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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

SUPPLEMENTAL COMMENTS OF OMNIPOINT CORPORATION

Omnipoint Corporation ("Omnipoint") hereby responds to the Commission's March 14, 1996 public notice¹ requesting further comment on how the provisions of the Telecommunications Act of 1996 ("1996 Act")² affect the Commission's number portability decisions in this proceeding.

The 1996 Act resolves many of the issues initially raised in this proceeding by establishing that all local exchange carriers ("LECs"), including independent telephone companies and RBOCs, have a duty to offer service provider number portability "to the extent technically feasible." As explained below, the 1996 Act requires more than interim number portability. Congress expressly defined "number portability" and required the Commission to implement a long-term solution. To recover the costs of number portability in a competitively neutral manner, each LEC should bear the costs of improving its own network, while common

¹ "Further Comments, Telephone Number Portability," DA 96-358 (released March 14, 1996). Omnipoint filed comments in this proceeding on September 12, 1995, and reply comments on October 12, 1995, in response to the Commission's Notice of Proposed Rulemaking, 10 FCC Rcd. 12350 (1995) ("NPRM").

² Pub. L. 104-104, 110 Stat. 56 (1996). In these comments, references to provisions of the 1996 Act will be made to the specific section to be codified.

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costs of the database, maintenance and administration should be shared by all carriers in a given market.

DISCUSSION

I. The 1996 Act Directs the Commission to Set An Implementation Plan that Ensures Long-Term Number Portability

Number portability is directly addressed in four separate provisions of the 1996 Act. 47 U.S.C. §§ 153(44), 251(b)(2), 251(e), 271(c)(2)(B)(xi). These provisions resolve and clarify several issues raised by the NPRM and the comments.

A. The FCC is required to implement a uniform number portability plan

At ¶¶ 28-34 of the NPRM, the Commission tentatively concluded that it had authority to implement a "uniform, national number portability plan" because it would serve several federal interests.³ While these federal interests amply established the Commission's authority, the passage of the 1996 Act leaves no doubt that the Commission is authorized, and even required, to implement the LECs' duty to offer service provider number portability. As part of its Section 251 interconnection obligations, all LECs,⁴ including independent telephone companies and RBOCs, have a "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2). The

³ The NPRM identified the following federal interests in number portability: effect on the competitive market for interstate telecommunications (¶29); diverse state implementation would frustrate Commission control over interstate and international communications (¶30); efficient use of the numbering resource (¶ 31).

⁴ Under the 1996 Act, the term "local exchange company" does not include a CMRS operator. 47 U.S.C. § 153(44). Thus, CMRS operators are not subject to Section 251(b) requirements.

Commission is directed to implement a number portability plan by August 8, 1996.⁵ 47 U.S.C. § 251(d)(1) ("Commission *shall* complete all actions necessary to establish regulations to implement the requirements of this section.") (emphasis added). Consistent with the Congressional mandate, Omnipoint strongly endorses an expeditious implementation plan.

B. The FCC regulations must implement long-term service provider number portability

Congress provided a clear mandate for the Commission to implement long-term number portability in this proceeding, as evidenced by the definition of "number portability," the number portability requirement within the 1996 Act's broader focus on local exchange competition, and the number portability requirements of the Section 271 competitive checklist.

"Number portability" is defined by the 1996 Act as follows:

(46) NUMBER PORTABILITY. - The term 'number portability' means 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(46).

This definition establishes the LECs' statutory obligation to offer number portability that is transparent to the customer. A customer switching to a competitive carrier should not suffer *any* degradation in "quality, reliability, or convenience." However, the interim measures proposed by the LECs, such as remote call forwarding ("RCF") and direct inward dial trunks ("DID") will, in fact, cause customers who switch to competitive carriers to suffer losses in the

⁵ The Commission has estimated that an order in this proceeding will be issued in May, 1996. Draft FCC Implementation Schedule for S.652, "Telecommunications Act of 1996" (revised March 27, 1996). As discussed herein, the 1996 Act resolves many issues raised by the NPRM, and so Omnipoint urges the Commission to keep to its schedule of a May order in this proceeding.

quality of service, reliability, and convenience that they would otherwise enjoy. As MCI explained, RCF and DID cause loss of CLASS features (such as caller i.d., automatic callback, and automatic recall), additional call set up time, impairment of 911 and E-911 service, and confusing customer bills. Comments of MCI at 21-22 (filed Sept. 12, 1995). *See also id.*, Appendix D at 4-8 (technical analysis shows that RCF and DID would result in several specific deficiencies). Time Warner Telecommunications also demonstrated that RCF and DID "suffer from severe competitive and technical problems," and "both services inefficiently utilize numbering resources and prevent subscribers from receiving certain CLASS features." Comments of Time Warner Telecommunications at 9-10 (filed Sept. 12, 1995). Time Warner also offered a detailed analysis of inefficiencies and service limitations of RCF and DID. *Id.*, Appendix B at 7-8.

