

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
) RM 8535
)
To: The Commission)

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COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	2
II. THE COMMISSION MUST PLAY A CENTRAL ROLE IN ENSURING A UNIFORM, NATIONWIDE NUMBER PORTABILITY POLICY.....	4
III. TRUE SERVICE PROVIDER NUMBER PORTABILITY MUST BE FOCUSED UPON AS THE COMMISSION'S GOAL	8
IV. WHILE INTERIM MEASURES MAY BE NEEDED PRIOR TO THE ADVENT OF TRUE NUMBER PORTABILITY, THEY SHOULD NOT BE USED TO SLOW THE DEVELOPMENT OF TRUE NUMBER PORTABILITY	12
CONCLUSION.....	14

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THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby files its Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM")¹ in the above-captioned proceeding dealing with telephone number portability.

NCTA is the principal trade association of the cable television industry in the United States. NCTA represents cable television operators serving over 80 percent of the nation's television households, over sixty program networks, as well as cable equipment manufacturers and others interested in or affiliated with the cable television industry.

Cable television companies are the most likely competitors to the local exchange carrier ("LEC") monopolies. This is so for a number of reasons: Cable systems pass over 96 percent of American homes with facilities that have a capacity to carry up to 900 times as much information as the local phone company's twisted pair. Cable companies are leaders in the use of fiber optic and digital compression technology. And, cable's high-

¹ In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, Notice of Proposed Rulemaking, FCC 95-284, released July 13, 1995 ("NPRM").

capacity systems will ultimately deliver virtually every type of communications service conceivable offering consumers competitive choices for advanced voice, video, and data services. Accordingly, NCTA's members are vitally interested in the establishment of conditions for full and fair competition in the local exchange marketplace, one such condition being true telephone number portability. These Comments highlight several basic policy concerns NCTA has regarding the issue of number portability and the Commission's NPRM.

I. INTRODUCTION AND SUMMARY

With the NPRM the Commission begins a proceeding that will be crucial to the development of fair local exchange competition. As the NPRM states in its first sentence: "[T]elephone numbers are critical to the routing of telephone calls over the public switched network."² From this the Commission draws the obvious conclusion: "The inability of end users to retain their telephone numbers under these circumstances -- that is, a lack of number 'portability' -- appears to deter customers who wish to select new and different services or who wish to choose among competing service providers. . . . Full number portability would permit customers to change service providers, services, and even geographic locations without having to change their telephone numbers."³

The Commission tentatively concludes in the NPRM that the portability of telephone numbers benefits consumers of telecommunications services and would contribute to development of competition among alternative providers of local telephone and other telecommunications services. It also tentatively concludes that the Commission should assume a leadership role in developing a national number portability policy, and it seeks comment to determine the specific nature of that role. In this regard, it seeks

² NPRM at ¶1.

³ Id. at ¶2.

comment on whether the Commission should promulgate rules to ensure the development of number portability, and if so, what rules the Commission should promulgate, observing that it lacks sufficient information on the costs (monetary and nonmonetary) of making telephone numbers portable either between service providers, services, or locations.⁴

In these comments, we focus on some fundamental policy issues. In brief, we believe that a long-term number portability solution is a prerequisite to the development of lasting competition in the local exchange market and we believe the Commission must play a leadership role in the development and deployment of uniform, nationwide true number portability.

True number portability encompasses the ability of an end user to retain existing telephone numbers within a telephone exchange service area without impairment in functionality, quality, reliability, and convenience when changing from one provider of telephone exchange service to another. It should include the capability of a local exchange carrier to route a call to any point on the network of another provider of telephone service as such provider requests, without the use of the call forwarding or functionally equivalent capabilities of such local exchange.

While so-called "interim" solutions may be necessary, they do not constitute true number portability. Their use should not be an excuse to delay (or worse yet, preempt) the introduction of true number portability. By the same token, resolution of "service provider portability" (and related forms of service portability) problems should not be delayed

⁴ The NPRM also concluded that service provider portability of 900 and 500 numbers is beneficial for customers of those services and it sought comment on that conclusion, and on the costs of making such portability available and other related implementation issues. We support the Commission's conclusion that non-geographic number portability is beneficial to consumers and fosters competition. The Commission should vigorously pursue the portability of non-geographic numbers but, because it involves issues different from those raised by service provider portability, consideration of a solution for non-geographic portability should not delay resolution of the service provider portability issue.

pending resolution of the more complex "location portability" issues.⁵ The latter issues simply are not critical to the development of local exchange competition as are the former.

