port their wireline number to Western Wireless upon the implementation of
8 number portability as mandated by the Federal Communications Commission. The
9 FCC has observed that the inability of customers to retain their telephone numbers
10 when changing local service providers hampers the development of local competition:

11 Section 251(b)(2) removes a significant barrier to competition by
12 ensuring that consumers can change carriers without forfeiting their
13 existing telephone numbers.³¹

14 The fact is, number portability has proven to be an enabler of competition wherever it
15 has been implemented. The bona fide request process for local number portability
16 has led to an opportunity for increased competition in rural Missouri markets on May
17 24, 2004, (i.e., the ability of a wireless carrier to compete for service in areas that
18 have not previously been exposed to competition). The implementation of LNP is
19 intended to serve the important public interests of improved choice and competition
20 for consumers.

21 **Q. WHAT STANCE HAS THE FCC STAFF TAKEN WITH RESPECT TO PETITIONERS'**
22 **POSITIONS?**

³⁰ 47 U.S.C. § 251(f)(2)(B).

³¹ Third LNP Order, 13 FCC Red 11701, 11702-04 ¶¶ 3-4 (1998).

1 A. Speaking at a forum on LNP issues, Wireless Bureau Assistant Chief David Firth said
2 that the volume of actual number porting would not be the measure of success, but
3 giving customers the option to port was most important. He indicated that carriers
4 outside of the 100 largest MSA's should be testing and preparing for the May 24,
5 2004 LNP deadline. Responding to questions, Mr. Firth indicated that rating and
6 routing issues between carriers are not porting issues and are therefore not a valid
7 reason for refusing to port.³²

8 VII. CONCLUSION

9 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

10 KLM has not provided compelling evidence that the status of their switch platform is
11 a technical constraint to the implementation of local number portability. KLM has
12 not met the standard that would lead one to conclude the economic impact is unduly
13 burdensome. Nor has KLM demonstrated that the implementation of number
14 portability would conflict with the public interest and the competitive choice
15 guidelines set by the FCC and this Commission.

16 The Commission should reject KLM arguments for delayed implementation,
17 deny their suspension request, and force KLM to implement LNP consistent with
18 obligations arising from receipt of a bona fide request.

19 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

20 A. Yes, it does.

³² See Washington Watch, NECA, March 18, 2004 – attached as Exhibit RW-5.

RW-1

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

In the Matter of
Telephone Number Portability

CTIA Petitions for Declaratory Ruling on
Wireline-Wireless Porting Issues

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CC Docket No. 95-116

**MEMORANDUM OPINION AND ORDER AND FURTHER NOTICE OF PROPOSED
RULEMAKING**

Adopted: November 7, 2003

Released: November 10, 2003

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing
separate statements.

Comment Date: 20 days after publication in the Federal Register.

Reply Comment Date: 30 days after publication in the Federal Register.

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I. INTRODUCTION

1. In this order, we provide guidance to the industry on local number portability (LNP) issues relating to porting between wireless and wireline carriers (intermodal porting). First, in response to a Petition for Declaratory Ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association (CTIA), we clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection¹ or numbering resources in the rate center where the number is assigned. We find that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. In addition, in response to a subsequent CTIA petition, we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

2. In the accompanying Further Notice of Proposed Rulemaking (Further Notice), we seek comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, we seek comment on whether we should require carriers to reduce the length of the porting interval for ports between wireless and wireline carriers.

II. BACKGROUND

A. Statutory and Regulatory Background

3. Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability, to the extent technically feasible, in accordance with requirements prescribed by the Commission.² Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications services to retain,

¹ Referred to hereinafter as "point of interconnection."

² 47 U.S.C. § 251(b)(2).

at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”³

4. The Commission released the Local Number Portability *First Report and Order* in 1996, which promulgated rules and deployment schedules for the implementation of number portability.⁴ The Commission highlighted the critical policy goals underlying the LNP requirement, indicating that “the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase.”⁵ The Commission found that “number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers.”⁶

5. The Commission adopted broad porting requirements, noting that “as a practical matter, [the porting obligation] requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA.”⁷ In addition, the Commission noted the section 251(b) requires LECs to port numbers to wireless carriers. The Commission stated that “section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio Service (CMRS) providers as well as wireline service providers.”⁸

6. The Commission adopted rules implementing the LNP requirements. Section 52.21(k) of the rules defines number portability to mean “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.”⁹ Section 52.23(b)(1) provides that “all local exchange carriers (LECs) must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998 ... in switches for which another carrier has made a specific request for the provision of number portability ...”¹⁰ Finally, Section 52.23(b)(2)(i) of the Commission rules provides that “any wireline carrier that is certified ... to provide local exchange service, or any licensed CMRS provider, must be permitted to make a request for the provision of number portability.”¹¹

7. In 1997, in the Local Number Portability *Second Report and Order*, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of

³ 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k).

⁴ Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (First Report and Order).

⁵ *Id.* at 8368, para. 30.

⁶ *Id.*

⁷ *Id.* at 8393, para. 77.

⁸ *Id.* at 8431, para. 152.

⁹ 47 C.F.R. § 52.21(k).

¹⁰ 47 C.F.R. § 52.23(b)(1).

¹¹ 47 C.F.R. § 52.23(b)(2)(i).

wireline-to-wireline number portability.¹² Under the guidelines developed by the NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls.¹³ The NANC guidelines made no recommendations regarding limitations on intermodal porting.

8. Although the Act excludes CMRS providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.¹⁴ In the Local Number Portability *First Report and Order*, the Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability.¹⁵ The Commission noted that “sections 2 and 332(c)(1) of the Act give the Commission authority to regulate commercial mobile radio service operators as common carriers ...”¹⁶ Noting that section 1 of the Act requires the Commission to make available to people of the United States, a rapid, efficient, nation-wide and world-wide wire and radio communication service, the Commission stated that its interest in number portability “is bolstered by the potential deployment of different number portability solutions across the country, which would significantly impact the provision of interstate telecommunications services.”¹⁷ Section 4(i) of the Act grants the Commission authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended] as may be necessary in the execution of its functions.”¹⁸ The Commission concluded that “the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.”¹⁹

9. The Commission determined that implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.²⁰ The

¹² Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12,281 (1997) (*Second Report and Order*). The requirement that LECs port numbers to wireless carriers has not been applied previously due to extensions of the deadline for wireless carriers’ implementation of LNP. See Telephone Number Portability, Cellular Telecommunications & Industry Association’s Petition for Extension of Implementation Deadlines, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315 (1998); Telephone Number Portability, Cellular Telecommunications & Industry Association’s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); and Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

¹³ North American Numbering Council Local Number Portability Selection Working Group Final report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at <http://www.fcc.gov/wcb/tapd/nanc/lnpastuf.html>.

¹⁴ *First Report and Order* at 8431, paras 152-53.

¹⁵ *Id.* at para. 153. See 47 U.S.C. §§ 1, 2, 4(i), and 332.

¹⁶ *Id.*

¹⁷ *Id.* at 8432, para. 153.

¹⁸ 47 U.S.C. § 154(i).

¹⁹ *First Report and Order* at 8432, para. 153.

²⁰ *Id.* at 8434-36, paras. 157-160.

Commission noted that "service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services."²¹ Commission rules reflecting the wireless LNP requirement provide that, by the implementation deadline, "all covered CMRS providers must provide a long-term database method for number portability ... in switches for which another carrier has made a request for the provision of LNP."²²

10. In the Local Number Portability *Second Report and Order*, after adopting NANC guidelines applicable to wireline-to-wireline porting, the Commission directed the NANC to develop standards and procedures necessary to provide for wireless carriers' participation in local number portability.²³ The Commission indicated its expectation that changes to LNP processes would need to be made to accommodate porting to wireless carriers. The Commission noted that "the industry, under the auspices of NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations."²⁴ In addition, the Commission noted that the NANC would have to consider issues of particular concern to wireless carriers, including how to account for differences between service area boundaries for wireline versus wireless services.²⁵

11. In 1998, the NANC submitted a report on the integration of wireless and wireline number portability from its Local Number Portability Administration (LNPA) Working Group to the Common Carrier Bureau (now known as the Wireline Competition Bureau).²⁶ The report discussed technical issues associated with wireless-to-wireline porting. The report noted that differences between the local serving areas of wireless and wireline carriers affected the porting capabilities of each type of carrier, making it infeasible for some wireline carriers to port-in numbers from wireless subscribers. The report explained that because wireline service is fixed to a specific location the subscriber's telephone number is limited to use within the rate center within which it is assigned.²⁷ By contrast, the report noted, because wireless service is mobile and not fixed to a specific location, while the wireless subscriber's number is associated with a specific geographic rate center, the wireless service is not limited to use within that rate center.²⁸ As a result of these differences, the report indicated that, if a wireless subscriber seeks to port his or her number to a wireline carrier, but the subscriber's NPA-NXX is outside of the wireline rate center where the subscriber is located, the wireline carrier may not be able to receive the ported number.²⁹ The NANC did not reach consensus on a solution to this issue, and reported that this lack of symmetry, referred to as

²¹ *Id.* at 8437, para. 160.

²² 47 C.F.R. § 52.31(a).

²³ *Second Report and Order* at 12333, para. 90.

²⁴ *Id.*

²⁵ *Id.* at 12334, para. 91.

²⁶ North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration).

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.*

"rate center disparity," raises questions by some carriers about competitive neutrality.³⁰ The Common Carrier Bureau sought comment on the NANC report.³¹

12. The NANC submitted a second report on the integration of wireless and wireline number portability to the Commission in 1999,³² and a third report in 2000,³³ both focusing on porting interval issues. The second report provided an analysis of the wireline porting interval and considered alternatives to reduce the porting interval for ports between wireless and wireline carriers.³⁴ The report recommended that each potential alternative be thoroughly developed and investigated.³⁵ The third report again analyzed the elements of the wireline porting interval and examined whether the length of the porting interval for both intermodal ports and wireline-to-wireline ports could be reduced.³⁶ The NANC determined that the wireline porting interval should not be reduced, but it was unable to reach a consensus on an intermodal porting interval.³⁷ Accordingly, we seek comment on the appropriate interval for intermodal porting.³⁸

B. Outstanding Petitions for Declaratory Ruling

13. On January 23, 2003, CTIA filed a petition requesting that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number.³⁹ In its petition, CTIA claims that some LECs have narrowly construed their LNP obligations with regard to wireless carriers, taking the position that portability is only required where the wireless carrier receiving the number already has a point of presence or numbering resources in the wireline rate center.⁴⁰ CTIA urges the Commission to confirm that wireline carriers have an obligation to port to wireless carriers when their respective service areas overlap. CTIA notes that, in several of its decisions, the Commission has found that LNP is necessary to promote competition between the wireless and wireline

³⁰ Letter from Alan C. Hasselwander, Chairman, NANC to A. Richard Metzger, Jr., Chief, Common Carrier Bureau (filed Apr. 14, 1998).

³¹ Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Integration, CC Docket No. 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

³² North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) (Second Report on Wireless Wireline Integration).

³³ North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket no. 95-116 (filed Nov. 29, 2000) (Third Report on Wireless Wireline Integration).

³⁴ Second Report on Wireless Wireline Integration at section 3.

³⁵ *Id.* at section 1.1.

³⁶ Third Report on Wireless Wireline Integration at section 3.

³⁷ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

³⁸ See paras. 45-51, *infra*.

³⁹ CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Jan. 23, 2003) (January 23rd Petition).

