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

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OCT 12 1995
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In The Matter of)
)
Telephone Number Portability)

CC Docket No. 95-116
RM 8535

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**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), by its attorneys, hereby submits its Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") and the comments filed pursuant thereto.

I. INTRODUCTION

The initial comments filed in this docket strongly support the implementation of service provider number portability as an aid to competition in the local service market, with the unsurprising exception of the local exchange carrier ("LEC") comments, which questioned the "necessity" of number portability to the growth of local competition. Wide support exists among the commenters for the Commission's taking a leading role in the development of a uniform, national policy for service provider number portability, and for the resolution of technical issues through an industry work group, as TRA urged in its initial Comments.

Although most parties agree that the cost of implementing service provider number portability should be fairly and equitably allocated, there is a lack of consensus (except, again, among the LECs) as to how such an allocation should be made; TRA offers a proposal in this regard in these Reply Comments. Finally, commenters are divided on the issue whether the

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Commission should mandate specific number portability requirements (as TRA has urged) based on the recommendations of a multi-sector task force, or rely on marketplace forces (an approach that has failed in the past) to encourage implementation of the agreed-on number portability plan.

II. **ARGUMENT**

A. **The LECs' Arguments Against the Importance of Number Portability to Local Competition Are Unpersuasive and Self-Serving.**

The overwhelming majority of commenters in the initial round -- including inter-exchange carriers ("IXCs"), representatives of commercial mobile radio services ("CMRS") providers, State public utilities commissions, and federal government agencies -- echoed the view expressed by the Commission in the NPRM that the growth of true local competition depends in large measure on the deployment of service provider number portability.^{1/}

Only the LEC commenters seriously questioned the importance of service provider portability to local competition, asserting that portability was not a "necessary condition" to competition,^{2/} and that "competition will develop with or without" provider portability.^{3/} To support these hollow assertions, the LECs rely principally on a study for Pacific Bell by ConStat, Inc., entitled "Analysis of Potential Local Access Competition in the Pacific Bell

^{1/} See, e.g., Comments of Sprint Corporation ("Sprint") at 3-7, AT&T Corp. ("AT&T") at 1-3, Cellular Telecommunications Industry Association ("CTIA") at 3, Personal Communications Industry Association ("PCIA") at 3, California Public Utilities Commission ("CPUC") at 2, Florida Public Service Commission ("FPSC") at 1, U.S. Small Business Administration ("SBA") at 5-6, and U.S. General Services Administration ("GSA") at 3-5.

^{2/} Comments of NYNEX Telephone Companies ("NYNEX") at 7.

^{3/} Comments of GTE Service Corporation at 5; *accord*, United States Telephone Association ("USTA") Comments at 3.

Residence & Business Markets" (the "ConStat Study"). That Study is at best a flimsy attempt to prove quantitatively that provider portability is not as important to telephone subscribers as virtually all of the non-LEC commenters and the Commission believe.

The ConStat Study concludes that

[w]hen making the decision regarding switching local and toll services to another company, in general businesses will consider pricing more heavily than the ability to keep their telephone number. In fact, the barrier of having to switch telephone numbers can be overcome by reasonable discounting strategies.

ConStat Study at 17.

Behind these generalizations, the numerical data set forth in the ConStat Study in fact show that number portability is the most important factor in a number of customers' decisions whether to switch local providers, and that it was a significant factor in almost all the scenarios discussed in the Study. For example, while 10% of the businesses participating in the Study would switch local providers if no discount were offered by the new provider, even if they had to change telephone numbers as a result, more than twice that number -- 21% -- would switch providers if portability were available.^{4/} Thus, according to Pacific Bell's own Study, provider portability is a more significant factor in a business customer's decision to change local service providers when no discount is offered. And if a competing local provider offered a 25% discount, one-third more business customers surveyed (45%) would change local providers if they could retain their telephone numbers than would business customers (34%) that had to change telephone numbers.^{5/}

^{4/} ConStat Study at 49.