Because the 1996 Act requires a number portability solution "without impairment of quality, reliability, or convenience" to the customer, the Commission must promulgate an implementation plan that entails more than simply RCF or DID. Further, interim measures seemingly frustrate the Congressional goals of Section 256 to promote "coordinated public telecommunications network planning," interconnectivity, and "the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks." 47 U.S.C. § 256(a)(1)(A), (B) & (2). Because LECs have a duty "not to install network features, functions, or capabilities that do not comply with the standards established pursuant to . . . section 256," 47 U.S.C. § 251(a)(2), RCF and DID may be contrary to the 1996 Act.

Long-term number portability is also consistent with the 1996 Act's broader interconnection goals.⁶ The entire purpose of Title II, Part II is to provide a new regulatory framework to encourage competition at the local level.⁷ Number portability is key to that plan because it will permit customers to switch to a competitive carrier based on the service offerings and prices found in the marketplace, without bearing the expense and disruption of changing telephone numbers. Interim solutions, however, are contrary to this Congressional goal because they provide for all local calls to be routed through the incumbent LEC,⁸ thereby reinforcing the existing "bottleneck" that local competition is meant to supersede.

⁶ Remarks of Commissioner Susan Ness, Public Policy Forum Series, The Wharton School of the University of Pennsylvania, "New Telecommunications Marketplace: Radical Changes and Golden Opportunities (Feb. 22, 1996) (1996 Act "requires the FCC . . . to create a procompetitive environment for telephony. Components of that environment include . . . number portability -- so customers don't have to give up their telephone identity when they change local service providers").

⁷ See, e.g., 47 U.S.C. §§ 251(b) (all LECs have resale, interconnection, dialing parity, and number portability duties to other local competitors); 251(c) (further safeguards for new entrants are imposed on incumbent LECs); 251(e)(1) (RBOC-controlled numbering administration shall be replaced with "one or more impartial entities" and numbers will be available "on an equitable basis"); 252 (state and federal review establish process for fair interconnection terms with incumbent LEC); 253 (prohibition on state or local laws that prohibit new entrants from interstate or intrastate telecommunications market); 254(k) (non-competitive service revenue may not be used to subsidize service offered in competitive environment); 257(b) ("Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition . . . "); 259(a) (incumbent LEC shall share its facilities, technology, and information with competing qualifying carrier).

⁸ As Omnipoint and many other commenters in this proceeding pointed out, interim measures require the call to be routed through the incumbent LEC network and then to the competitive carrier. This subjects competitors, and their customers, to the incumbent LEC's pricing of interim measures, the incumbent LEC's system failures (or possible retaliation), and restrictions on service options. Essentially, interim measures fail here because they are not designed to promote efficient call routing between competitive local providers.

Finally, in establishing number portability as one of the fourteen conditions that must be met before an RBOC will be permitted to offer in-region, interLATA telecommunications services, Congress specifically noted that "interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible" would be tolerated only "[u]ntil the date by which the Commission issues regulations pursuant to section 251 to require number portability." 47 U.S.C. § 271(c)(2)(B)(xi). Thereafter, "full compliance with such regulations" would be required. *Id.* This provision demonstrates that Congress knew very well the difference between "number portability" and interim measures such as RCF and DID. Congress also recognized that RCF and DID do impair "functioning, quality, reliability and convenience" in a way that is unacceptable except in the very short term while the Commission promulgates its order in this proceeding. At a minimum, Section 271 establishes that RBOCs are not permitted to enter the in-region, interLATA services market until they offer long-term number portability to local telecommunications competitors.

C. *Long-Term Number Portability Should Be Required As Soon As Technically Feasible*

In comments submitted prior to the passage of the 1996 Act, several LECs complained that number portability may be too expensive to implement.⁹ The Commission also expressed concern about the "relative costs and benefits associated with the current interim solutions to the costs and benefits associated with alternative longer-term solutions, " and how that should affect the transition from interim to long-term number portability. NPRM at ¶¶ 68, 53, 65.

