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

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In the Matter of	)	CC Docket No. 95-116
	)	
Telephone Number Portability	)	RM 8535
	)	
	)	FCC 96-286

PETITION FOR RECONSIDERATION AND CLARIFICATION  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION  
AND THE  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES

Pursuant to 47 C.F.R. § 1.429, the National Telephone Association ("NTCA") and Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") submit this Petition for Reconsideration and Clarification of the Commission's First Report and Order released in the above proceeding on July 2, 1996.

NTCA and OPASTCO are national associations that together represent approximately 800 small LECs serving rural areas of the United States.

In their comments filed in this proceeding, NTCA and OPASTCO each suggested that the Commission should not mandate small and rural LEC deployment of number portability in rural areas where there is no demand for the service.<sup>1</sup> However, the rules adopted in the Report

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<sup>1</sup> NPRM at ¶ 73.

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and Order do not provide for an exemption from the mandatory deployment schedule. As a result, rural telephone companies that operate in the 100 largest MSAs will have the mandatory obligation to provide portability under schedules that require deployment of long-term service portability by December 31, 1998, regardless of whether they have received a request to provide the service. Commission rules take account of the differing levels of local exchange competition in rural areas by requiring the deployment of long-term number portability outside the 100 largest MSAs within six months of a specific request but fail to account for any differences that might involve sparsely populated areas within the 100 MSAs where rural telephone companies serve.<sup>2</sup>

NTCA and OPASTCO request that the Commission reconsider and clarify its rules to state that rural telephone companies are not required to provide service provider portability under the mandate that applies to LECs in the 100 MSAs until they have received a specific request to provide that service. Reconsideration and clarification is necessary because the Act provides no automatic exemption from the requirements of Section 251(b).<sup>3</sup> Moreover, the

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<sup>2</sup> The National Exchange Carrier Association (NECA) has identified 115 study areas of tariff pooling companies that are "rural telephone companies", as defined by the Telecommunications Act of 1996, which operate in the 100 largest MSAs. NECA's identification of these companies is based on the 1994 LEC boundary file data from Claritis, Inc., a data mapping firm; 1990 census block group boundaries from U.S. Census Bureau; and NECA's July 1995 Tariff 4 data on switch locations.

<sup>3</sup> The Commission does not directly address the concerns raised by the rural telephone companies in their comments but states that the Telecommunications Act of 1996 ("Act") exempts rural telephone companies from the "duty to negotiate. . . the particular terms and conditions of agreements to fulfill [interconnection] duties created by the Act. [citing Section 251(c),(f)]. . . ." The Commission also states that LECs with fewer than two percent of the country's total installed subscriber lines may obtain suspensions or modifications of the requirements of Section 251 [citing Section 251(f)(2)]. NPRM at ¶83. The Commission has incorrectly relied on Sections 251(c) and (f) in support of its conclusion that rural telephone companies are per se exempt from number portability requirements. The exemption in Section 251(f)(1) is only available for relief from the duties imposed on incumbent LECs in Section

legislative history demonstrates that the obligations imposed on all LECs in Section 251(b) were not intended to apply to any LEC, let alone a small rural LEC, until a LEC received a request to provide the particular service or access. The Manager's Report states:

The conferees note that the duties imposed under new section 251(b) make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with or provide services using the LEC's network.<sup>4</sup>

At paragraph 82, the Commission recognizes that the pace of competitive entry into local markets should determine the need for service provider portability.<sup>5</sup> Thus failing to account for any differences that might involve sparsely populated areas within the top 100 MSAs flies in the face of the Commission's own logic.

Reconsideration and clarification of the rule will be consistent with the Commission's intent to phase implementation so as to meet the needs of different levels of competition and take account of economic factors. Limiting the rural telephone companies' obligation to instances that only involve a request for service would prevent the deployment of technologies that are not currently needed by competitors in these areas. A rule requiring deployment in areas where competitors have not made a request will result in no public benefits while imposing

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251(c). Rural telephone companies may, however, obtain suspensions and modifications from the duties imposed on all LECs in Section 251(b) since number portability is a duty imposed by that subsection. In view of the clear Congressional intent, the companies cannot rely on the Commission's statement (NPRM at ¶83) that the 251(f)(1) exemption from the "duty to negotiate . . ." extends to an exemption from Section 251(b) obligations.

<sup>4</sup> Joint Managers' Statement, S.Conf.Rep.No. 104-230, 104th Cong., 2d Sess. 121, (1996) ("Joint Explanatory Statement").

<sup>5</sup> NPRM.

burdensome costs on rural telephone companies, their customers and other users of the network who will be required to bear the common costs of deployment.

The Commission should also reconsider conclusions made in its Final Regulatory Flexibility Analysis. In that analysis, the Commission did not address the impact of the rules on incumbent LECs that are small businesses.<sup>6</sup> All NTCA and OPASTCO members come under the Small Business Administration ("SBA") definition of a "small business" or "small entity" subject to the protections afforded by the Regulatory Flexibility Act ("RFA"). The SBA definition of a "small entity" ordinarily determines what entities are "small" for purposes of the RFA analysis.<sup>7</sup> SBA regulations in 13 C.F.R. § 121.201 set the eligibility criteria for the SIC codes that describe LEC business operations at fewer than 1500 employees.

The RFA requires that the Commission consider alternatives that reduce adverse economic and other harmful impacts on "small entities" or "small businesses." The Commission's RFA analysis did not consider alternatives suggesting an exemption for the rural

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<sup>6</sup> NPRM, Appendix C, C2 at ¶5. This conclusion is inconsistent with the First Report and Order in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, ¶1330 (released August 8, 1996). There, at least, the Commission addressed the impact of its rules on small incumbent LECs even though it did not squarely conclude that they are "small entities" for purposes of the RFA.

<sup>7</sup> The RFA in 5 U.S.C. §601 (3) requires that the Commission consult with or use SBA definitions. It provides: "the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, 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 definition(s) in the Federal Register." *See also*, 13 C.F.R., section 121, which contains the SBA's section 3 definitions and procedures for other Government agencies to consult with the SBA when they define a small business. Despite the Commission's statement to that effect, the SBA section 3 definition contained in the regulations does not conclude that all incumbent LECs are dominant.

telephone companies that are small businesses. It should now do so in connection with this reconsideration and clarification of its rules and make it clear that it has considered and selected the alternative which only requires rural telephone companies to provide portability upon a specific request. That alternative accomplishes the purposes of the Telecommunications Act of 1996 and fulfills the legislative intent that Section 251(b) duties only arise when specific requests occur. It also permits the Commission to achieve the purposes of the RFA as it weighs the costs and benefits of regulatory alternatives and designs regulations to impose the least burden on small entities and the public they serve.

#### Conclusion

For the above stated reasons, NTCA and OPASTCO request that the Commission reconsider and clarify its rules to provide that rural telephone companies are only required to provide service provider portability if they receive a specific request for the service.

Respectfully submitted,

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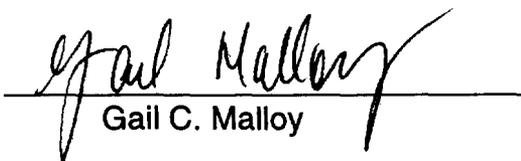
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August 26, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration and Clarification of the National Telephone Cooperative Association and the Organization For The Promotion And Advancement of Small Telecommunications Companies was served on this 26th day of August 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached service list:

  
Gail C. Malloy

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