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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of	)	CC Docket No. 95-116
	)	RM 8535
Telephone Number Portability	)	DA 96-358
	)	

**COMMENTS OF COX ENTERPRISES, INC.**

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March 29, 1996

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## SUMMARY

The Commission's authority to adopt rules requiring implementation of true service provider local telephone number portability has been enhanced by the passage of the 1996 Act. The 1996 Act delegates specific authority to the Commission to implement true number portability. The Commission should use its power to mandate swift implementation by incumbent LECs, including the BOCs.

The 1996 Act clarifies the Commission's authority. The Commission must adopt rules for the implementation of true service provider local number portability and the definition of "number portability" in the 1996 Act requires implementation of true portability, not the inadequate interim portability measures now available from LECs. The 1996 Act also requires competitively neutral cost recovery. That requirement precludes LEC proposals to force new entrants to bear all of the costs of portability.

The Commission should require BOCs to implement true number portability before they are permitted to enter the interexchange and manufacturing businesses. Interim portability will not satisfy the "checklist" requirement in Section 271 once the Commission has adopted portability rules. Even if interim technologies could satisfy the checklist, requiring permanent portability will create positive incentives for the BOCs to implement true portability promptly and is consistent with the intent of the checklist provision.

Finally, number portability can be implemented quickly. Switch vendors have committed to a schedule that would permit widespread deployment of the leading portability technology in mid-1997. There is, therefore, no reason for the Commission to delay implementation of true service provider local telephone number portability.

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**COMMENTS OF COX ENTERPRISES, INC.**

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its comments in response to the Commission's Public Notice regarding the above-referenced proceeding.<sup>1/</sup> The Public Notice seeks additional comments on how the passage of the Telecommunications Act of 1996 (the "1996 Act") affects the issues raised in the Notice of Proposed Rulemaking in this proceeding.<sup>2/</sup> As described below, the 1996 Act enhances the Commission's existing power to require the implementation of telephone number portability and permits the Commission to adopt rules that will increase the incentives for the Bell Operating Companies to implement portability promptly. At the same time, events since the adoption of the NPRM show that it is reasonable for the Commission to require implementation of number portability on an expedited schedule.

**I. Introduction**

Cox is an active participant in the development of local telephone competition in the United States. Cox holds two licenses for personal communications services, including a

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<sup>1/</sup> "Further Comments, Telephone Number Portability," Public Notice, DA 96-358, rel. Mar. 14, 1996 (the "Public Notice").

<sup>2/</sup> *Telephone Number Portability*, Notice of Proposed Rulemaking, 10 FCC Rcd 12350 (1995) (the "NPRM").

license earned through the Commission's pioneers preference program for the Los Angeles MTA, and is a partner in Sprint Spectrum, L.P., which holds PCS licenses covering most of the nation. Cox also is one of the largest cable operators in the country and has been a leader in the development of cable-based telephony, to be offered in competition with incumbent local exchange carriers.

Cox participated in the earlier phase of this proceeding as a member of the Ad Hoc Coalition of Competitive Carriers.<sup>3/</sup> The Coalition urged the Commission to adopt rules requiring prompt implementation of true local service provider number portability. Coalition Comments at 15-17. The Coalition also demonstrated that carriers should bear their own costs of implementing portability and that interim portability measures are not sufficient to level the playing field for the development of competition. *Id.* at 18-20, 21-23.

Nothing in the 1996 Act prevents the Commission from adopting rules consistent with those supported by the Coalition last year. Indeed, the 1996 Act reinforces the Commission's authority to require uniform implementation of true service provider number portability. At the same time, the provisions of the 1996 Act governing BOC provision of interexchange service give the Commission a new tool to encourage prompt deployment of true service provider number portability. In other words, the 1996 Act represents a significant step forward in the efforts to make number portability a reality.