Incumbent LECs will likely use every effort to delay the adoption and implementation of number portability. For this reason, LECs should be economically incented to develop and implement number portability as soon as it is technically feasible. Economic incentives might include options such as free usage by new entrants of LEC forwarding services until number portability is achieved. Alternatively, if cost-based compensation mechanisms are employed prior to the implementation of true number portability, then a discount (analogous to the 55% discount for originating toll traffic prior to the implementation of equal access) on terminating traffic charges is appropriate. All carriers should bear the cost of the implementation of full number portability, rather than just new entrants.

II. THE COMMISSION MUST PLAY A CENTRAL ROLE IN ENSURING A UNIFORM, NATIONWIDE NUMBER PORTABILITY POLICY

NCTA applauds the Commission's decision to take a leadership role in developing a nationwide number portability policy and to begin doing so while Congress considers a number of related issues in pending legislation. Whatever role is eventually mandated for the Commission to play in ensuring full and fair local exchange competition, number portability issues are among the highest priority matters that must be considered in achieving that goal. Indeed, the pending House and Senate bills both recognize the federal nature of this issue by charging the FCC with the responsibility for adopting regulations to

⁵ "Service portability" refers to the ability of end users to retain the same telephone numbers as they change from one service to another (e.g., from POTS to ISDN). "Location portability" refers to the ability of end users to retain the same telephone numbers when moving from one location to another.

implement the policy decisions reflected in those bills.⁶ For this reason, the Commission's decision to move forward now will serve the cause of competition well.

NCTA strongly supports the Commission decision to take a leadership role on number portability issues and we urge it to adopt rules to ensure the development of uniform, nationwide number portability which only the Commission can establish. Local telephone number portability is essential to allow customers to take full advantage of competitive local exchange services. Customers, especially business customers, develop strong proprietary interests in their telephone numbers. The costs of reprogramming key systems, PBX systems, and other customer premises equipment; revising stationery, business cards, advertising and other promotional or written materials; and instilling number recognition in employees and clients, serve as significant barriers that inhibit customers from changing local carriers, even if the customer believes that a competitor can offer superior service at a lower price. If customers cannot easily retain their telephone numbers when they switch carriers, they simply will not do so. The Commission has concluded as much in related contexts.⁷

The Commission recognizes that market forces alone are unlikely to establish a solution to the number portability issue. We think it plain that, in the absence of a federal regulatory mandate, market forces are insufficient to promote the nationwide, uniform development and deployment of number portability. The House and Senate as well as several states have already found that number portability is necessary for the development of local competition and that regulatory intervention is necessary to reach that result. In addition, many state legislatures which have passed telecommunications legislation this

⁶ See H.R. 1555, 104th Cong., 1st Sess. §101(a) (1995) and S.652, 104th Cong. 1st Sess. §8b (1995) cited in NPRM at n.17. See also NYPSC Number Portability Order, Case No. 94-C-0095 (Mar. 8, 1995) at 3; NPRM at ¶¶14-17, 22.

⁷ See 800 Access, Report and Order, CC Docket No. 86-10, 4 FCC Rcd 2824 (1989).

year, and several state PUCs which have issued rules since the publication of the NPRM (e.g. California), have adopted language which will require long-term number portability solutions.

Despite these state efforts -- or perhaps because of them -- a federal leadership role is required. Market forces certainly are not sufficient to promote a nationwide, uniform solution and many states are years away from even considering the issue, much less requiring the adoption of a solution. If number portability issues are left completely to the states, the result could be a patchwork of inconsistent technical and economic requirements applicable across the country -- a prescription for inhibiting competition in the local exchange marketplace.