^{5/} *Id.*

Moreover, the results of a survey by The Gallup Organization for MCI Telecommunications Corporation ("MCI") concluded that 83% of business customers believed that retaining their telephone numbers when switching local providers was important and 80% of residential customers reported that they would be very unlikely or somewhat unlikely to change providers if they also had to change telephone numbers.^{6/} These results are not atypical. In fact, Sprint has stated that "[e]very survey on this topic of which Sprint is aware supports the conclusion that service provider portability for geographic telephone numbers is an important influence on customers' willingness to use a competitive local service provider."^{7/}

The striking discrepancy between the LECs' position and that of the other commenters can possibly be explained only by the self-interest of those carriers in retaining their monopolistic market shares in local service, something the General Services Administration seems to have alluded to in its Comments, when it stated that "the likelihood of market forces alone resolving the problems of number portability are remote because there are forces in the market that have an interest in delay, if not outright failure, of the effort to achieve effective number portability."^{8/}

The irrebuttable preponderance of views and data presented in the initial comment round therefore argues for a prompt deployment of service provider number portability because of the certain benefits it will bring to local competition.

^{6/} The Gallup Organization, "Local Number Portability National Study" (November, 1994), Attachment A to MCI Comments, Executive Summary at 2-3.

^{7/} Sprint Comments at 4-5.

^{8/} GSA Comments at 7.

B. A Commission Mandate is Required to Ensure the Prompt Implementation of Number Portability.

Because of the previously noted reluctance of certain market forces, *i.e.*, the incumbent LECs, to implement number portability (a fact proved by their virtually uniform resistance to the notion in their initial comments in this proceeding), the Commission should issue specific standards for the implementation of provider number portability and a date certain by which specified goals must be met. Only under the compulsion of a mandatory timetable will industry forces that are best suited to resolve the highly technical issues involved in provider portability be able to reach a consensus. Perhaps mindful of past experience with 800 number portability or expanded interconnection, numerous commenters reached the identical conclusion in their initial submissions.^{2/}

As Time Warner stated, "LECs obviously stand to benefit from refusing to cooperate since such refusal helps them to retain customers. The implementation of service provider portability, then, represents a classic case of market failure justifying government intervention."^{10/} As it did with expanded interconnection and 800 number portability, the Commission should be proactive in this docket to ensure that the benefits that are widely expected to result from provider portability are made available to the public at the earliest convenience.

^{2/} See, *e.g.*, Comments of AT&T at 38, GSA at 7-9, MCI at 6, Sprint at 9-10, Nextel Communications, Inc. ("Nextel") at 9, PCIA at 7, and Time Warner Communications Holdings, Inc. ("Time Warner") at 5, 9, 15-16, & 19-20.

^{10/} Comments of Time Warner at 7.

C. The Commission Should Convene a Multi-Sector Task Force to Resolve Technical Issues and Craft a Plan for Nationwide Number Portability.

In furtherance of this goal, the Commission should, as TRA proposed in its initial Comments, immediately begin to accept nominations for a multi-sector task force, composed of industry representatives (including LECs, IXC's, resellers, CMRS providers, and switch manufacturers), federal and state governments (particularly representatives of the State public utilities commissions, GSA, and the FCC), and consumer interests. The mission of the task force would be to identify and resolve the myriad complex technical and operational issues that will arise in designing a nationwide service provider portability plan, and eventually to propose a plan for national implementation which will be considered by the Commission and, through the Commission's processes, the public. The creation of such a task force enjoys wide support from diverse parties filing comments in the initial round,^{11/} and, according to at least one commenter, would be consistent with the precedential Commission action in CC Docket No. 92-237, with respect to administration of the North American Numbering Plan.^{12/} Moreover, given the diversity of views and interests involved in the design and implementation of a nationwide plan, the only hope of eventual success is to give each of the major interest groups the opportunity to play a role in development of the plan.

D. The Commission Should Assume a Leading Role in the Development of a Nationwide Plan for Number Portability.

Virtually all commenters stated that achievement of the overarching federal policy objectives at stake in this proceeding will require the Commission to take a strong leadership role

^{11/} See, e.g., Comments of SBC Communications, Inc. ("SBC") at 2-3, MCI at 7-10, FPSC at 7, Nextel at 9.

^{12/} Comments of SBC at 3.

in the development of a nationwide provider portability plan, with many commenters calling for specific standards for the nationwide plan, and one or more deadlines for design and implementation of the plan.

Considerable activity is already underway in several states to study, develop, and test different number portability solutions, a fact that further demonstrates the belief that number portability will enhance local competition and thereby benefit consumers. Such state activities should be encouraged by the Commission, as a number of commenters have argued,^{13/} since much can be learned from the states' experience in this area, but in the final analysis, the Commission should propose a uniform national plan that will bring seamless portability to all states. A few state interests have argued that the national plan should "recognize and accommodate" state interests,^{14/} and even allow for local, state, or even regional implementation of state-devised portability plans.^{15/} TRA believes that the states should play a significant role in the development of any national plan; but this is a textbook example of an area where the Commission can and should preempt inconsistent state actions to achieve legitimate federal goals. Many of the state interests participating in this proceeding have already recognized the need for a strong federal lead in developing some sort of national standard.