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<sup>3/</sup> See Ad Hoc Coalition of Competitive Carriers (the "Coalition") Comments, filed Sep. 12, 1995; Coalition Reply Comments, filed Oct. 12, 1995. Cox also has been an active participant in other Commission proceedings concerning numbering issues and was an early proponent of number portability. See, e.g., Comments of Cox Enterprises, CC Dkt. No. 92-237 (Administration of the North American Numbering Plan), filed Sep. 27, 1995; Comments of Cox Enterprises, IAD 94-104 (Teleport Petition for Declaratory Ruling on Pacific Bell Area Code Relief Plan), filed Jan. 30, 1995, at 16-19 (urging the Commission to "establish specific requirements and deadlines for implementation" of true number portability).

## **II. The 1996 Act Reinforces the Commission's Authority to Adopt a Nationwide Number Portability Solution.**

One question that the Commission was attempting to address in the NPRM was the extent of its authority to require nationwide implementation of true number portability. *See* NPRM, 10 FCC Rcd at 12361-63. The Commission's tentative conclusion that it did have the authority to require number portability was based on sound analysis of its responsibilities under the Communications Act as it existed in 1995. *Id.* Nevertheless, some parties believed that the Commission's role was more limited. *See, e.g.,* AirTouch Paging/Arch Communications Group Comments at 10-12; Bellsouth Corporation Comments at 50-52. Congress has now settled this question in the Commission's favor by adopting the 1996 Act, which gives the Commission broad authority over number portability and telephone numbering issues in general.

Number portability is addressed by several new provisions. First, all local exchange carriers have a "duty to provide, to the extent feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2). "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. § 3(30). Number portability also is part of the "competitive checklist" that BOCs must meet before they can offer in-region interexchange service or manufacture telecommunications equipment. 47 U.S.C. § 271(c)(2)(B)(xi).

These provisions eliminate any doubt that the Commission has the authority to adopt rules governing true service provider local number portability. Indeed, the 1996 Act directs

the Commission to adopt rules. *See* 47 U.S.C. § 251(d)(1) (requiring rules to implement Section 251 within 6 months of adoption of 1996 Act). These provisions do not, however, confer any additional obligation on the Commission to order location portability or service portability.<sup>4/</sup>

The Commission also has been granted plenary authority over all numbering issues. Under Section 251(e), “[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.” 47 U.S.C. § 251(e)(1). With this power, the Commission also has been granted the authority to delegate numbering administration to neutral entities and other numbering powers to states or other entities. *Id.* These provisions reinforce the authority over number portability granted by Section 251(d)(1). They also permit the Commission to give the States a role in the implementation of the number portability mechanism adopted at the national level.

Section 251(e) also addresses how the costs of number portability should be recovered and gives the Commission the power to determine the cost recovery mechanism. Under Section 251(e), the costs of number portability “shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” 47 U.S.C. § 251(e)(2). The requirement that cost recovery be competitively neutral is consistent with

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<sup>4/</sup> As described in the Coalition’s comments, service provider portability should be defined to include portability between wired and wireless carriers. Coalition Comments, Appendix at 1. This approach is consistent with the 1996 Act, which defines number portability in terms of customers changing from one “telecommunications carrier” to another. The term “telecommunications carrier”, unlike “local exchange carrier,” includes CMRS providers. *Compare* 47 U.S.C. § 3(26) (defining local exchange carrier) *with* 47 U.S.C. § 3(44) (defining telecommunications carrier).

the cost recovery mechanism proposed by the Coalition, under which each carrier providing number portability would bear its own costs of implementation.<sup>5/</sup>

In sum, the 1996 Act confirms the NPRM's initial conclusion that the Commission has the authority to require the implementation of true service provider local number portability and defines important elements of the number portability regime that the Commission must adopt. The Commission's role now is to ensure that number portability is implemented promptly, efficiently, and in a way that promotes the growth of competition across the country.

