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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

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Petition for Reconsideration

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SUMMARY

USTA proposes three specific changes to the First Report and Order which will reduce the costs of local number portability, lead to more efficient deployment, and avoid unnecessary administrative burdens. Specifically, USTA respectfully requests that the Commission:

- 1) reconsider its decision to “effectively preclude” carriers’ option to use the Query-on-Release (QoR) methodology for providing LRN-based number portability;
- 2) reconsider its conclusion that the Communications Act requirement that LECs provide “number portability” includes portability for non-geographic numbers, and
- 3) Adopt measures which permit deployment of local number portability in response to market forces, specifically:
 - a) establish that the absence of a request for number portability by April 1, 1997, by any facilities-based competitor is grounds for a waiver of the deployment schedule, and
 - b) permit a carrier with a de minimis presence in an MSA to deploy local number portability under the same rules as other carriers outside the MSA. These changes will help ensure that the Commission’s rules fulfill its goals in this proceeding.

The Commission concludes that the requirement that the solution not require carriers to rely on facilities or services provided by other carriers “will effectively preclude carriers from implementing QoR.” The Commission apparently bases this conclusion on two additional grounds: 1) QoR is technically inferior and does not meet the Commission’s performance criteria; 2) there is no significant savings from QoR. But QoR does meet the Commission’s performance criteria, and will result in significant savings.

USTA stresses that its members seek only the option to deploy QoR in their own networks, not to require use of QoR as a mandatory industry standard. Additionally, it should be remembered that QoR is an adjunct or enhancement to LRN, not a substitute methodology.

The primary objection to QoR appears to be that it will require reliance on the incumbent LEC’s network. In the first instance, any method for local number portability or any other scheme in which calls are placed by one carrier’s customer to another carrier’s customer requires dependence to a significant degree on the other carrier’s network. But one carrier’s decision to utilize QoR in its own network has no effect on the dependency of other carriers on the incumbent LEC’s network. CMRS providers, CLECs, and other LECs remain free to determine whether or not a data message will be first directed to an incumbent LEC before determining whether a LRN database query is required. QoR does not require competing LECs to rely on the incumbent LEC to process calls originated by their customers, nor for calls to be terminated to their customers.

Because optional QoR does not force reliance on the incumbent LEC’s network, it presents no concerns about call blocking, or interoperability which would justify prohibiting carriers from utilizing that method in their own networks. QoR can be deployed in one carrier’s network without having any effect on calls placed by any other carrier’s customers to a terminating number, including those in the network of the QoR deploying carrier.

The Commission also apparently determined that QoR must be rejected because it would increase post-dial delay. Information available to USTA is that the additional time is about .5 second maximum, and that additional time is imperceptible to the calling party. This point is supported on the record, even by the opponents of QoR. Rather, the opponents of QoR argue that the existence of post-dial delay can be used as a “marketing ploy” to discourage customers from changing carriers. But it is the calling party, i.e., the customer in the QoR deploying network, that experiences whatever additional time is necessary to complete the QoR sequence. There is no way that an incumbent LEC could use delay experienced by its own customers as a “marketing ploy” to discourage customers from porting their numbers.

The Commission apparently believes that QoR must be rejected because ported and non-ported numbers would be treated differently. As Bell Atlantic explained on the record, as long as the arrangement does not impair the “quality, reliability, or convenience” of the service, it meets the statutory requirements. See 47 U.S.C. § 153 (30). Additionally, LRN itself could be said to create service disparities. With LRN, when a given customer in an NPA/NXX ports his or her number to a new service provider, all customers, no matter whether across the country or in the next town, experience the slight additional delay required for the call suspension, database query, response, and call launch to be completed. But carriers deploying the QoR enhancement to LRN continue to complete calls to customers who have not moved in essentially the same manner as before. Only calls that require database dips experience the delay and expense of the dip. As such, QoR restores some of the disparity in call processing required by the LRN structure.

The Commission states that there is little evidence in the record to support the claim that the cost savings associated with the QoR query technique are significant. First Report and Order, para. 54. The Commission summarily dismisses the record evidence concerning the level of costs saved by QoR. The Commission also compares these figures to the potential costs to competitors, which it does not quantify.