⁴⁰ *Id.* at 3.

industries. CTIA argues that, without Commission action to resolve the deadlock over the rate center disparity issue, the reality of wireline-to-wireless porting will be at risk because many wireline subscribers will be unable to port their numbers to wireless carriers that serve their areas.⁴¹

14. CTIA also requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier can be based on a service-level porting agreement between the carriers, and does not require an interconnection agreement. According to CTIA, number portability requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer.⁴²

15. The majority of wireless carriers submitting comments support CTIA's request for declaratory ruling. They agree with CTIA that, without Commission action to resolve the rate center issue, the majority of wireline customers will be prevented from porting their number to a wireless carrier.⁴³ They call for the Commission to reject any proposal that would restrict porting to rate centers where a wireless carrier has already obtained numbers, contending that such a limitation would be inconsistent with the competitive objectives of intermodal LNP and would waste numbering resources.⁴⁴

16. Wireline carriers generally oppose CTIA's petition.⁴⁵ Some argue that requiring LECs to port to carriers who do not have a point of interconnection or numbering resources in the same rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers.⁴⁶ LECs argue that, in contrast to wireless carriers who have flexibility in establishing their service areas and rates, wireline carriers are governed by state regulations. Under the state regulatory regime, they rate and route local and toll calls based on wireline rate centers. Consequently, LECs contend, wireline service providers do not have the same opportunity that wireless carriers have to offer number portability where the rate center in which the number is assigned does not match the rate center in which the LEC seeks to serve the customer.⁴⁷ Others argue that CTIA's petition would amount to a system of location portability rather than service provider portability, causing customer confusion over

⁴¹ *Id.* at 19.

⁴² *Id.* at 3.

⁴³ AT&T Wireless, Midwest Wireless, Nextel, Sprint, T-Mobile, and US Cellular all filed comments supporting CTIA's January 23rd petition. Comments and Reply Comments filed in response to the CTIA's January 23rd and May 13th petitions are listed in Appendix A.

⁴⁴ *See, e.g.*, Sprint Reply Comments on CTIA's January 23rd Petition at 9; T-Mobile Comments on CTIA's January 23rd Petition at 14-15; and Virgin Mobile Reply Comments on CTIA's January 23rd Petition at 4.

⁴⁵ Centurytel, Fred Williams & Associates, the Independent Alliance, the Michigan Exchange Carriers Association, NECA and NTCA, the Nebraska Rural Independent Companies, OPASTCO, SBC, TCA, USTA, and Valor Communications all filed comments opposing CTIA's January 23rd petition.

⁴⁶ *See, e.g.*, Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; SBC Comments on CTIA's January 23rd Petition at 1; Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 9, 2003) (Qwest Oct. 9th *Ex Parte*); and Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Sept. 9, 2003) (BellSouth Sept. 9th *Ex Parte*).

⁴⁷ *See, e.g.*, Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc. to Michael K. Powell, Chairman, FCC, CC Docket No. 95-116 (filed Aug. 29, 2003) (SBC Aug. 29th *Ex Parte*); and BellSouth Sept. 9th *Ex Parte*.

the rating of calls.⁴⁸ Several LECs also argue that the Commission may not permit intermodal porting outside of wireline rate center boundaries without first issuing a Notice of Proposed Rulemaking.⁴⁹ Several rural LECs argue that requiring porting between wireline and wireless carriers where the wireless carriers do not have a point of interconnection in the same rate center as the ported number would raise intercarrier compensation issues, as wireline carriers would be required to transport calls to ported numbers through points of interconnection outside of rural LEC serving areas.⁵⁰

17. On May 13, 2003, CTIA filed a second Petition for Declaratory Ruling. In its petition, CTIA argues that, in addition to the rate center issue that was the subject of its January petition, there are additional LNP implementation issues that have not been resolved by industry consensus and therefore must be addressed by the Commission.⁵¹ Specifically, CTIA requests that the Commission rule on the appropriate length of the porting interval, the necessity of interconnection agreements, a dispute between BellSouth and Sprint concerning the ability of carriers to designate different routing and rating points, definition of the largest 100 Metropolitan Statistical Areas (MSAs), the bona fide request requirement, and whether carriers must support nationwide roaming for customers with ported numbers.

18. On October 7, 2003, we released a Memorandum Opinion and Order addressing carrier requests for clarification of wireless-wireless porting issues.⁵² In response to CTIA's May 13th petition as well as a Petition for Declaratory Ruling/Application for Review, we concluded that wireless carriers may not impose "business rules" on their customers that purport to restrict carriers' obligations to port numbers upon receipt of a valid request to do so. In addition, we clarified that wireless-to-wireless porting does not require the wireless carrier receiving the number to be directly interconnected with the wireless carrier that gives up the number or to have numbering resources in the rate center associated with the ported number. We clarified that, although wireless carriers may voluntarily negotiate interconnection agreements with one another, such agreements are not required for wireless-to-wireless porting. We confirmed also that, in cases where wireless carriers are unable to reach agreement regarding the terms and conditions of porting, all such carriers must port numbers upon receipt of a valid request from another carrier, with no conditions.

19. We encouraged wireless carriers to complete "simple" ports within the industry-established two and one half hour porting interval and found that no action was necessary regarding the porting of numbers served by Type 1 interconnection because carriers are migrating these numbers to switches served by Type 2 interconnection or are otherwise developing solutions.⁵³ Finally, we reiterated the requirement that wireless carriers support roaming nationwide for customers with pooled and ported

⁴⁸ See Centurytel Comments on CTIA's January 23rd Petition at 4-5.

⁴⁹ See, e.g., Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

⁵⁰ NECA and NTCA Comments on CTIA's January 23rd Petition at 6. See, In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002) (Sprint Petition for Declaratory Ruling).

⁵¹ CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed May 13, 2003) (May 13th Petition).

⁵² Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-237, rel. Oct. 7, 2003.

⁵³ Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch. Type 2 numbers reside in a wireless carrier's switch and are assigned to a Type 2 interconnection group, which connects the wireless carrier's switch and a LEC access tandem switch or end office switch.

numbers, and we addressed outstanding petitions for waiver of the roaming requirement. We indicated our intention to address issues related to intermodal porting in a separate order.⁵⁴

III. ORDER

A. Wireline-to-Wireless Porting

20. *Background.* In its January 23rd Petition, CTIA requests that the Commission clarify that the LNP rules require wireline carriers to port numbers to any wireless carrier whose service area overlaps the wireline carrier's rate center that is associated with the ported number.⁵⁵ CTIA claims that, absent such a clarification, a majority of wireline customers will not be able to port their phone number to the wireless carrier of their choice because wireless carriers typically have a point of interconnection or numbering resources in only a fraction of the wireline rate centers in their service areas.⁵⁶ Citing prior Commission decisions, CTIA notes that the Commission has cited intermodal competition as a basis for imposing LNP requirements on wireless carriers.⁵⁷ CTIA argues that the Commission's objectives with respect to intermodal competition cannot be realized without prompt action.

21. *Discussion.* The Act and the Commission's rules impose broad porting obligations on LECs. Section 251(b) of the Act provides that all local exchange carriers "have the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."⁵⁸ The Act defines 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."⁵⁹ In implementing these requirements in the Local Number Portability *First Report and Order*, the Commission determined that LECs were required to provide portability to all other telecommunications carriers, including CMRS service providers, providing local exchange or exchange access service within the same MSA.⁶⁰ The Commission's rules reflect these requirements, requiring LECs to offer number portability in switches for which another carrier made a request for number portability and providing that all carriers, including CMRS service providers must be permitted to make requests for number portability.⁶¹

⁵⁴ Remaining issues from CTIA's January 23rd and May 13th petitions pertaining to intermodal porting are addressed in this order. Additional issues from CTIA's May 13th petition, including the implication of the porting interval for E911, the definition of the 100 largest MSAs, and the bona fide request requirement have been addressed separately. See Letter from John B. Muleta, Chief, Wireless telecommunications Bureau, to John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless and Michael F. Altschul, Senior Vice President, General Counsel, CTIA, CC Docket No. 95-116, DA 03-2190, dated July 3, 2003. See also, Numbering Resource Optimization, *Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket Nos. 99-200 and 95-116 (rel. June 18, 2003).

⁵⁵ January 23rd Petition at 3.

⁵⁶ *Id.* at 18.

⁵⁷ *Id.* at 12-16.

⁵⁸ 47 U.S.C. § 251(b).

⁵⁹ 47 U.S.C. § 153(30).

⁶⁰ *First Report and Order* at 8393, 8431, paras. 77 and 152.

⁶¹ 47 C.F.R. § 52.23(b)(1), (b)(2)(i).

22. We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁶² Permitting intermodal porting in this manner is consistent with the requirement that carriers support their customers' ability to port numbers while remaining at the same location. For purposes of this discussion, the wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. Permitting wireline-to-wireless porting under these conditions will provide customers the option of porting their wireline number to any wireless carrier that offers service at the same location. We also reaffirm that wireless carriers must port numbers to wireline carriers within the number's originating rate center. With respect to wireless-to-wireline porting, however, because of the limitations on wireline carriers' networks ability to port-in numbers from distant rate centers, we will hold neither the wireline nor the wireless carriers liable for failing to port under these conditions. Rather, we seek comment on this issue in the Further Notice below.

23. We make our determinations based on several factors. First, as stated above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent that it is technically feasible to do so, in accordance with regulations prescribed by the Commission.⁶³ There is no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number. Accordingly, the plain text of the Act and the Commission's rules, requiring LECs to provide number portability applies. In fact, several LECs acknowledge that there is no technical obstacle to porting wireline numbers to wireless carriers whose point of interconnection is outside of the rate center of the ported numbers.⁶⁴ Moreover, at least two LECs, Verizon and Sprint, have already established agreements with their wireless affiliates that specifically provide for intermodal porting.⁶⁵ In addition, BellSouth indicates in its comments that it has no intention of preventing customers from porting their telephone numbers to wireless carriers upon the customers' requests – regardless of whether or not the

⁶² We anticipate that a minimal amount of identifying information will be transmitted from the wireless carrier to the LEC when a customer seeks to port. For example, carriers may choose to verify the zip code of the porting-out wireline customer in their validation procedures.

⁶³ 47 U.S.C. § 251(b)(2), 47 C.F.R. § 52.23.

⁶⁴ See BellSouth Comments on CTIA's January 23rd Petition at 3; and USTA Comments on CTIA's January 23rd Petition at 7-8.

Several interexchange carriers (IXCs) have brought to the Commission's attention a problem IXCs face in identifying whether a customer has switched carriers. This problem can result in customers receiving erroneous bills from IXCs after they have switched local or interexchange carriers, and could also be a problem when customers port from a wireline carrier to a wireless carrier. While we do not address this issue in the instant order, we have sought comment on carrier petitions regarding this matter. See Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatel Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corp., and WorldCom, Inc., CG Docket No. 02-386, *Public Notice*, 17 FCC Rcd 25535 (2002).

⁶⁵ "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at <http://news.vzw.com/news/2003/09/pr2003-09-22.html>; and "Sprint Wireless Local Number Portability Plans on Track, on Schedule for November Deadline," Press Release from Sprint dated Oct. 1, 2003, available at [Sprint.com](http://www.sprint.com).

carriers' service areas overlap.⁶⁶ Accordingly, BellSouth states, number portability can still occur despite the "rate center disparity" issue. We note that, to the extent that LECs assert an inability to port numbers to wireless carriers under the circumstances described herein, they bear the burden of demonstrating with specific evidence that porting to a wireless carrier without a point of interconnection or numbering resources in the same rate center to which the ported number is assigned is not technically feasible pursuant to our rules.

24. Second, neither the Commission's LNP rules nor any of the LNP orders have required wireless carriers to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. In the Local Number Portability *Second Report and Order*, the Commission adopted NANC recommendations regarding several specific aspects of number portability implementation, including technical and operational standards for the provision of number portability by wireline carriers.⁶⁷ In this context, the Commission adopted the NANC recommendations concerning the boundaries applicable to wireline-to-wireline porting. Specifically, the Commission adopted NANC recommendations limiting the scope of ports to wireline carriers based on wireline carriers' inability to receive numbers from foreign rate centers.⁶⁸

25. In this order, we address a different issue, wireline-to-wireless porting. The NANC recommendations that were the subject of the *Second Report and Order* included a boundary for wireline-to-wireline porting, but were silent regarding wireline-to-wireless porting issues. In adopting the NANC recommendations, the Commission specifically recognized that the NANC had not included recommendations regarding wireless carriers' participation in number portability and that modifications to existing standards and procedures would probably need to be made as the industry obtained additional information about incorporating CMRS service providers into a long-term number portability solution and interconnecting CMRS carriers with wireline carriers already implementing number portability.⁶⁹ However, while the Commission noted that NANC should consider intermodal porting issues of concern to wireless carriers, it did not impose limits on wireline-to-wireless porting while NANC considered these issues, nor did it give up its inherent authority to interpret the statute and rules with respect to the obligation of wireline carriers to port numbers to wireless carriers. Accordingly, we find that in light of the fact that the Commission has never adopted any limits regarding wireline-to-wireless number portability, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.⁷⁰

⁶⁶ See BellSouth Comments on CTIA's January 23rd Petition at 3. In recent ex parte filings, BellSouth argues that the Commission cannot proceed to require intermodal porting until it addresses the issues arising from the differences in network architecture, operational support systems, and regulatory requirements that distinguish wireline carriers from wireless carriers. See, e.g., BellSouth Sept. 9th Ex Parte.