### **III. The Commission Should Not Permit the Use of Interim Number Portability Measures to Satisfy the 1996 Act BOC Checklist Requirements.**

In addition to giving the Commission the unambiguous power to adopt number portability requirements, the 1996 Act requires BOCs to offer number portability before they can obtain authority to offer in-region interexchange services or to manufacture telecommunications equipment. *See* 47 U.S.C. § 271(c)(2)(B)(xi). The Commission should not permit interim number portability technologies to satisfy the checklist requirements once portability rules are adopted.<sup>6/</sup> Only permanent portability will satisfy the requirements of

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<sup>5/</sup> *See* Coalition Comments at 21. Some LECs argued that new entrants should bear a disproportionate burden of the costs of number portability. *See, e.g.,* SBC Corp. Comments at 6. Such an approach would be inconsistent with the competitive neutrality principle because it would unreasonably burden new entrants while imposing no burden on incumbents. In addition, because not all new entrants will begin providing service at the same time it would be extremely difficult to allocate number portability costs on a competitively neutral basis unless each carrier bears its own costs of implementation.

<sup>6/</sup> While the 1996 Act permits BOCs to use "interim telecommunications number portability" measures to meet the checklist until the Commission adopts permanent rules, there is no meaningful likelihood that any BOC will apply for authority to enter the interexchange and manufacturing markets before there are permanent rules. First, the Commission has committed to issuing number portability rules in May, so there is very little  
(continued...)

the 1996 Act and, in any event, requiring permanent portability to be implemented will create positive incentives for BOC behavior.

First, the 1996 Act does not contemplate that interim portability will be sufficient to fulfill a BOC's obligations under the checklist. The definition of number portability under the 1996 Act requires that it be "without impairment of quality, reliability, or convenience." 47 U.S.C. § 3(30). As the Coalition and other commenters demonstrated, all interim portability technologies meaningfully impair the quality of telephone service, and make it impossible for new entrants to offer ported customers popular optional services. *See, e.g.,* Coalition Comments at 18-20. Thus, interim measures will not meet a LEC's obligations under Section 251(c)(2).

For that reason, interim measures will not be sufficient for a BOC to meet its independent number portability obligations under the Section 271 checklist once the Commission adopts regulations. Section 271 requires "full compliance" with the Commission's regulations implementing true number portability — that is, the regulations implementing Section 251(c)(2) — before a BOC can obtain authority to provide in-region interexchange service or to manufacture telecommunications equipment. 47 U.S.C. § 271(c)(2)(B)(xi). Because interim portability does not meet the requirements of Section 251(c)(2), it also cannot meet the requirements of Section 271 once the Commission has adopted number portability rules. Thus, BOCs will have to implement true service provider local number portability before they can obtain interexchange and manufacturing relief under Section 271.

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6/ (...continued)

time for any BOC to comply with the rest of the checklist. Second, the Commission does not plan to adopt its interconnection rules until August, so it would be impossible for a BOC to comply with the checklist until that time.

Even if the Commission were not required to reach this result by the statute, there are good policy reasons to require BOCs to implement true number portability before they are eligible to obtain interexchange and manufacturing relief. The underlying goal of Section 271(c)(2)(B) is to assure that all barriers to local exchange competition are lifted before the BOCs are freed from the restraints of the AT&T Consent Decree. Implementation of true number portability is one of the most important elements in assuring that those barriers are removed. As a result, requiring true number portability to meet the checklist requirement is consistent with Congressional goals.

At the same time, requiring true number portability to satisfy the checklist requirement will create the proper incentives for BOCs to implement portability. If the BOCs are free to enter the interexchange and manufacturing marketplace before they implement true number portability, they will have little incentive to meet any deadlines the Commission may set. It also will be difficult for the Commission to withdraw interexchange and manufacturing authority once it is granted. Indeed, the only time when the Commission will have sufficient leverage to encourage prompt implementation of true number portability (or, for that matter, compliance with any of the checklist items) is before the BOCs enter the interexchange and manufacturing markets.