⁹ Comments of GTE at 14, Appendix A (filed Sept. 12, 1995); Comments of NYNEX at 10 (filed Sept. 12, 1995). Bell South believes that no number portability, either interim or long-term, should be implemented until cost studies are conducted. Reply Comments of Bell South at 7-8 (filed Oct. 12, 1995).

Section 251(b)(2) of the 1996 Act simplifies the Commission's task by requiring all LECs, including independent telephone companies and RBOCs, to implement a long-term number portability scheme "to the extent *technically* feasible" (emphasis added). Economic feasibility, especially for incumbent local exchange companies that have historically avoided upgrades of their networks, is no longer a consideration in this proceeding. This conclusion is buttressed by the fact that Congress established an economic feasibility test for implementation of *other* portions of the 1996 Act not related to number portability, and yet it chose not to apply such a standard to number portability. See 47 U.S.C. § 251(f)(1)(A) (incumbent rural telephone company is exempt from Section 251(c) requirements until State Commission determines that interconnection request is "not unduly economically burdensome, is technically feasible . . . "); *id.* at § 254(h)(2)(A) (Commission shall establish rules "to enhance, to the extent technically feasible and economically reasonable," access to advanced and information services for schools, health care providers and libraries). The Commission should require long-term number portability as quickly as it is technically feasible, and may not add economic feasibility considerations into this proceeding where Congress chose not to. City of Chicago v. Environmental Defense Fund, 114 S. Ct. 1588, 1593 (1994) (" '[I]t is generally presumed that Congress acts intentionally and purposely' when it 'includes particular language in one section of a statute but omits it in another' "), *citing*, Keene Corp. v. United States, 508 U.S. 200, 208 (1993) (citations omitted); MCI Telecommunications Corp. v. AT&T, 114 S. Ct. 2223, 2232 n. 4 (1994) (FCC and courts "are bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.").

II. To Assess the Costs of Number Portability in a Competitively Neutral Manner, Each Carrier Should Be Responsible For Improving Its Own Network

At ¶¶ 53-54 of the NPRM, the Commission sought comment on what cost and cost recovery methods would be appropriate to implement number portability. Several LECs

suggested that competitors ought to share in the costs of upgrading the LEC network in order to meet the demands of the number portability implementation,¹⁰ in addition to paying a ratable portion of the continuing common costs of numbering databases and administration.

The 1996 Act clarifies this issue by providing that "[t]he costs of establishing . . . 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 statutory standard of competitive neutrality requires that the Commission not force new entrant competitors to pay for the incumbent LECs' network upgrade. In a competitive environment, each local exchange provider makes its own system upgrade decisions and bear its own costs, including the deployment of SS7 or advanced intelligent network services.¹¹ The improvements made become part of the value of the individual carrier's network, and the profits from those investment decisions are certainly not shared with its competitors. Therefore, spreading the costs of a particular carrier's network and investment decisions to all competitive carriers is completely contrary to a competitively neutral approach. Competitive neutrality can only be maintained if each carrier invests in its network equipment based on the fact that it alone must pay for those decisions, so long as the system meets Commission's requirements. Further, requiring new entrants to pay for an incumbent LEC's past decisions not to upgrade its system (and accommodate earlier local competition) essentially asks the new entrant to pay twice: once for the costs and revenue losses that lack of number portability has imposed on its current business, and then for the incumbent to update its network.

¹⁰ Comments of Cincinnati Bell Telephone Company at 10 (filed Sept. 12, 1995); Comments of Pacific Bell at 14; Comments of NYNEX at 21-22 (filed Sept. 12, 1995); Reply Comments of Ameritech at 7 (filed Oct. 12, 1995).

¹¹ *See also*, Comments of Citizens Utility Company at 10 (filed Sept. 12, 1995).

To keep the costs of entry into the local exchange market at a minimum, each carrier should be required to pay only a pro-rata portion of the common costs associated with number portability. Thus, local competitors should share in the costs of establishing an independent database and facilities, as well as the maintenance and administrative costs of such database.

CONCLUSION

The 1996 Act mandates the adoption of long-term number portability in this proceeding, and Omnipoint urges the Commission to fulfill that mandate expeditiously in order to facilitate the beginning of local exchange competition.

Respectfully submitted,

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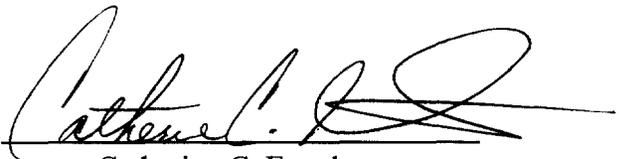
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