⁶⁷ See *Second Report and Order*. Subsequent NANC reports address technical issues associated with wireless-to-wireline porting. In the Further Notice, we seek comment on these technical feasibility issues.

⁶⁸ North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at www.fcc.gov/wcb/tapd/nanc/lnpastuf.html.

⁶⁹ *Second Report and Order* 12 FCC Rcd at 12333-34.

⁷⁰ Similarly, wireless-to-wireline porting is required, as of November 24, 2003, where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.

26. We reject the argument advanced by certain wireline carriers,⁷¹ that requiring LECs to port to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number would constitute a new obligation imposed without proper notice. In fact, the requirement that LECs port numbers to wireless carriers is not a new rule. Citing the D.C. Circuit's decision in the *Sprint* case specifying the distinction between clarifications of existing rules and new rulemakings subject to APA procedures, Qwest, for example, argues that the permitting wireline-to-wireless porting in the manner outlined above would change LECs' existing porting obligations.⁷² As described earlier, however, section 251(b) of the Act and the Commission's Local Number Portability *First Report and Order* impose broad porting obligations on wireline carriers. Specifically, these authorities require wireline carriers to provide portability to all other telecommunications carriers, including wireless service providers. While the Commission decision in the Local Number Portability *Second Report and Order* limited the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting, the Commission, as noted above, has never established limits with respect to wireline carriers' obligation to port to wireless carriers. The clarifications we make in this order interpret wireline carriers' existing obligation to port numbers to wireless carriers. Therefore, these clarifications comply with the requirements of the Administrative Procedure Act as well as the D.C. Circuit's decision in the *Sprint* case.

27. We also reject the argument made by some LECs that the scope of wireline-to-wireless porting should be limited because wireline carriers may not be able to offer portability to certain wireless subscribers.⁷³ As discussed above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent technically feasible. The fact that there may be technical obstacles that could prevent some other types of porting does not justify denying wireline consumers the benefit of being able to port their wireline numbers to wireless carriers. Each type of service offers its own advantages and disadvantages (e.g., wireless service offers mobility and larger calling areas, but also the potential for dropped calls) and wireline customers will consider these attributes in determining whether or not to port their number. In our view, it would not be appropriate to prevent wireline customers from taking advantage of the mobility or the larger local calling areas associated with wireless service simply because wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to a wireline service provider. Evidence from the record shows that limiting wireline-to-wireless porting to rate centers where a wireless carrier has a point of interconnection or numbering resources would deprive the majority of wireline consumers of the ability to port their number to a wireless carrier.⁷⁴ With such limited intermodal porting, the competitive benefits we seek to promote through the porting requirements may not be fully achieved. The focus of the porting rules is on promoting competition, rather than protecting individual competitors. To the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules.

28. We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated

⁷¹ See, e.g., Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2003) (Qwest Oct. 17th Ex Parte); and SBC Aug. 29 Ex Parte.

⁷² Qwest Oct. 17th Ex Parte at 11. See *Sprint Corp. v. FCC*, 315 F. 3d 369 (D.C. Cir. 2003).

⁷³ See, e.g., SBC Aug. 29th Ex Parte and BellSouth Sept. 9th Ex Parte.

⁷⁴ January 23rd Petition at 6.

in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.⁷⁵

29. Some wireline carriers contend that they lack the technical capability to support wireline-to-wireless porting in the manner outlined above, and that they need time to make technical modifications to their systems. We emphasize that our holding in this order requires wireline carriers to support wireline-to-wireless porting in accordance with this order by November 24, 2003, unless they can provide specific evidence demonstrating that doing so is not technically feasible pursuant to our rules.⁷⁶ We expect carriers that need to make technical modifications to do so forthwith, as the record indicates that major system modifications are not required and that several wireline carriers have already announced their technical readiness to port numbers to wireless carriers without regard to rate centers.⁷⁷ We recognize, however, that many wireline carriers outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability. In addition we note that wireless carriers outside the top 100 MSAs are not required to provide LNP prior to May 24, 2004, and accordingly are unlikely to seek to port numbers from wireline carriers prior to that date. Therefore for wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

30. Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.⁷⁸ We note that several wireline carriers have already filed requests for waiver.⁷⁹ We will

⁷⁵ As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. See Sprint Petition for Declaratory Ruling. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.

We recognize that the Act limits wireline carriers' ability to route calls outside of Local Access Transport Area (LATA) boundaries. See 47 U.S.C. § 272. See also, Application by SBC Communications, Inc., Southwestern Bell Telephone, and Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, 15 FCC Rcd 18354 (2000). Accordingly, we clarify that our ruling is limited to porting within the LATA where the wireless carrier's point of interconnection is located, and does not require or contemplate porting outside of LATA boundaries.

⁷⁶ 47 U.S.C. § 251(b). We anticipate that, as a general matter, enforcement issues regarding both wireless-wireless and wireless-wireline local number portability at this time are likely to be better addressed in the context of Section 208 formal compliant proceedings or related mediations as opposed to FCC-initiated forfeiture proceedings. In this connection, we note that a violation of our number portability rules would constitute an unjust and unreasonable practice under section 201(b) of the Act.

⁷⁷ We note that Verizon has already announced its intention to port numbers without regard to rate centers. See "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at <http://news.vzw.com/news/2003/09/pr2003-09-22.html>.

⁷⁸ 47 C.F.R. § 1.3, 52.25(e). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

consider these requests separately, and our decision in this order is without prejudice to any potential disposition of these requests.

B. Interconnection Agreements

31. *Background.* In its January 23rd petition, CTIA requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer. From a practical perspective, CTIA contends, such porting can be based on a service-level porting agreement between carriers, and does not require direct interconnection or an interconnection agreement. Moreover, CTIA argues, because the Commission imposed number portability requirements on wireless carriers pursuant to its authority under sections 1, 2, 4(i), and 332 of the Act, and outside the scope of sections 251 and 252, number portability between wireline and wireless carriers is governed by a different regime than number portability between wireline carriers and is subject to the Commission's unique jurisdiction over wireless carriers.⁸⁰

32. A number of wireless carriers agree with CTIA, arguing that requiring wireless carriers to establish interconnection agreements with wireline carriers from whom they sought to port numbers would delay LNP implementation.⁸¹ Several wireline carriers, however, assert that interconnection agreements for porting are necessary.⁸² SBC, for example, argues that under sections 251 and 252 of the Act, LECs must establish interconnection agreements for porting.⁸³ SBC contends that interconnection agreements guarantee parties their right to negotiate, provide a means of resolving disputes, and allow public scrutiny of agreements.⁸⁴ In addition, some LECs argue that, without interconnection agreements, they have no means to ensure that they will receive adequate compensation for transporting and terminating traffic to wireless carriers.

33. Other LECs, on the other hand, disagree that interconnection agreements are a necessary precondition to intermodal porting. Verizon contends that intermodal porting is not a Section 251 requirement and is therefore not necessary to incorporate wireless-wireline porting into Section 251 agreements.⁸⁵ AT&T questions whether either service level agreements or interconnection agreements are necessary, contending that because such little information needs to be exchanged between carriers for porting, less formal arrangements may be sufficient.⁸⁶ Sprint argues that interconnection agreements are

⁷⁹ See e.g., Franklin Telephone Company, Inc. Petition for Waiver, CC Docket Nos. 95-116 (filed Sept. 24, 2003); Intercommunity Telephone Company, LLC Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003); and North Central Telephone Cooperative, Inc. Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003).

⁸⁰ May 13th Petition at 17-18.

⁸¹ See Sprint Comments on CTIA's May 13th Petition at 16; T-Mobile Comments on CTIA's May 13th Petition at 8; and Virgin Mobile Comments on CTIA's May 13th Petition at 4-5.

⁸² See Missouri Independent Telephone Company Group Comments on CTIA's May 13th Petition; National Telecommunications Cooperative Association Comments on CTIA's May 13th Petition; and SBC Comments on CTIA's May 13th Petition.

⁸³ SBC Comments on CTIA's May 13th Petition at 8.

⁸⁴ *Id.*

⁸⁵ Sprint Comments on CTIA's May 13th Petition at 18; Verizon Comments on CTIA's May 13th Petition at 10.

⁸⁶ AT&T Reply Comments on CTIA's May 13th Petition at 7-8.

not required for LNP because whether or not a customer ports a number from one carrier to another has nothing to do with the interconnection arrangements two carriers use for the exchange of traffic.⁸⁷ Several LECs urge the Commission to let carriers determine on their own what type of agreement to use to facilitate porting.⁸⁸

34. *Discussion.* We find that wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers. We note that the intermodal porting obligation is also based on the Commission's authority under sections 1, 2, 4(i) and 332 of the Act. Sprint argues that interconnection agreements are not required to implement every section 251 obligation.⁸⁹ Sprint also claims that because porting involves a limited exchange of data (e.g., carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established), interconnection agreements should not be required here.⁹⁰ We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting. Moreover, to avoid any confusion about the applicability of section 252 to any arrangement between wireline and wireless carriers solely for the purpose of porting numbers, we forbear from these requirements as set forth below.

35. To the extent that the *Qwest Declaratory Ruling Order* could be interpreted to require any agreement pertaining solely to wireline-to-wireless porting to be filed as an interconnection agreement with a state commission pursuant to sections 251 and 252 of the Act, we forbear from those requirements. First, we conclude that interconnection agreements are not necessary to prevent unjust or unreasonable charges or practices by wireless carriers with respect to porting. The wireless industry is characterized by a high level of competition between carriers. Although states do not regulate the prices that wireless carriers charge, the prices for wireless service have declined steadily over the last several years.⁹¹ No evidence suggests that requiring interconnection agreements for intermodal porting is necessary for this trend to continue.

36. For similar reasons, we find that interconnection agreements for intermodal porting are not necessary for the protection of consumers.⁹² The intermodal LNP requirement is intended to benefit

⁸⁷ Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint to John Rogovin, General Counsel, FCC (filed Sept. 22, 2003).

⁸⁸ See Association for Local Telecommunications Services Reply Comments on CTIA's May 13th Petition at 3, BellSouth Comments on CTIA's May 13th Petition at 9; and USTA Reply Comments on CTIA's May 13th Petition at 6.

⁸⁹ See note 87.

⁹⁰ Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port. See, Letter from Luisa L. Lancetti, Vice President PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau (filed Sept. 23, 2003); and Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau and William Maher, Chief, Wireline Competition Bureau (filed August 8, 2003).

⁹¹ Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, at 45 (rel. July 14, 2003).

⁹² Certain LECs have expressed concern that without interconnection agreements between LECs and CMRS carriers, calls to ported numbers may be dropped, because NPAC queries may not be performed for customers who have ported their numbers from a LEC to a CMRS carrier. See Letter from Mary J. Sisak, Counsel for Centurytel, Inc. to Marlene H. Dortch, Secretary, FCC (filed Oct. 23, 2003). We do not find these concerns to be justified,

consumers by promoting competition between the wireless and wireline industries and creating incentives for carriers to provide new service offerings, reduced prices, and higher quality services. Requiring interconnection agreements for the purpose of intermodal porting could undermine the benefits of LNP to consumers by preventing or delaying implementation of intermodal porting. We also do not believe that the state regulatory oversight mechanism provided by Section 251 is necessary to protect consumers in this limited instance.

37. Finally, we conclude that forbearance is consistent with the public interest. Number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port. Sprint, for example, notes that to accomplish porting, carriers need only exchange basic contact information and connectivity details, after which the port can be rapidly accomplished.⁹³ Given the limited data exchange and the short time period required to port, we conclude that interconnection agreements approved under section 251 are unnecessary. In view of these factors, we conclude that it is appropriate to forbear from requiring interconnection agreements for intermodal porting.