Moreover, requiring implementation of true number portability will not be overly burdensome for the BOCs because it will not significantly delay their compliance with the checklist as a whole. As shown below, true number portability can be implemented in the near future, most likely on a shorter schedule than proposed by the Coalition last fall. Thus, implementation of true number portability will not create any significant delays in BOC entry into the interexchange and manufacturing businesses. This fact, when considered together with the substantial public policy benefits of swift implementation of true portability,

removes any question of whether the Commission should require true service provider number portability as a condition of satisfying the checklist requirements.

**IV. Events Since the NPRM Demonstrate that It Is Feasible to Require Permanent Number Portability on an Expedited Schedule.**

Section 251(c)(2) requires LECs to implement number portability “to the extent technically feasible.” 47 U.S.C. § 251(c)(2). Events since the time of the NPRM have shown that true number portability is technically feasible, and that it can be implemented on an expedited schedule.

Since the NPRM, several states have considered how and whether to implement number portability. The states that have reached conclusions all have found that it is technically feasible and desirable to implement number portability, using the Location Routing Number (“LRN”) mechanism proposed by AT&T.<sup>7/</sup> Similarly, in California a clear majority of participants in that State’s number portability workshop favored LRN.<sup>8/</sup>

While the developing consensus around LRN is significant, the timing of implementation is equally important. Based on information provided by switch manufacturers to the California task force, it is likely that LRN will be available on a

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<sup>7/</sup> See, e.g., California Local Number Portability Task Force Report, Feb. 29, 1996, submitted in Cal. PUC dockets R.95-04-043 and R.95-04-044 (the “California Report”), Attachment 10 (describing results in other states).

<sup>8/</sup> See California Report at 28-29. The task force did not recommend LRN as the technology because of dissents from Pacific Bell, GTE and their affiliates. Pacific Bell supports technologies that depend on the facilities of a ported customer’s original carrier. For the reasons described by the Coalition, this approach is unacceptable. Coalition Comments at 19. GTE, on the other hand, supports a proposal that would assign all portable customers to a new non-geographic area code. This would require a ported customer to change her number when she first opted for portability, contrary to the requirements of the 1996 Act.

commercial basis by the middle of 1997, or about fifteen months from the date of these comments. *See California Report, Attachment 8.*

These commitments establish both that LRN is technically feasible and that it can be made available to all local exchange carriers within a very short time. In this context, it is evident that the schedule proposed to the Commission in the Coalition comments last fall is quite reasonable. Under that schedule, LECs would have been required to implement number portability within 24 months of adoption of Commission rules in the top 100 MSAs and within 24 months of a request from a competing provider in all other areas. Coalition Comments at 15-17. With commercial availability of LRN now scheduled for mid-1997, implementation within 24 months is eminently reasonable. Indeed, LECs should be able to implement true number portability well before the 24 months expires, especially if the Commission's order in this proceeding is delayed for any period of time. In that context, the Commission may wish to permit the States to require shorter implementation periods if individual States want to obtain the benefits of true number portability as quickly as possible.

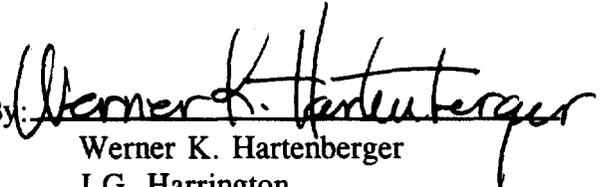
#### **V. Conclusion**

For all of these reasons, Cox Enterprises, Inc. urges the Commission to adopt regulations requiring the implementation of true service provider local telephone number

portability, in accordance with these comments and with the comments filed by the Coalition in this proceeding.

Respectfully submitted,

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March 29, 1996

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 29th day of March, 1996, I caused copies of the foregoing "Comments of Cox Enterprises, Inc." to be served by hand-delivery to the following:

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