In this regard, we support the Commission's tentative conclusions that "there is a federal interest in this area because deployment of different number portability solutions across the country would have a significant impact on interstate telecommunications services" and because of its "interest in efficient use of the numbering resource."⁸ For similar reasons, we support the Commission's tentative conclusion that it has a significant interest in promoting the nationwide availability of number portability due to its likely impact upon interstate communications, and that it is within the Commission's jurisdiction "to ensure that the portability of telephone numbers within the numbering system is handled efficiently and fairly."⁹

While a federal regulatory mandate is important and appropriate, NCTA urges the Commission not to permit the process to devolve into an agonizingly long standards setting process. The Commission has the jurisdiction and there exists a clear federal interest. It must act now, forcefully and decisively.

⁸ NPRM at ¶¶30-31.

⁹ Id. at ¶29.

At the same time, NCTA -- as does the Commission -- recognizes the interests that states have in the development of number portability.¹⁰ In particular, trials in several states will serve as primary sources for information on the best methods to achieve true number portability. As a result, there should be no need to conduct similar trials when results can be obtained from these state technical trials. To duplicate such trials would only delay the implementation of true number portability. Moreover, while the Commission should consider the results of those trials in reaching its decision, it need not wait for those trials to run their course. Rather, it should take prompt, decisive action. We urge the states and the Commission to work in concert to develop solutions to the number portability problem.¹¹

Nevertheless, at bottom, the Commission has an overriding interest in ensuring the development of a uniform, nationwide policy and, as it recognizes, "state requirements governing number portability should not thwart or impede national policies, such as nondiscrimination and competitive neutrality."¹² The primary areas in which states may adopt policies inconsistent with federal policy will be where a state decides not to require telephone companies (in particular for small or rural telcos) to implement number portability or if a state decides to impose costs on only the new entrants. Such policies should be preempted.

¹⁰ *Id.* at ¶32.

¹¹ Once the Commission adopts its rules on number portability, any inconsistent state rules or policies should be pre-empted and states should be required to bring their policies into compliance with the federal rule within a time certain.

¹² *Id.*

III. TRUE SERVICE PROVIDER NUMBER PORTABILITY MUST BE FOCUSED UPON AS THE COMMISSION'S GOAL

The Commission discusses three types of number portability in its NPRM:

(1) Service Provider Number Portability; (2) Service Portability¹³; and (3) Location Portability. In the context of those three categories, it discusses what it calls "Longer Term Number Portability Solutions" and "Interim Number Portability Measures" as well as the "Transition from Interim Portability Measures".

As we discuss below, the Commission must focus like a laser on true number portability -- what the NPRM terms "Longer Term Number Portability." This is so because the so-called "Interim Number Portability" measures do not constitute number portability at all. Rather they are LEC business constructs which currently place burdens on new entrants and, if too much emphasis is put on them, will delay real local exchange competition indefinitely.

Our comments focus particularly on service provider (and to a lesser extent, service) portability as opposed to location portability. Of the three, service provider portability is most important to achieving full local exchange competition. For this reason, the Commission should separate the issue of service provider portability from the other forms of portability. Service Provider Portability is critical to local exchange competition, and deserves "fast track" attention. Unfortunately, one technical solution probably will not solve all three problems, since problems with the other two forms of portability may be much more difficult to resolve. Service provider portability should

¹³ There are really two forms of service portability, one real-time and one "permanent". The former occurs, for instance, when a person leaves the office that has conventional wireline service, drives home in a cellular-equipped vehicle, and then spends the evening in his/her home served by a cable company. That person would like calls to follow him or her from provider to provider. The permanent form applies when, say, a homeowner switches from conventional telephone service to ISDN, presumably on a long-term basis.

not be held hostage to the more challenging goal of solving all three at the same time.¹⁴

In particular, resolving the location portability issue should not delay resolution of service provider (or service) portability issues. Location portability is likely to be further off in the future, more complex technically, and may sever the relationship between area codes and geography. Moreover, focus on location portability may delay the implementation of the much more important (from a competitive standpoint) service provider portability. Resolution of the service provider portability problems should not be delayed until location portability is possible nor should this rulemaking be delayed while location portability solutions are pondered.