C. The Porting Interval

38. CTIA requests that the Commission require wireline carriers to reduce the length of the porting interval, or the amount of time it takes two carriers to complete the process of porting a number, for ports from wireline to wireless carriers.⁹⁴ Currently, the wireline-to-wireline porting interval is four business days.⁹⁵ The wireline porting interval was adopted by the NANC in its Architecture and Administrative Plan for Local Number Portability, which was approved by the Commission.⁹⁶ Upon subsequent review of the porting interval, the NANC agreed that the four business day porting interval for wireline-to-wireline porting should not be reduced; it did not specify a porting interval for intermodal porting.⁹⁷ The current porting interval for wireless-to-wireless ports is two and one half hours.⁹⁸ We decline to require wireline carriers to follow a shorter porting interval for intermodal ports at this time. Instead, we will seek comment on this issue in the Further Notice. We note that, while we seek comment on whether to reduce the length of the wireline porting interval, the current four business day porting

however, because the Commission's rules require carriers to correctly route calls to ported numbers. See Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7307-08, paras. 125-126.

⁹³ Sprint Comments on CTIA's May 13th Petition at 13-14.

⁹⁴ May 13th Petition at 7.

⁹⁵ Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. See North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997).

⁹⁶ *Second Report and Order*, 12 FCC Rcd 12281 (1997).

⁹⁷ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

⁹⁸ See North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration); North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); ATIS Operations and Billing Forum, Wireless Inter-carrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

interval represents the outer limit of what we would consider to be a reasonable amount of time in which wireline carriers may complete ports. We note also that whatever porting interval affiliated wireline and wireless service providers offer within their corporate family must also be made available to unaffiliated service providers.⁹⁹

D. Impact of Designating Different Routing and Rating Points on LNP

39. CTIA asks the Commission to resolve the intercarrier dispute between BellSouth and Sprint as it affects the rating and routing of calls to ported numbers.¹⁰⁰ CTIA contends that, although the dispute largely concerns matters of intercarrier compensation, to the extent LECs argue that they need not differentiate between rating and routing points for local calls, intermodal porting may not be available to consumers.¹⁰¹ To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center. We note, however, that the routing will change when a number is ported. Indeed, several wireline carriers have expressed concern about the transport costs associated with routing calls to ported numbers. The National Exchange Carrier Association (NECA) and National Telecommunications Cooperative Association (NTCA), for example, argue in their joint comments, that when wireless carriers establish a point of interconnection outside of a rural LEC's serving area, a disproportionate burden is placed on rural LECs to transport originating calls to the interconnection points.¹⁰² They argue that requiring wireline carriers to port telephone numbers to out-of-service area points of interconnection could create an even bigger burden. Other carriers point out, however, that issues associated with the rating and routing of calls to ported numbers are the same as issues associated with rating and routing of calls to all wireless numbers.¹⁰³

40. We recognize the concerns of these carriers, but find that they are outside the scope of this order. As noted above, our declaratory ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings.¹⁰⁴ Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Wireless-to-Wireline Porting

41. *Background.* As noted above, some LECs argue that allowing wireless carriers to port numbers wherever their coverage area overlaps the rate center in which the number is assigned would

⁹⁹ 47 U.S.C. §§ 201(b) and 202(a).

¹⁰⁰ May 13th Petition at 25-26.

¹⁰¹ *Id.*

¹⁰² NECA and NTCA Comments on CTIA's January 23rd Petition at 6.

¹⁰³ BellSouth Comments on CTIA's May 13th Petition at 11-12.

¹⁰⁴ See, e.g. In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002).

give wireless service providers an unfair competitive advantage over wireline carriers.¹⁰⁵ They contend that while this may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number.¹⁰⁶ If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, the LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.¹⁰⁷ Furthermore, the LECs contend that for them to offer wireless-to-wireline porting in this context would require significant and costly operational changes.¹⁰⁸ Qwest, for example, argues that if the Commission were to make the Local Access Transport Area (LATA) or Numbering Plan Area (NPA) the relevant geographic area for porting, LECs would be required to upgrade switches, increase trunking, and rework billing and provisioning systems.¹⁰⁹

42. *Discussion.* We seek comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. Some wireline commenters contend that requiring porting between wireline and wireless carriers where the wireless carrier does not have a point of interconnection or numbering resources in the rate center creates a competitive disparity because wireline carriers would not have the same flexibility to offer porting to wireless customers whose numbers are not associated with the wireline rate center. We seek comment on the technical impediments associated with requiring wireless-to-wireline LNP when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. We seek comment on whether technical impediments exist to such an extent as to make wireless-to-wireline porting under such circumstances technically infeasible. Commenters that contend there are technical implications should specifically describe them, including any upgrades to switches, network facilities, or operational support systems that would be necessary. Commenters should also provide detailed information on the magnitude of the cost of such upgrades along with documentation of the estimated costs. We also seek comment on whether the benefits associated with offering wireless-to-wireline porting would outweigh the costs associated with making any necessary upgrades. We seek comment on the expected demand for wireless-to-wireline porting. We note that wireline customers who decide to port their numbers to wireless carriers are able to port their numbers back to wireline carriers if they choose, because the numbers remain associated with their original rate centers.

43. In addition to technical factors, we seek comment on whether there are regulatory requirements that prevent wireline carriers from porting wireless numbers when the rate center associated with the number and the customer's physical location do not match. Commenters that suggest such obstacles exist and result in a competitive disadvantage should submit proposals to address these impediments, as well as consider the collateral effect on other regulatory objectives as a result of these proposals. We note that wireline carriers are not able to port a number to another wireline carrier if the rate center associated with the number does not match the rate center associated with the customer's

¹⁰⁵ See, e.g., Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; and SBC Comments on CTIA's January 23rd Petition at 1.

¹⁰⁶ See, e.g., Qwest Oct. 9th *Ex Parte*; and Letter from Herschel L. Abbott, Jr., Vice President-Government Affairs, BellSouth to Michael K. Powell, Chairman, FCC (filed Oct. 14, 2003).

¹⁰⁷ *Id.*

¹⁰⁸ See Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC (filed July 24, 2003) at 4-5 (Qwest July 24th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

¹⁰⁹ See Qwest July 24th *Ex Parte* at 4-5.

physical location. We seek comment on whether wireless and wireline numbers should be treated differently in this regard. We also seek comment on whether there are any potential adverse impacts to consumers resulting from wireless-to-wireline porting where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer.

44. In addition, we seek comment on whether there are other competitive issues that could affect our LNP requirements. For example, to the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, we seek comment on the extent to which wireline carriers should absorb the cost of allowing the customer with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, we seek comment on the extent to which wireline carriers can serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or virtual FX basis.¹¹⁰ A third option is for wireline carriers to seek rate design and rate center changes at the state level to establish larger wireline local calling areas. We seek comment on the procedural, technical, financial, and regulatory implications of each of these approaches. We also seek comment on the viability of each of these approaches and whether there are any alternative approaches to consider.

B. Porting Interval

45. *Background.* Over the past several years, the NANC has studied the wireline porting interval and reviewed options for reducing the length of the interval for simple ports.¹¹¹ In the Third Report on Wireless/Wireline Integration, the Local Number Portability Administration Working Group analyzed the elements of the wireline porting interval and investigated how reducing the length of the interval for simple ports would affect carriers' operations.¹¹² The report noted that reducing the porting interval would require wireline carriers to make significant changes to their operations. First, reducing the porting interval would require wireline carriers to automate and make uniform the Local Service Request (LSR)/Local Service Request Confirmation (LSC) Firm Order Confirmation (FOC) process.¹¹³ In addition, the report indicated that wireline carriers would likely have to eliminate or adjust their batch processing operations. The report noted that a change from batch processing to real time data processing would require in-depth system analysis of all business processes that use batch processing systems.¹¹⁴ Based on its analysis of these and other challenges, the working group concluded that because most wireline carriers already found their processes and systems challenged to meet the current porting interval it was not feasible to reduce the length of the wireline porting interval for simple ports.¹¹⁵

46. Because of the number and complexity of changes that would be required in the porting process for wireline carriers, the NANC was not able to reach consensus on reducing the porting interval

¹¹⁰ T-Mobile Comments on CTIA's January 23rd Petition at 11.

¹¹¹ See Second Report on Wireless Wireline Integration; Third Report on Wireless Wireline Integration.

¹¹² See Third Report on Wireless Wireline Integration. Simple ports are defined as those ports that: do not involve unbundled network elements, involve an account for a single line (porting a single line from a multi-line account is not a simple port), do not include complex switch translations (e.g., Centrex or Plexar, ISDN, AIN services, remote call forwarding, multiple services on the loop), may include CLASS features such as Caller ID, and do not include a reseller. All other ports are considered "complex" ports. *Id.* at 6.

¹¹³ *Id.* at 13.

¹¹⁴ *Id.* at 13-14.

¹¹⁵ *Id.* at 14.

to accommodate intermodal porting.¹¹⁶ The wireless industry expressed concern that the wireline four business day porting interval does not fit within its business model.¹¹⁷ In order to accommodate the wireless business model, the NANC attempted to shorten the porting interval for wireline-to-wireless ports by developing a process that will allow the wireless carrier to activate the port before the wireline carrier activates the disconnect in the Number Portability Administration Center (NPAC). This process results in a situation referred to as a "mixed service" condition, whereby the customer can make calls on both the wireline and wireless phones before the port is completed. The NANC reported that this mixed service condition can result in misdirected callbacks in an emergency situation.¹¹⁸ That is, for example, if the emergency operator attempts to callback a person that made a call from the wireless phone, the call may be routed to the wireline phone. The NANC consulted with the National Emergency Number Association and concluded that, while the mixed service condition is not desirable, the incidence of such is low and would not impede intermodal porting.¹¹⁹

47. LECs contend that their current porting interval cannot be reduced readily for intermodal porting, because it is necessary to support the complex systems and procedures of wireline carriers.¹²⁰ SBC, for example, explains that the current porting interval not only ensures that the porting out carrier correctly ports a number to the porting in carrier, but also that these carriers accurately update other systems, including E911, billing, and maintenance.¹²¹ Qwest notes that wireline carriers have longer porting intervals due to differences in network and system configurations.¹²² Qwest indicates that wireline carriers are often constrained by the provisioning of physical facilities (e.g., loops) to serve customers.¹²³ Moreover, LECs contend, reducing the length of the current wireline porting interval would require them to make changes to many of their systems and would involve significant expense.¹²⁴

48. Wireless carriers argue that a reduced intermodal porting interval would encourage more consumers to use porting by eliminating confusion about the porting process.¹²⁵ They argue that a reduced porting interval is technically achievable and that wireline carriers should be required to make the

¹¹⁶ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

¹¹⁷ Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. See North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997). See also Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

¹¹⁸ See Second Report on Wireless Wireline Integration.

¹¹⁹ See Letter from John R. Hoffman, Chair, NANC to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, dated Nov. 29, 2000.

¹²⁰ See letter from Kathleen Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, dated Oct. 15, 2003.

¹²¹ SBC Aug. 29th *Ex Parte*.

¹²² Qwest Comments on CTIA's May 13th Petition at 7.

¹²³ *Id.*

¹²⁴ *Id.* at 5.

¹²⁵ See, e.g., AT&T Wireless Comments on CTIA's May 13th Petition at 3-6; Sprint Comments on CTIA's May 13th Petition at 6-12; and T-Mobile Comments on CTIA's May 13th Petition at 7-9.

necessary changes to their systems. At least one wireless carrier recognizes, however, that significant changes to LEC systems may be required to achieve reduced porting intervals.¹²⁶

49. *Discussion.* Reducing the porting interval could benefit consumers by making it quicker for consumers to port their numbers. To that end, wireless carriers intend to complete intramodal wireless ports within two and one-half hours.¹²⁷ There, however, may be technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. We seek comment on whether we should reduce the current wireline four business day porting interval for intermodal porting. If so, what porting interval should we adopt? Commenters proposing a shorter porting interval should specify what adjustments should be made to the LNP process flows developed by the NANC.¹²⁸ For example, the wireline NANC LNP Process Flows establish that the FOC must be finalized within 24 hours of receiving the port request.¹²⁹ Specific time periods are also established for other steps within the porting process that may require adjustment in the event that a shorter porting interval is adopted.