^{13/} Comments of CPUC at 2, National Association of Regulatory Utility Commissioners ("NARUC") at 4-5, Public Utilities Commission of Texas at 2-3.

^{14/} *E.g.*, Comments of NARUC at 6-7, *see* Comments of CPUC at 2.

^{15/} NARUC Comments at 6-7.

E. The Number Portability Plan, Including Provisions for Cost Recovery, Should Be Implemented in a Competitively Neutral Manner.

Several parties have asserted that the number portability plan the Commission ultimately adopts should be "competitively neutral" in both design and implementation. That is, the plan should not disproportionately burden or benefit incumbent market forces or newcomers.^{16/} For example, the LECs, which will admittedly bear the lion's share of the expense in reprogramming (and perhaps upgrading) their switching equipment to accommodate number portability, should be permitted to recover the costs they incur as a result; however, since all consumers will benefit from provider portability, the cost of the LEC upgrades should be spread evenly among all users of the service, including customers of both incumbent LECs and their competitors. This method of spreading the cost, which has been endorsed by several commenters,^{17/} would burden new market entrants and their customers less than the proposals of most of the LECs, that the "cost causers" -- presumably new carriers and their customers -- bear the full weight of the portability implementation costs.^{18/}

To further enhance the competitive neutrality of the national plan, the Commission should appoint a neutral party to administer any database that is required for the nationwide plan, as it has done with respect to the 800 database.^{19/} In addition, it should issue guidelines

^{16/} E.g., Comments of AT&T at 32-36, MCI at 20, SBC at 10-13.

^{17/} E.g., Comments of Sprint at 12-13, MCI at 17, SBA at 8 & n.5.

^{18/} E.g., Comments of USTA at 13.

^{19/} See Comments of AT&T at 33-34, Sprint at 8, MCI at 17, Bell South Telecommunications, Inc. at 20-22.

for the multi-sector task force to follow in designing and implementing the plan. Such guidelines might include:^{20/}

1. a requirement that portability be transparent to users and not result in a loss of quality, functionality, or access to services;
2. that the existing network infrastructure should be used to the maximum extent feasible;
3. competition should be open to all service providers, without licensing or similar fees;
4. all LECs should be equally benefitted and equally required to deploy the necessary network capabilities to furnish provider portability;
5. support of wireline portability should be made immediately available; support of wireless portability should be made available as soon as feasible, but by a date certain;
6. the plan should have minimal impact on numbering resources;
7. there should be no change to call rating;
8. calls originating or terminating with non-portability-equipped providers should be accommodated;
9. consistent national standards should be upheld while accommodating state interests;
10. the system database should be administration by a neutral party in a neutral manner, with nondiscriminatory access to database information and essential facilities; and
11. the plan should be completed and implemented by a specified date.

Finally, given the differing demands, resources, and sophistication of large and small LECs and the communities they serve, the Commission should consider imposing a phased implementation timetable, as a number of commenters have proposed,^{21/} perhaps beginning

^{20/} See Comments of MCI at 7-8, Sprint at 3.

^{21/} E.g., Comments of National Exchange Carrier Association ("NECA") at 2, FPSC at 2, Nextel at 5, Sprint at 11-12, SBA at 8-9.

with the largest urban markets (or LECs), and gradually expanding the requirements to encompass smaller markets (or LECs).

The Commission should also adopt Time Warner's proposal that LECs seeking pricing flexibility under price caps should be required to provide interim and permanent portability solutions as prerequisites to any grant of the LECs' requests.^{22/}

III. CONCLUSION

For the foregoing reasons, the Commission should assume a strong leadership role in promoting service provider number portability, and should establish and oversee a multi-sector task force to design a uniform nationwide plan for service provider portability. The Commission should strive to accommodate state interests through representation on the task force, but should recognize that overarching federal policy goals are at stake and must be protected through preemption of state action if necessary. A neutral third party should administer any database that is required as part of the national plan, and the plan should be designed and implemented in a competitively neutral manner.

Respectfully submitted,

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October 12, 1995

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^{22/} Comments of Time Warner at 14-15.