In dealing with a permanent number portability solution, NCTA urges the Commission to bear in mind the following principles:

- While the FCC should take a leadership role on policy development since a national solution is necessary, it should not reverse whatever actions the states have taken unless a state-adopted solution is incompatible with a national solution. The FCC should require that all LECs implement number portability (if federal legislation, which would require LECs to provide number portability, fails to pass). The Commission should adopt rules with economic incentives for the speedy development and implementation of a technical solution and with rigid milestones to achieve its goal within a time certain.
- The Commission is correct in recognizing the link between number portability and other issues associated with the onset of local exchange competition. These other issues include, inter alia, interconnection terms and conditions, network unbundling, and the like. They are extremely important to the prospects for success of a local exchange competitor. The Commission must make certain that by focusing on number portability, it does not delay the timely consideration of these other issues.

¹⁴ It is likely that some forms of service portability -- for instance, switching from a wireline to a wireless provider -- might be resolvable in the context of a service provider portability solution. In that case, a solution to that narrow service portability problem might not delay the resolution of the service provider portability problem.

- The Commission should rely on industry standards-setting groups and other industry processes for gathering data, conducting tests and proposing recommendations. However, the Commission must assert a substantial leadership role that does not allow those entities to delay the process. The Commission must set hard-and-fast deadlines for resolving various technical and policy issues and adhere to those deadlines.
- The Commission should ensure that the administrative side of the solution is examined and resolved as fully as the technical side. Number portability raises some very significant administrative issues, such as creating, updating, and maintaining the databases(s), coordinating multiple databases, database security, and the like. These may tend to get neglected in industry processes that tend to focus on technology issues.
- Whatever solution is pursued, it should provide not only the promised benefits, but also avoid potential pitfalls, such as excessive cost, degraded service quality (e.g., longer call setup time, more misdirected calls, etc.). In monitoring industry activities, the FCC should ensure that adequate consideration is provided to such issues, while not letting them unduly slow the timetable for prompt resolution of the number portability problem.
- We agree with the Commission that a number portability environment should support operator services and enhanced 911 services and should efficiently use telephone numbers.
- Call Processing Scenarios. It initially appears that neither the terminating access provider ("TAP") or the Originating Service Provider ("OSP") scenarios would be in the public interest. As the Commission observes, the TAP scheme would route most calls to the LECs and deny terminating access charges to competing providers unless other arrangements were made, while the OSP plan would require flash-cut implementation of a number portability database (or databases) across the country.¹⁵ A scenario other than TAP or OSP must be adopted. Such a scenario should permit originating and terminating carriers to process calls where appropriate.
- Geographic Scope of Portability. The Commission should adopt the approach which most rapidly helps develop local competition. Crossing area codes adds technical problems and probably is not necessary at this point (unless area code overlays, rather than splits, become widespread). State-wide and regional solutions

¹⁵ NPRM at ¶¶43-45.

would disassociate telephone numbers (and area codes) from geography, as well as add a general level of confusion about the meaning of telephone numbers. Moreover, those broader solutions are not necessary for the development of local competition and excessively complicate the potential solutions for the service provider portability problem.

- Administration of the Database. Funding of a service provider portability solution should be done in a competitively-neutral fashion. This requires at least cost-based charges, a single provider-neutral national administrator, a complaint resolution mechanism, and recognition that numbers are a resource shared by the whole industry, not something one entity can unilaterally control or sell to others. Equal access to all databases must be required.
- Costs and Cost Recovery Issues. One of the most critical policy decisions will be who should pay for a number portability solution. The answer is that everyone should pay since all customers will benefit whether or not they change providers. Customers benefit by having the option to change providers and keep their number. In addition, all benefit by continuing to be able to reach those they are calling without having to employ a new number when the called party has changed providers. Competition itself will result in improvements in customer service and pricing. Moreover, ultimately all carriers, including today's incumbents, will benefit from the universal implementation of number portability because it will facilitate switching from carrier to carrier, including switching back to the original incumbent carrier, if the customer so chooses. The costs of creating the portability capability should be shared on an equitable basis among all carriers -- the traditional LECs as well as the new entrants.

In sum, the Commission must adopt a rigid schedule for achieving a competitively-neutral solution to the number portability problem. At a minimum, the Commission should require implementation of true number portability by a date certain. It also should establish a number of milestone dates by which time studies, technical trial results and recommendations must be submitted. It should make clear that it will not countenance delay or obfuscation of the issue of true service provider number portability, while it examines other portability issues. And it must adopt rules that resolve these issues once and for all without the necessity for interminable additional proceedings.