50. We also seek comment on whether adjustments to the NPAC processes, including interfaces and porting triggers, would be required.¹³⁰ In addition, we seek comment on the risks, if any, associated with reducing the porting interval for intermodal porting. We seek comment on an appropriate transition period in the event a shorter porting interval is adopted, during which time carriers can modify and test their systems and procedures.

51. We seek input from the NANC on reducing the interval for intermodal porting. The NANC recommendation should include corresponding updates to the NANC LNP process flows and any recommendations on an appropriate transition period. The NANC should provide its recommendations promptly as we intend to review the record and address this issue expeditiously.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities of the proposals suggested in the *Further Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice*, and must have a separate and distinct heading designating them as responses to the IRFA.

¹²⁶ See Sprint Comments on CTIA's May 13th Petition.

¹²⁷ See First Report on Wireless Wireline Integration; North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); and ATIS Operations and Billing Forum, Wireless Inter-carrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

¹²⁸ See Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

¹²⁹ FOC, or Firm Order Confirmation refers to the response the old service provider sends to the new service provider upon receiving the new service provider's request to port a number, setting a due time and date for the port. See Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

¹³⁰ The NPAC, administered by NeuStar, operates and maintains the centralized databases associated with LNP. Interaction with the NPAC is required for all porting transactions.

B. Paperwork Reduction Analysis

53. This *Further Notice* contains no new or revised information collections.

C. Ex Parte Presentations

54. This is a permit-but-disclose notice and comment rule making proceeding. Members of the public are advised that ex parte presentations are permitted, provided they are disclosed under the Commission's Rules.¹³¹

D. Comment Dates

55. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before twenty (20) days from the date of publication of this *Further Notice* in the Federal Register and reply comments thirty (30) days from the date of publication of this *Further Notice* in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

56. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an E-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rule making number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW-A306, 445 12th Street, S.W., Washington, D.C. 20554.

58. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be

¹³¹ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

59. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202)418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This Further Notice can be downloaded in ASCII Text format at: <http://www.fcc.gov/wtb>.

E. Further Information

60. For further information concerning this Further Notice of Proposed Rulemaking, contact: Jennifer Salhus, Attorney Advisor, Policy Division, Wireless Telecommunications Bureau, at (202) 418-1310 (voice) or (202) 418-1169 (TTY) or Pam Slipakoff, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1500 (voice) or (202) 418-0484 (TTY).

VI. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 160, the Petitions for Declaratory Ruling filed by CTIA on January 23, 2003, and May 13, 2003, are GRANTED to the extent stated herein.

62. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Parties****A. January 23rd Petition****Comments**

ALLTEL
AT&T
AT&T Wireless
BellSouth
California Public Utilities Commission (CA PUC)
CenturyTel, Inc.
Fred Williamson & Associates
Illinois Citizens Utility Board
Independent Alliance
Michigan Exchange Carriers Association
Midwest Wireless
National Exchange Carrier Association and National Telephone Cooperative Association (NECA & NTCA)
Nebraska Rural Independent Companies
New York State Department of Public Service (NY DPS)
Nextel
Ohio Public Utilities Commission (Ohio PUC)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Telecommunications Group (RTG)
SBC
TCA, Inc.
Texas 911 Agencies
T-Mobile
United States Telecom Association (USTA)
United States Cellular (US Cellular)
WorldCom

Reply Comments

AT&T
AT&T Wireless
BellSouth
CA PUC
Cingular Wireless
CTIA
Fred Williamson & Associates
McLeod USA Telecommunications Services
Mid-Missouri Cellular
Bernie Moskal
South Dakota Telecommunications Association
Sprint
T-Mobile
USTA

Valor Telecommunications Enterprises
Virgin Mobile

B. May 13th Petition

Comments

ALLTEL
AT&T
AT&T Wireless
BellSouth
CA PUC
Cincinnati Bell Wireless
Cingular Wireless
City of New York
First Cellular of Southern Illinois
Illinois Citizens Utility Board
Independent Alliance
Missouri Independent Telephone Group
Nebraska Public Service Commission
NENA
Nextel
Ohio PUC
OPASTCO
Qwest
Rural Cellular Association
Rural Iowa Independent Telephone Association
RTG
SBC
Sprint
T-Mobile
Triton PCS
USTA
Verizon
Verizon Wireless
Virgin Mobile
Western Wireless
Wireless Consumers Alliance

Reply Comments

ALLTEL
ALTS
AT&T
AT&T Wireless
Cellular Mobile Systems of St. Cloud, LLC
Cingular Wireless
CTIA
ENMR-Plateau
Illinois Citizens Utility Board

Missouri Independent Telephone Group
NTCA
NTELOS Inc.
T-Mobile
South Dakota Telecommunications Association
Sprint
US Cellular
USTA
Verizon
Verizon Wireless
XIT Cellular

APPENDIX B

**Initial Regulatory Flexibility Analysis
Further Notice of Proposed Rulemaking
CC Docket No. 95-116**

1. As required by the Regulatory Flexibility Act, as amended (RFA),¹³² the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice), CC Docket No. 95-116. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.¹³³

A. Need for, and Objectives of, the Proposed Rules

2. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting where the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer do not match. The Further Notice also seeks comment on whether the Commission should reduce the current four-business day porting interval for intermodal porting.

B. Legal Basis for Proposed Rules

3. The proposed action is authorized under Section 52.23 of the Commission's rules, 47 C.F.R. § 52.23, and in Sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154(i), 201-202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹³⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.¹³⁶ Under the Small business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established

¹³² See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹³³ See 5 U.S.C. § 603(a).

¹³⁴ See 5 U.S.C. § 603(b)(3).

¹³⁵ 5 U.S.C. § 601(6).

¹³⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

by the Small Business Administration (SBA).¹³⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹³⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹³⁹

5. **Incumbent Local Exchange Carriers.** We have included small incumbent local exchange carriers LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁴⁰ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁴¹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.¹⁴² Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.¹⁴³

6. **Competitive Local Exchange Carriers.** Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁴ According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹⁴⁵ Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.¹⁴⁶

7. **Wireless Service Providers.** The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under

¹³⁷ 15 U.S.C. § 632.

¹³⁸ *Id.* § 601(4).

¹³⁹ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹⁴⁰ 5 U.S.C. § 601(3).

¹⁴¹ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁴² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p 5-5 (Aug. 2003) (*Telephone Trends Report*).

¹⁴³ *Id.*

¹⁴⁴ 13 C.F.R. § 121.201, NAICS code 513310.

¹⁴⁵ Telephone Trends Report, Table 5.3.

¹⁴⁶ *Id.*

that standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁷ According to the FCC's *Telephone Trends Report* data, 719 companies reported that they were engaged in the provision of wireless telephony.¹⁴⁸ Of these 719 companies, an estimated 294 have 1,500 or fewer employees and 425 have more than 1,500 employees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

8. To address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines. In addition, future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. These potential changes may impose new obligations and costs on carriers.¹⁴⁹ Commenters should discuss whether such changes would pose an unreasonable burden on any group of carriers, including small entity carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵⁰

10. The Further Notice reflects the Commission's concern about the implications of its regulatory requirements on small entities. Particularly, the Further Notice seeks comment on the concern that wireline carriers, including small wireline carriers, have expressed that permitting wireless carriers to port numbers wherever their rate center overlaps the rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers. Wireline carriers contend that while permitting porting outside of wireline rate center boundaries may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number. If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.

11. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. The Further Notice seeks comment on whether there are technical or regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer's physical location do not match. The Further Notice

¹⁴⁷ 13 C.F.R. § 121.201, NAICS code 513322.

¹⁴⁸ Telephone Trends Report, Table 5.3.

¹⁴⁹ See e.g., Further Notice, paras. 41, 48-49.

¹⁵⁰ See 5 U.S.C. § 603.

asks commenters that contend that such obstacles exist and result in a competitive disadvantage to submit proposals to mitigate these obstacles.

12. In addition, the Further Notice seeks comment on alternative methods to facilitate wireless-to-wireline porting. To the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, the Further Notice seeks comment on the extent to which wireline carriers should absorb the cost of allowing the customers with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider.

Alternatively, the Further Notice seeks comment about whether wireline carriers may serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or Virtual FX basis. The Further Notice seeks comment on the procedural, technical, and regulatory implications of each of these approaches. These questions provide an excellent opportunity for small entity commenters and others concerned with small entity issues to describe their concerns and propose alternative approaches.

13. The Further Notice also seeks comment about whether the Commission should require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. The Further Notice analyzes the current wireline porting interval and seeks comment about whether there are technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. The Further Notice recognizes that, if a reduced porting interval was adopted, carriers may need additional time to modify and test their systems and procedures. Accordingly, the Further Notice seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

14. Throughout the Further Notice, the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the Further Notice, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

15. None.

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: *In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116*

After today it's easier than ever to cut the cord. By firmly endorsing a customer's right to untether themselves from the wireline network – and take their telephone number with them – we act to eliminate impediments to competition between wireless and wireline services. Seamless wireline-to-wireless porting is another landmark on the path to full fledged facilities-based competition.

Our action promises significant consumer benefits for wireline and wireless customers. I have heard the concerns expressed by some wireline providers that wireline network architectures and state-imposed rate centers complicate number portability. This proceeding has undoubtedly focused the Commission's attention on these issues. State regulators have long been champions of local number portability and I appreciate their support. I look forward, however, to working with my colleagues in the states to remove additional barriers to inter-modal local number portability such as the difficulty of some providers to consolidate rate centers to more accurately match wireless carrier service areas.

In the end, the consumer benefits associated with inter-modal LNP convince me that the time for Commission action is now. No doubt there will be some bumps in the road to implementation, but I trust that carriers will use their best efforts to ensure consumers have the highest quality experience possible. I look forward to the Commission's November 24th trigger for this obligation and to working with my colleagues to ensure that full wireline to wireless portability is a reality for all consumers everywhere.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116

This Order removes the final roadblocks to implementing wireline-to-wireless number portability, which is an important step in facilitating intermodal competition. The Commission mandated local number portability (LNP) within and across the wireline and wireless platforms, where technically feasible, with the goal of maximizing consumer choice. As of November 24, 2003, this goal will become a reality: Most consumers who seek to switch wireless providers or to move from a local exchange carrier to a wireless carrier will be able to retain their existing telephone numbers. While I expressed sympathy in the past to arguments that the November 24 deadline was premature, our present focus must be on implementation, and the foregoing Order provides much-needed clarity regarding the parties' obligations.

I recognize that wireline network architecture and state rating requirements will prevent many (if not most) consumers from porting wireless numbers to wireline carriers. Although, in the short term, wireline carriers will have more limited opportunities to benefit from intermodal LNP than wireless carriers will, I was simply not willing to block consumers from taking advantage of the porting opportunities that are technologically feasible today. I am hopeful that existing obstacles to wireless-to-wireline porting will be addressed as expeditiously as possible through technological upgrades and, where necessary, state regulatory changes.

Finally, I am pleased that the Commission is stepping up its consumer outreach efforts on the issues of wireless and intermodal LNP. To this end, I commend the recent proactive efforts of the Wireless Telecommunications Bureau and the Consumer and Government Bureau to educate the public about our LNP rules. I am also pleased with the recent efforts of industry to reach out to consumers so that they understand what number-porting opportunities are available to them. For consumers to benefit from our expanded LNP regime, it is imperative for them to have sufficient information to make the most appropriate choices for themselves.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Telephone Number Portability CTIA Petitions for Declaratory Ruling
on Wireline-Wireless Porting Issues (CC Docket No. 95-116)*

With today's action, consumers are assured that intermodal telephone number portability will begin, at last, to become a reality later this month. After numerous delays, consumers are on the verge of enjoying the significant new ability to take their current telephone numbers with them when they switch between carriers and technologies. This gives consumers much sought-after flexibility and it provides further competitive stimulus to telephone industry competition. This makes it a win-win situation for consumers and businesses alike.

It was some seven years ago, in the 1996 Act, when Congress recognized that the ability of consumers to retain their phone numbers when switching providers would facilitate the development of competition. Congress instructed us to get this job done and to use "technical feasibility" as our guide in making sure the vision became reality. This we have labored mightily to do. As a result, American consumers will be able to take their digits with them, unimpeded by the hassle, loss of identity and attendant expenses that until now have accompanied switching between service providers and technologies.

The bulk of the problems accompanying the challenge of porting numbers are behind us now. A very limited few remain and these are the subject of the Further Notice of Proposed Rulemaking also approved today. I am confident that these can be handled expeditiously if all interested parties work together. Similarly, any minor implementation problems that develop should be amenable to swift and cooperative corrective actions. It has taken considerable cooperation to bring us to this important point, and I believe consumer support for porting will encourage all parties to reach quick resolution of the few remaining challenges.

Finally, it is difficult to see how we are ever going to have true intermodal competition in the telephone industry apart from initiatives like the one we embark on today. Intermodal competition always receives strong rhetorical support. Today it gets some action, too.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116

I am pleased to support this item because it provides important consumer benefits by promoting competition in the wireline telephone market. One of the primary reasons I supported wireless local number portability is the additional competition it is likely to encourage in the wireline market. See Press Statement of Commissioner Kevin J. Martin on the Commission's Decision on Verizon's Petition for Permanent Forbearance from Wireless Local Number Portability Rules (July 16, 2002). As I stated last year, the ability to transfer a wireline phone number to a wireless phone is an important part of ensuring that competition with wireline phones continues to grow. I am glad that today the full Commission agrees.

I am disappointed, however, that the Commission was not able to provide this guidance until weeks before the LNP requirement is scheduled to take effect. The Commission has an obligation to minimize the burdens our regulations place on carriers, and I wish we had provided the guidance in this Order considerably sooner.

Finally, I recognize that LNP – although very important for consumers – places real burdens on the carriers, particularly the small and rural carriers. Accordingly, I support the decision to waive our full porting requirements until May 24, 2004, for wireline carriers operating in areas outside of the largest 100 MSAs. I am also pleased that we emphasize that those wireline carriers may file waiver requests if they need additional time.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116

I am pleased to support this Order because it clarifies that our rules and policies provide for enhanced number portability opportunities for American consumers. Specifically, we enable consumers to port their wireline telephone numbers to local wireless service providers. We also affirm that wireless carriers are required to port telephone numbers to wireline carriers but recognize that wireline carriers are only able to receive those numbers from wireless carriers on a limited basis. Finally, we rightly seek comment on how to deal with these limitations and further facilitate wireless-to-wireline porting.

I believe that our decision is consistent with Section 251(b) of the Communications Act, which requires local exchange carriers (LECs) to provide local number portability to the extent technically feasible. However, I do recognize that there may be certain limitations on the ability of the nations' smallest LECs to technically provide local number portability. In this regard, I am extremely pleased we made the decision to waive until May 24, 2004, the requirement of LECs operating in areas outside of the largest 100 MSAs to port numbers to wireless carriers that do not have a point of interconnection or numbering resource in the rate center where the LEC customer's wireline number is provisioned.

I recognize that there may be other compelling circumstances that make it disproportionately difficult for these same LECs to provide full number portability. Consequently, I am pleased we agreed to the language in the item recognizing that those wireline carriers may need to file additional waivers of our LNP requirement.

I remain concerned, however, that today's clarification of our LNP rules and obligations will exacerbate the so-called "rating and routing" problem for wireless calls that are rated local, but are in fact carried outside of wireline rate centers. While I appreciate the language in the Order that clarifies that ported numbers must remain rated to the original rate center, the rating and routing issue continues to remain unresolved for rural wireline carriers as well as neighboring LECs and the wireless carriers whose calls are being carried. I believe that we must redouble our efforts to resolve this critical intercarrier compensation issue as quickly and comprehensively as possible.

Finally, I take very seriously the concerns of those wireline carriers that have argued wireline-to-wireless number portability should be limited pending the resolution of issues associated with full wireless-to-wireline porting. While I do not believe that these concerns outweigh the very significant benefits to American consumers that our clarification provides today, I do want to highlight my keen interest in working both with industry and the Chairman and my fellow Commissioners on solutions to address this inequity. The Commission should constantly strive to level the proverbial playing field, and the situation presented by our LNP rules and policies should not be any different.

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

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition of The North-Eastern Pennsylvania)	
Telephone Company for Temporary Waiver of its)	
Porting Obligations)	
)	
)	

ORDER

Adopted: May 12, 2004

Released: May 13, 2004

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny the petition filed by The North-Eastern Pennsylvania Telephone Company (NEP) seeking an extension of the May 24, 2004 deadline for implementing local number portability (LNP or porting).¹ We find that NEP has not demonstrated that special circumstances warrant a waiver or that such an extension is in the public interest. We will not, however, enforce NEP's LNP obligations until sixty days after the release of this Order to provide NEP with an opportunity to make arrangements to come into compliance with its LNP obligations.

II. BACKGROUND

2. Local Number Portability. Section 251(b) of the Communications Act of 1934, as amended, (Act)² mandates local exchange carriers (LECs) to provide LNP in accordance with the requirements outlined by the Commission.³ The Commission, in the *Number Portability First Report and Order*, established the parameters for LNP and required commercial mobile radio service (CMRS or wireless)

¹ See Petition of The North-Eastern Pennsylvania Telephone Company Petition for Waiver of Section 52.23(b) of the Commission's Rules, filed March 23, 2004 (NEP Petition). The NEP petition was placed on public notice on March 26, 2004. See *Wireline Competition Bureau Seeks Comment on the Petition of The North-Eastern Pennsylvania Telephone Company for Temporary Waiver of the Commission's Number Portability Requirements*, Public Notice, CC Docket No. 95-116, DA 04-798 (rel. March 26, 2004). Comments were filed by Cellular Telecommunications & Internet Association (CTIA), Dobson Communications Corporation (Dobson), Nextel Communications, Inc. (Nextel) and Verizon Wireless (Verizon), and reply comments were filed by National Telecommunications Cooperative Association (NTCA), NEP, and T-Mobile USA, Inc. (T-Mobile).

² 47 U.S.C. §§ 151-174.

³ 47 U.S.C. §251(b).

providers to become LNP-capable pursuant to sections 1, 2, 4(i), and 332 of the Act.⁴ In doing so, the Commission concluded that the public interest is served by making LNP available across different technologies and thereby promoting competition between CMRS service providers and wireline carriers.⁵ Initially, CMRS providers were required to become LNP-capable by June 30, 1999.⁶ The Commission subsequently extended this deadline, and required CMRS carriers operating in the top 100 Metropolitan Statistical Areas (MSAs) to provide number portability upon request by another carrier by November 24, 2003.⁷ CMRS carriers operating outside the top 100 MSAs must become LNP-capable within six months of a request or by May 24, 2003, whichever is later.⁸ On November 10, 2003, the Commission concluded that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁹ The Commission, however, granted wireline carriers operating in areas outside of the 100 largest MSAs, in certain circumstances, a waiver until May 24, 2004 of the requirement to port numbers to wireless carriers.¹⁰ The Commission later granted certain LECs with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) that operate in the top 100 MSAs a limited waiver of the wireline-to-wireless porting requirement.¹¹

3. *NEP's Request for Waiver.* NEP is a rural incumbent LEC providing service in Northeast Pennsylvania.¹² NEP represents that it decided, in 2001, to upgrade its switch network and sought

⁴ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431-42 (1996) (*Number Portability First Report and Order*).

⁵ See *id.* at 8432, ¶ 153.

⁶ *Id.* at 8440, ¶ 166.

⁷ See *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002) (*Verizon Wireless LNP Forbearance Order*); *Cellular Telecommunications & Internet Association v. FCC*, No. 02-1264 (D.C. Cir. June 6, 2003) (Dismissing in part and denying in part CTIA's appeal of the Commission's decision in the *Verizon Wireless LNP Forbearance Order*). CMRS carriers were required to be LNP-capable by November 24, 2003 if requests from other carriers were received by February 24, 2003. *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14985-86. The *Verizon Wireless LNP Forbearance Order* also lays out the history of the CMRS carriers' LNP deadline extensions. See also, *Western Wireless Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations*, CC Docket Nos. 95-116 and 99-200, Order, 18 FCC Rcd 24692 (Wireline Comp. Bur. 2003) (*Western Wireless Order*).

⁸ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14986.

⁹ See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706-07 (2003) (*Intermodal LNP Order*).

¹⁰ *Id.*

¹¹ *Telephone Number Portability*, Order, 19 FCC Rcd 875 (2004).

¹² NEP's existing switch network consists of eight exchanges. These exchanges include the Union Dale, Harford, New Milford, Jackson, Thompson, Pleasant Mount, Clifford, and Forest City exchanges. See NEP Petition at 2, 5.

informal quotes from various switch equipment manufacturers at that time.¹³ NEP subsequently concluded that it would be more efficient and economical to replace its existing switches with software based switch ("soft switch") technology.¹⁴ Accordingly, in March 2003, NEP sought formal quotes and proposals from several switch manufacturers for soft switches.¹⁵ In September 2003, NEP contracted with Taqua, Inc. (Taqua) to purchase eight soft switches to be installed on a phased-in basis, beginning on May 1, 2004 and ending on December 31, 2005.¹⁶ However, according to NEP, certain service feature implementation issues need to be resolved before the first switch can be put into service.¹⁷ NEP requests a waiver to provide additional time to accommodate the deployment schedule for its eight exchanges and to resolve the implementation issues.¹⁸

4. NEP contends good cause exists for granting an extension of the May 24, 2004 porting implementation deadline.¹⁹ Specifically, NEP maintains that it has been planning and implementing network upgrades since 2001 to address expected network capability requirements.²⁰ NEP argues that it did not anticipate that intermodal porting²¹ would be an "imminent requirement" until the Commission's *Intermodal LNP Order* released in November 2003.²² Upon release of the order, NEP contends that it immediately reviewed its number portability plans with Taqua.²³ NEP maintains that, while working with Taqua to resolve certain service feature issues, it became apparent to NEP that it will be unable to meet the May 24, 2004 implementation deadline for all of its switches.²⁴ Further, NEP states that it will provide the Commission with quarterly progress reports and updates to the deployment schedule, including solutions that will allow NEP to advance its deployment schedule and number portability.²⁵

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3, 5.

¹⁷ *Id.* at 3.

¹⁸ See *id.* at 5. NEP's projected switch in-service date for its eight exchanges is as follows: (1) Union Dale - May 1, 2004; Harford - June 30, 2004; New Milford - September 30, 2004; Jackson - December 31, 2004; Thompson - March 31, 2005; Pleasant Mount - June 30, 2005; Clifford - September 30, 2005; and Forest City - December 31, 2005. *Id.* NEP notes, however, that this deployment schedule is dependent on Taqua's resolution of service feature problems and the successful deployment of LNP. *Id.*

¹⁹ *Id.* at 1; NEP Reply Comments at 1-2.

²⁰ NEP Petition at 2-3.

²¹ Intermodal porting is porting between wireline and wireless service providers.

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.* at 6.

5. CTIA, Dobson, Nextel, Verizon, and T-Mobile oppose granting NEP's waiver.²⁶ They argue that NEP has not demonstrated through substantial, credible evidence that special circumstances justify a waiver of the Commission's LNP rules.²⁷ They also contend that the public interest would not be served if such waiver is granted.²⁸ Specifically, they argue that grant of NEP's waiver would undermine the Commission's goal of promoting competition and cause customer confusion.²⁹

6. One commenter, NTCA, supports NEP's petition.³⁰ NTCA maintains that, because NEP is moving toward full compliance with its LNP obligations, the Commission should provide NEP with a temporary waiver.³¹ NTCA contends that large carriers, such as Nextel and Verizon, fail to take into account the financial, technical, and staffing realities of small LECs.³² According to NTCA, it would have been financially irresponsible for NEP to upgrade its equipment prior to having a firm obligation to do so.³³

7. Waiver Standard. The Commission's rules may be waived when good cause is demonstrated.³⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁵ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁶ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.³⁷ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.³⁸

²⁶ See CTIA Comments at 1-2; Dobson Comments at 1-2; Nextel Comments at 1-3; Verizon Comments at 1-3; T-Mobile Reply Comments at 1-2.