IV. WHILE INTERIM MEASURES MAY BE NEEDED PRIOR TO THE ADVENT OF TRUE NUMBER PORTABILITY, THEY SHOULD NOT BE USED TO SLOW THE DEVELOPMENT OF TRUE NUMBER PORTABILITY

The NPRM seeks comment on "whether a transition to a longer-term number portability solution is in the public interest. . . ." ¹⁶ The NPRM describes a number of proposals as "interim number portability measures," but they are not a "number portability" solution. They are local exchange carrier services which though they may slightly moderate the number portability problem, by no means resolve it. In fact, the Commission in the NPRM recognizes the problems associated with so-called "interim number portability measures," such as remote call forwarding ("RCF") and Flexible Direct Inward Dialing ("Flex-DID"). ¹⁷ One such fundamental issue is how to establish the charges (if any) that incumbents may impose on new entrants. Indeed, the charges that have been (or might be) imposed for the use of services such as RCF and Flex-DID themselves create barriers to entry into the local exchange market. Those measures -- however necessary until true number portability is achieved nationwide -- must not be allowed to stall or preempt the deployment of true number portability.

True number portability -- the ability of customers to take their telephone numbers when switching carriers, without any loss in service quality or functionality -- must be the ultimate goal of policymakers. Given existing equipment limitations, however, we recognize that true number portability cannot be achieved immediately. Until true portability is possible, the Commission should require the incumbent LEC to offer competitors interim measures through the use of call-forwarding or other technologies. But such measures must be explicitly recognized as being "interim" measures, as not constituting true number portability and as being, in themselves, impediments to full and

¹⁶ Id. at ¶55.

¹⁷ Id. at ¶¶57-62.

fair local exchange competition. As such, the Commission should require a LEC to provide for free service used as an interim solution to true number portability.

The lack of true number portability creates a major obstacle to competition in the local exchange market because of its effect on the collection of access charges from interexchange carriers, unless fair collection and allocation mechanisms are in place. This problem arises because some customers will continue to receive incoming calls on the incumbent's network even after they switch to a competing provider to originate calls. Access charges paid by interexchange carriers with respect to inward toll calls that terminate on a competitive local carrier's network should flow to the competitive carrier, even if the carrier is operating under an interim number portability arrangement. Terminating access charges, including the carrier common line charge, compensate the local carrier for the costs it incurs in delivering a long distance call to its intended recipient. An appropriate share of these charges should be allocated to the competitor.

The lack of true number portability also impacts compensation mechanisms for the exchange of local traffic. If a bill and keep mechanism is not adopted, any compensation scheme which involves a payment for the termination of traffic should include discounts on interconnection and interconnection-related services, such as database access, because otherwise the incumbent LEC will reap a windfall from access charges that would go to the new entrant if true number portability were in place.

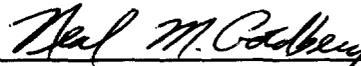
Different states have considered whether tariffed rates are appropriate for these services. To the extent these interim measures are used as a substitute for long-term portability, the Commission should require that they be charged at most at the LEC's incremental cost if not provided free of charge as discussed above. Even provision of these measures free of charge should not, however, permit them to become long-term solutions because of the numerous technical problems with these measures. For these and other reasons, the Commission must keep its focus on the long-term, true number portability problem and its solutions.

Thus, the Commission must explicitly and unequivocally reject the suggestion in the NPRM that it might be "in the public interest to require only that carriers make available interim measures that accommodate number portability and not require the implementation of a longer-term number portability solution."¹⁸

CONCLUSION

For the reasons stated above, the Commission should play a leadership role in ensuring the development and deployment of a uniform, nationwide number portability solution and should adopt, as expeditiously as possible, the proposals described herein to achieve that goal.

Respectfully submitted,



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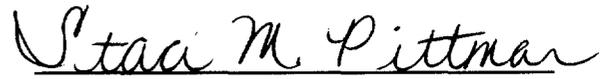
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September 12, 1995

¹⁸ NPRM at ¶68 (emphasis added).

CERTIFICATE OF SERVICE

I, Staci M. Pittman, do hereby certify that on this 12th day of September, 1995, copies of the foregoing "**Comments of the National Cable Television Association, Inc.**" were delivered by first-class, postage pre-paid mail upon the attached list:


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