²⁷ See CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 3-4; T-Mobile Reply Comments at 2-4.

²⁸ See CTIA Comments at 3; Dobson Comments at 8; Nextel Comments at 7-8; Verizon Comments at 5-7; T-Mobile Comments at 4-5.

²⁹ *Id.*

³⁰ See NTCA Reply Comments.

³¹ See *id.* at 1.

³² *Id.* at 3.

³³ *Id.* at 2-3.

³⁴ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

³⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

³⁷ *WAIT Radio*, 418 F.2d at 1157.

³⁸ *Id.* at 1159.

8. In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.³⁹ A request for an extension of a deadline must be filed with the Commission at least sixty days in advance of the deadline.⁴⁰

III. DISCUSSION

9. We find that NEP has not demonstrated good cause to justify waiving the May 24, 2004 porting deadline. In particular, we agree with those commenters who argue that NEP has not shown through substantial, credible evidence that special circumstances warrant an extension of the porting deadline until December 31, 2005 and that postponing porting as requested will serve the public interest.⁴¹ We decline, however, to enforce NEP's LNP obligations for sixty days following the release of this Order.

10. *Special Circumstances.* We are not persuaded by NEP's claims that special circumstances exist warranting a waiver of the May 24, 2004 porting deadline in order to accommodate NEP's switch delivery and deployment schedule, and provide additional time to resolve any service feature issues. We find that NEP has not presented "extraordinary circumstances beyond its control in order to obtain an extension of time."⁴² Rather, NEP consciously made a business decision to upgrade its switches on a certain schedule.⁴³ NEP has not shown that challenges it may face are different from those faced by similarly situated carriers who are able to comply.⁴⁴ Generalized references to limited resources and implementation problems do not constitute substantial, credible evidence justifying an exemption from the porting requirements. NEP has known since 1996 that it would need to support LNP within six months of a request from a competing carrier.⁴⁵ Although wireless LNP was delayed, all carriers have been on notice since July 2002 that wireless and intermodal LNP would become available beginning in November 2003.⁴⁶ Thus, NEP has had sufficient time to follow through with these mandates and prepare for LNP.⁴⁷

³⁹ 47 C.F.R. § 52.23(e); *see also* 47 C.F.R. § 52.31(d).

⁴⁰ *Id.*

⁴¹ *See* CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 3-4; T-Mobile Reply Comments at 2-4.

⁴² *Number Portability First Report and Order*, 11 FCC Rcd at 8397, ¶ 85.

⁴³ *See supra* ¶ 3.

⁴⁴ *See Western Wireless Order*, 18 FCC Rcd at 24696, ¶ 10 (in denying a waiver request to extend the thousands-block number pooling and LNP deadlines, the Bureau found that "Western ha[d] not demonstrated that it will sustain costs that are different from, or burdensome than, the costs of similarly situated Tier II wireless carriers").

⁴⁵ *See Number Portability First Report and Order*, 11 FCC Rcd 8352; *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7273-75, ¶¶ 60-66 (1997) (*Number Portability Reconsideration Order*).

⁴⁶ *See Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd 14972.

⁴⁷ *See Western Wireless Order*, 18 FCC Rcd at 24697-98, ¶ 13.
(continued....)

11. *Public Interest.* We also conclude that an extension of the porting deadline until December 31, 2005 would not serve the public interest because it would unduly delay the benefits of number portability to the public and could cause customer confusion. Portability has promoted, and will continue to promote, competition, especially in underserved areas, by allowing consumers to move to carriers that better serve consumers' needs without having to make the difficult choice to give up their numbers.⁴⁸ Thus, we find that the public interest would be served by implementing porting as soon as possible.

12. Furthermore, NEP should have considered the porting requirements, set out by the Commission long ago, when it contracted with vendors to install necessary upgrades. Accordingly, we conclude that granting NEP's request to extend the porting deadline would be inconsistent with the Commission's policy to promote competition, consumer choice, and efficient number use. We therefore deny NEP's request for a waiver of the May 24, 2004 porting implementation deadline.

13. Although we are not persuaded that a waiver of the porting requirements until December 31, 2005 is justified, we decline to enforce NEP's LNP obligations for sixty days following the release of this Order.⁴⁹ We find that some limited time to allow NEP to make the necessary preparations to implement LNP is reasonable to ensure compliance with our rules.⁵⁰ Non-enforcement for sixty days will also help to avoid any network disruptions, maximize trouble-free operation of LNP, and ensure that customers' requests for services will not be delayed due to carriers' difficulty in obtaining numbering resources.⁵¹

(Continued from previous page) _____

⁴⁸ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14984, ¶ 28.

⁴⁹ See *Western Wireless Order*, 18 FCC Rcd 24692 (in denying Western's petition for waiver to extend the thousands-block number pooling (pooling) and LNP deadlines, the Bureau found that a sixty-day non-enforcement period would provide Western the time needed to properly implement and commence LNP and pooling).

⁵⁰ *Id.* at 24698, ¶ 16.

⁵¹ *Id.*

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, and the authority delegated under sections 0.91, 0.291, 1.3, 52.9(b), and 52.23(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 52.9(b), 52.23(e), the petition filed by The North-Eastern Pennsylvania Telephone Company is DENIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

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

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	

ORDER

Adopted: January 13, 2004

Released: January 16, 2004

By the Commission:

I. INTRODUCTION

1. In this order, we grant a limited waiver of the wireline-to-wireless porting requirement for certain local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers)¹ that operate in the top 100 Metropolitan Statistical Areas (MSAs).² Specifically, we grant Two Percent Carriers that meet the conditions described in this order a waiver until May 24, 2004, to comply with the wireline-to-wireless porting requirement. The waiver applies to all Two Percent Carriers operating within the top 100 MSAs that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned (Covered Carriers). To the extent that a Two Percent Carrier operating within the top 100 MSAs does not meet these qualifications, it must comply with the requirements for wireline-to-wireless porting to date.

II. BACKGROUND

2. *Intermodal Portability.* Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability (LNP), to the extent technically feasible, in accordance with requirements prescribed by the Commission.³ Although the Act excludes Commercial Mobile Radio Service (CMRS) providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.⁴ The Commission determined that

¹ See 47 U.S.C. § 251(f)(2).

² The Commission received several petitions from small LECs operating in the top 100 MSAs for relief of the intermodal porting deadline of November 24, 2003. See Appendix A.

³ 47 U.S.C. § 251(b)(2). Under the Act and the Commission's rules, local number portability is defined 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." 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k).

⁴ Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431, paras. 152-53 (1996) (*First Report and Order*). The Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability. *Id.* at para. 153. See 47 U.S.C. §§ 1, 2, 4(i), and 332.

implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.⁵

3. After extending the wireless LNP deadline on several occasions, the Commission established November 24, 2003 as the date in which wireless carriers in the top 100 MSAs must be capable of wireless-to-wireless and wireless-to-wireline porting and wireline carriers must be capable of wireline-to-wireless porting. On November 10, 2003, we released a Memorandum Opinion and Order and Further Notice of Proposed Rule Making (*Intermodal Order*) further clarifying certain aspects of intermodal porting.⁶ In the order, we recognized that many wireline carriers operating outside of the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability.⁷ Therefore, we waived, until May 24, 2004, the requirement that wireline carriers operating outside the top 100 MSAs port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned.⁸

4. *Petitions.* As the November 24, 2003 deadline approached, we received a number of petitions for waiver of the intermodal porting requirement (Waiver Petitions) from small LECs operating in the top 100 MSAs (Petitioners).⁹ Nearly all of the Petitioners describe themselves as small telephone companies and assert that they are more similarly situated to LECs operating outside the top 100 MSAs than the large carriers operating within the top 100 MSAs.¹⁰ In support of this claim, many of the Petitioners note that the intermodal porting requests that they received from CMRS providers were their first requests for any type of porting.¹¹ Because they had not previously received requests from other wireline carriers to make their systems LNP-capable, the Petitioners argue that they were at a technological disadvantage compared to most, if not all, of the larger LECs in their MSAs, which had already upgraded their systems to provide wireline-to-wireline porting. Therefore, the Petitioners request additional time to comply with the intermodal porting requirements, many requesting the same period given to LECs operating outside the top 100 MSAs.¹²

5. On November 21, 2003, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (Joint Petitioners) filed an Emergency Joint Petition for Stay and Clarification (Joint Petition) requesting that the Commission stay application of the

⁵ *First Report and Order* at 8434-36, paras. 157-160.

⁶ Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. Nov. 10, 2003) (*Intermodal Order*).

⁷ *Intermodal Order* at para. 29.

⁸ *Id.*

⁹ See Appendix A. Sprint Corporation (Sprint) filed oppositions to five of these petitions and comments in support of one of the petitions. See Appendix B. Additionally, Northeast Florida and Valley filed reply comments to Sprint's oppositions to their petitions. *Id.*

¹⁰ See, e.g., Northeast Florida Petition at 3; Yadkin Valley Petition at 2; OTELCO Petition at 2; MoKan Petition at 3.

¹¹ See, e.g., MoKan Petition at 4; Northeast Florida at 4; United Petition at 2-3; Blountsville Petition at 3-4.

¹² A number of the Petitioners also claim that it was unclear, until the November 10, 2003 *Intermodal Order*, whether they would have had to act on the requests from CMRS providers that do not have points of interconnection or numbering resources in the rate centers where the customers' wireline numbers are provisioned. These Petitioners state that, because the clarification occurred only two weeks before the November 24 deadline, it would be technologically and operationally impossible to become intermodal porting capable by November 24, even with the carriers taking reasonable efforts and acting in good faith.

Intermodal Order with respect to Two Percent Carriers until the Commission reconsiders and/or clarifies certain aspects of that decision.¹³ Specifically, the Joint Petitioners assert that it is technically infeasible for Two Percent Carriers to comply with the November 24, 2003 deadline,¹⁴ and that the interests of all the parties involved in the port request, including the consumer, will benefit from additional time for Two Percent Carriers to face the operational and network hurdles that must be overcome to achieve a smooth transition.¹⁵ Moreover, the Joint Petitioners argue that Two Percent Carriers need additional time to become capable of wireline-to-wireless porting because many of them had never been requested to support wireline-to-wireline porting and were uncertain of their intermodal porting obligations until the release of the *Intermodal Order* two weeks before the November 24, 2003.¹⁶

6. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.²⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.²¹

III. DISCUSSION

7. We find that good cause exists to grant a waiver of the wireline-to-wireless porting requirement for Covered Carriers until May 24, 2004. Special circumstances exist for Covered Carriers because of the technological and operational limitations they face in implementing the necessary modifications to provide wireline-to-wireless porting. We also find that this additional time is consistent with the public interest. Therefore, we grant the Waiver Petitions and the Joint Petition, in part, to the extent consistent with this order, and otherwise deny them.

8. *Special Circumstances.* We find that special circumstances warrant a limited deviation from the November 24, 2003 deadline for Covered Carriers. Specifically, we recognize that the Covered Carriers' networks have technological limitations that cannot be resolved immediately to comply with the wireline-to-wireless porting requirement. The Joint Petitioners and most of the Petitioners assert that, unlike the large carriers serving within the Top 100 MSAs, a number of Two Percent Carriers in those markets had not received requests from other wireline carriers for wireline-to-wireline porting prior to

¹³ Emergency Joint Petition for Stay and Clarification filed by the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed on November 21, 2003 (Joint Petition) at 22. See Appendix A. Sprint and Nextel Communications, Inc. opposed the Joint Petition. See Appendix B.

¹⁴ Joint Petition at 4, 7, 12.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 7-11.

¹⁷ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

¹⁹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *WAIT Radio*, 418 F.2d at 1157.

²¹ *Id.* at 1159.

May 24, 2003.²² As a result, in order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work reliably and accurately.²³ Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting.²⁴ Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technological obstacles they face to successfully meet a request for wireline-to-wireless porting.²⁵ Such relief is also consistent with the relief we granted, in the *Intermodal Order*, to similarly situated wireline carriers operating outside the top 100 MSAs.²⁶

9. *Public Interest.* We likewise find that the additional time is in the public interest for Covered Carriers to become capable of providing wireline-to-wireless porting. While we continue to deem rapid implementation of number portability to be in the public interest, we also believe it to be just as important that carriers implement and test the necessary system modifications to ensure reliability, accuracy, and efficiency in the porting process.²⁷ As we found with the waiver granted to wireline carriers outside the top 100 MSAs, a transition period for Covered Carriers will help ensure a smooth transition and provide Covered Carriers sufficient time to make necessary modifications to their systems.²⁸

10. We also agree with the Petitioners that consumers will not likely be adversely impacted by the grant of an additional six months to these carriers. According to the Petitioners, many Two Percent Carriers had not received requests or even inquiries from their customers concerning their ability to port their wireline numbers,²⁹ and some carriers have devised temporary solutions to allow at least some of their customers to port their wireline numbers if they so desire.³⁰ Therefore, we anticipate that few customers will be adversely impacted by this limited waiver.

²² See, e.g., MoKan Petition at 4; OTELCO Petition at 4, 8; Northeast Petition at 4; Blountsville Petition at 4, 9; Warwick Valley Petition at 4, 9; United Petition at 2-3, 7; YCOM Petition at 3, 8; Rio Virgin Petition at 3, 7; Egyptian Petition at 3, 8; Cascade Utilities Petition at 3, 7-8; and Laurel Highland Petition at 3, 7-8. See also Joint Petition at 7.

²³ See, e.g., Full Service Petition at 2. We note, however, that additional time is not necessary for Two Percent Carriers inside the top 100 MSAs that received a request to port a subscriber's number to another wireline carrier before May 24, 2003. These carriers would already have had to become LNP capable as of November 24, 2003, and therefore, would only need to make accommodations to provide wireline-to-wireless porting. Likewise, carriers would not need additional time for switches that are already LNP capable.

²⁴ See, e.g., MoKan Petition at 5; Northeast Florida at 5.

²⁵ See, e.g., MoKan Petition at 5; Northeast Florida at 5. In response to Sprint's oppositions, we note that Two Percent Carriers that were LNP capable as of November 24, 2003, or otherwise received a request from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned, must continue to comply with the current requirements for wireline-to-wireless porting.

²⁶ *Intermodal Order* at para. 29.

²⁷ Joint Petition at 4, 18. See also MoKan Petition at 7 ("Without appropriate testing, there will be delays and errors in porting numbers, which is not in the best interest of the consumer or either carrier involved with the port.").

²⁸ *Intermodal Order* at para. 29.

²⁹ See, e.g., MoKan Petition at 6, Northeast Florida at 6.

³⁰ See, e.g., Full Service Petition at 3 (moving some of its customers from the outdated switch to UNE-P service which allows for number portability until a new switch that supports number portability is installed).

11. We disagree with Sprint's claim that such a waiver would relieve Covered Carriers of their obligations to provide wireline-to-wireless porting.³¹ Rather the relief granted in this Order merely gives Covered Carriers additional time to overcome the technological and operations hurdles that large carriers in the top 100 MSAs did not face. Moreover, the waiver will not adversely impact rural customers because of its limited nature.

IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, we GRANT a limited waiver of the wireline-to-wireless porting requirement, until May 24, 2004, for local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide that operate in the top 100 Metropolitan Statistical Areas and have not received a request for local number porting from either a wireline carrier prior to May 24, 2003 or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned.

13. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, that the petitions listed in Appendix A to this Order ARE GRANTED IN PART AND DENIED IN PART, to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³¹ See, e.g., Sprint Opposition to Bentleyville Petition at 1; Sprint Opposition to Valley Petition at 1-2; and Sprint Opposition to YCOM Petition at 1. See also, generally, Sprint Opposition to Northeast Florida Petition; Sprint Opposition to Warwick Valley Petition; and Sprint Opposition to Joint Petition.

APPENDIX A
PETITIONERS

Filed September 24, 2003

North Central Telephone Cooperative, Inc. (North Central) (supplemented petition on December 8, 2003)

Filed November 20, 2003

Yadkin Valley Telephone Membership Corporation (Yadkin Valley)

Filed November 21, 2003

Armstrong Telephone Company (Armstrong)
Bentleyville Telephone Company (Bentleyville) (**)
Blountsville Telephone Co. (Blountsville)
Cascade Utilities, Inc. (Cascade Utilities)
Champaign Telephone Company (Champaign) (supplemented petition on December 19, 2003)
Chouteau Telephone Company (Chouteau)
East Ascension Telephone Company, LLC (East Ascension)
Egyptian Telephone Cooperative Association (Egyptian)
Ellensburg Telephone Company (Ellensburg)
Empire Telephone Corp. (Empire)
E.N.M.R. Telephone Cooperative (ENMR)
Independent Telephone and Telecommunications Alliance, the National Telecommunications
Cooperation Association, and the Organization for the Promotion and Advancement of Small
Telecommunications Companies (Joint Petitioners)
Laurel Highland Telephone Company (Laurel Highland)
Mariana and Scenery Hill Telephone Company (Mariana)
Middleburg Telephone Company (Middleburg)
MoKan Dial Telephone Company (MoKan)
Northeast Florida Telephone Company (Northeast Florida)
Orwell Telephone Company (Orwell)
OTELCO Telephone, LLC (OTELCO)
Pymatuning Telephone Company (Pymatuning)
Rio Virgin Telephone Co., Inc. (Rio Virgin)
State Telephone Co., Inc. (State)
Taconic Telephone Corp. (Taconic)
Tohono O'odham Utility Authority (Tohono)
United Telephone Company (United)
Valley Telephone Cooperative, Inc. (Valley)
Warwick Valley Telephone Company (Warwick Valley)
YCOM Networks, Inc. (YCOM)

Filed November 24, 2003

Eastern Slope Rural Telephone Association (Eastern Slope)
Peoples Telecommunications, LLC (Peoples)
Southern Kansas Telephone Company (Southern Kansas)
Wheat State Telephone, Inc. (Wheat State)

APPENDIX A
PETITIONERS (CON'T)

Filed November 25, 2003

Full Service Computing Corp. (Full Service)

Filed December 11, 2003

Green Hills Telephone Corporation (Green Hills)

****** The Bentleyville Petition has been withdrawn pursuant to the petitioner's request. *See* Telephone Number Portability, CC Docket No. 95-116, *Order*, DA 04-0069 (rel. Jan. 15, 2004).

APPENDIX B**OPPOSITIONS, COMMENTS, AND REPLY COMMENTS****Comments**

Sprint Corporation (Sprint) filed comments in support of Yadkin Valley Petition (November 26, 2003).

Oppositions

Sprint filed oppositions to the following petitions:
Bentleyville Petition (December 8, 2003)(**);
Joint Petition (December 10, 2003);
Northeast Florida Petition (December 3, 2003);
Valley Petition (December 8, 2003);
Warwick Valley Petition (December 16, 2003); and
YCOM Petition (December 10, 2003).

Nextel Communications, Inc. filed an ex parte opposing the Joint Petition (December 23, 2003).

Reply Comments

Northeast Florida filed reply comments to Sprint's opposition (December 10, 2003).
Valley filed reply comments to Sprint's opposition (December 18, 2003).

** The Bentleyville Petition has been withdrawn pursuant to the petitioner's request. See Telephone Number Portability, CC Docket No. 95-116, *Order*, DA 04-0069 (rel. Jan. 15, 2004).



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Past Issues

NECA FILINGS

NECA TARIFF FCC NO. 5

Transmittal No. 1018

3/17/2004 - NECA filed Transmittal No. 1018, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing makes additions and miscellaneous changes to the listings of companies in the Title Pages, Optional Rate Plan Availability, DSL Access Services Availability and Federal Universal Service Charge sections.

NECA TARIFF FCC NO. 5

Transmittal No. 1019

3/17/2004 - NECA filed Transmittal No. 1019, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing adds Commonwealth Telephone Company to the list of companies applying Local Number Portability (LNP) End User Charges.

NECA TARIFF FCC NO. 5

Transmittal No. 1020

3/17/2004 - NECA filed Transmittal No. 1020, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing modifies NECA's Asynchronous Transfer Mode Cell Relay Access (ATM-CRS) and Digital Subscriber Line Access (DSL) Services. Specifically, this filing: 1) reduces the monthly rates for most existing ATM-CRS Port speeds, 2) introduces a third discount commitment level under the DSL Access Services Discount Pricing Arrangement, 3) introduces a non-chargeable optional function associated with ATM-CRS Ports enabling customers to transport Internet Protocol packets over the Telephone Company's network, and 4) removes the local exchange service copper-only requirement for ADSL and SDSL Access Services.

Studies show that as much as 20 % of minutes processed by end office switches is going unbilled. This unbilled "Phantom Traffic" is the focus of a one-day conference April 7, 2004 in Washington, DC. For more information please see the Conference Brochure

FCC RELEASES

LNP

Order, CC Docket No. 95-116, DA 04-726

3/17/2004 - The FCC has granted the requests of Cellular Telecommunications and Internet Association, Cingular Wireless, LLC, AT&T Wireless Services, Inc. and ALLTEL Communications, Inc. to withdraw their petition for a rulemaking asking the FCC to rescind the rule requiring commercial mobile radio service (CMRS) providers to provide local number portability.

SECTION 272

Report and Order, CC Docket Nos. 03-228, 96-149, 98-141, 96-149 and 01-337, FCC 04-54

3/17/2004 - The FCC issued a Report and Order removing prohibition against sharing by BOCs and their section 272 affiliates of operating, installation, and maintenance (OI&M) functions. The Commission concluded that it should retain the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located. The Commission dismissed as moot petitions filed by SBC and BellSouth, pursuant to section 10 of the Act, seeking forbearance from the OI&M sharing prohibition. The Commission also granted SBC's request for modification of the SBC/Ameritech Merger Order conditions related to OI&M services to the extent that these merger conditions are incorporated into the conditions of the SBC Advanced Services Forbearance Order

INDUSTRY FILINGS

USF

Ex Parte, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 and 98-170

3/16/2004 - Representatives of Microsoft met with Commissioners Adelstein, Abernathy, Copps and Martin and their staff members to explain that policy makers should keep in mind that regulations adopted to suit the PSTN might not translate well into an IP-centric Framework. In terms of Universal Service funding mechanisms, Microsoft believes that either a numbers-based or connections-based approach would be better than today's mechanism, but should be considered only as an interim step.

UNBUNDLED NETWORK ELEMENTS

Ex Parte, CC Docket Nos. 01-338, 96-98 and 98-147

3/17/2004 - In a letter to Commissioner Copps, Earthlink submitted a letter to explain its position on reconsideration of the line sharing unbundled network element rules in light of the D.C. Circuit Court's recent decision in *USTA v. FCC*. Earthlink states that line splitting is not a functional substitute for line sharing, nor is it a long-term competitive alternative to line sharing.

FEDERAL REGISTER

BIENNIAL REVIEW

Notice, WC Docket No. 02-313, FCC 03-337, FR Doc 04-5657

03/18/04 - The Commission has published a notice in the Federal Register setting the comment dates for its inquiry on whether certain rules should be repealed or modified because they are no longer necessary in the public interest. **Comments are due April 19, 2004. Reply Comments are due May 3, 2004.**

OTHER NEWS

Speaking at a CITA forum on LNP issues, Wireless Bureau Assistant Chief David Firth said that the volume of actual number porting would not be the measure of success, but giving customers the option to port was most important. He indicated that carriers outside of the 100 largest MSA's should be testing and preparing for the May 24, 2004 LNP deadline and that the Commission would not be very sympathetic to last minute waiver requests. He said that the Bureau in its orders has resolved most of the implementation issues. However, if there were still a lack of clarity on certain issues, such as overlapping boundaries, after May 24 the Bureau would consider issuing further guidelines. Responding to questions, he indicated that rating and routing issues between carriers are not porting issues and are therefore not a valid reason for refusing to port. He said that if carriers are experiencing problems with non-compliance by certain carriers, those are enforcement issues and need to be called to the Commission's attention.

The Western Governors Association has sent a letter to Congressional leaders asking them to urge Congress to examine the current Universal Service Fund distribution formula for non-rural carriers, which serve both rural and non-rural areas. The Governors asked Congress to help remedy the imbalance in the distribution of funds. <http://www.westgov.org/wga/testim/usf-ltr3-17-04.pdf>

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