As discussed above, where carriers exercise the option to utilize the QoR adjunct, the potential costs to competitors are nil, because one carrier’s decision to utilize QoR does not require reliance on that carriers’ network, does not require than the other carrier be QoR release-capable, or create any other potential costs. Consequently, any cost savings from one carriers’ decision to utilize QoR should not be compared to any “potential costs to competitors.”

With optional QoR, a considerable amount of costs may be avoided. This is true for all facilities-based carriers, including CLECs, who must pay for unnecessary queries on almost every call. Depending on the structure of a carriers’ network, QoR can result in significant savings. These savings result from reduced processing times required for the QoR sequence, and the elimination of database dips that would otherwise be required for every inter-office call.

MCI claims that the cost savings from a reduced SS7 query load are insignificant because most of the cost of local number portability will be incurred in upgrading infrastructure. But the cost of upgrading infrastructure is directly related to the level of capacity required of that infrastructure. The reduced number of database dips results directly in a reduced need for SCP capacity, signaling links, and other infrastructure, again resulting in lower capital costs. Reducing the capital costs will lead to a reduced cost recovery burden on carriers and end users, and to faster deployment.

The Commission states that the long-term solution also must not “result in unreasonable degradation in service quality or network reliability when implemented.” The additional option to complete a call with QoR, thus promoting efficient use of the SS7 network, enhances network reliability. Moreover, carriers’ ability to engineer their networks to provide the best service at the lowest cost and highest reliability is an important factor in the development of effective competition. In order to do permit carriers to exploit these options, they should have the freedom to utilize a QoR query methodology, either individually or cooperatively.

While only LECs are subject to the obligation to provide number portability, the Commission incorrectly states the nature of that obligation. According to the Act, “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.” The inclusion of the phrase “at the same location,” effectively excludes non-geographic telephone numbers such as 500 and 900 numbers from the definition of number portability. A customer of a 500 or 900 service purposefully has no “location,” where they receive service.

Even if the Commission determined, on its own authority, to require portability for 500 and 900 numbers, it should not require portability for LEC-assigned numbers only. If customer demand justifies portability of these numbers, then all carriers who provide services using those codes should participate in a portability plan. Selective deployment of the portability function would create disparate cost burdens, and competitive distortions. Customers would only be able to port 500-NXX numbers which had originally been assigned to LECs, which would unfairly prejudice certain carriers and subscribers. Since the record establishes that most customers of 500 and 900 services obtained service from an IXC, there would be little benefit to LEC-only portability for these numbers.

USTA agrees that the Commission’s choice of the Metropolitan Statistical Areas (MSAs) was a reasonably proxy for determining where number portability should be deployed most quickly in response to growing competition. But the MSAs are imperfect proxies - there are many carriers within the MSA who may not have a competing carrier to whom to port numbers.

Directly to the point, Congress explained that requiring LECs to undertake the significant expense needed to offer number portability in areas where no specific request has been made is absurd. The Conference Report states “[t]he conferees note that the duties imposed under new 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 LECs’ network.” Consequently, USTA recommends that the Commission establish that grounds for a waiver exist where a carrier within the MSA has not received a specific request for number portability by April 1, 1997.

Additionally, the First Report and Order requires “local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability.” USTA respectfully requests that the Commission establish a de minimis exemption for carriers who have facilities located within the MSA, but either do not provide service there, provide service to a very small percentage of the MSA, or whose operations within the MSA are a very small percentage of their total operations. Such carriers should be considered outside the MSA, and their deployment of local number portability should be governed by the deployment schedule established for carriers outside the top 100 MSAs.

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Petition for Reconsideration

INTRODUCTION

The United States Telephone Association (USTA) respectfully submits this petition for reconsideration of several aspects of the Order released July 2, 1996, in the above-referenced proceeding,¹ pursuant to Sections 1.429 and 1.4(b) of the Commission's rules, 47 C.F.R. §§ 1.429, 1.4(b). USTA is the principal trade association of the Local Exchange Carrier (LEC) industry, and has been an active participant in all phases of implementing local number portability. USTA members will be both providers and beneficiaries of local number portability.

DISCUSSION

The First Report and Order notes that the Commission may consider economic and other factors in determining the specific requirements in its number portability rules. First Report and Order, para. 36. Taking economic factors into account, USTA proposes three specific changes to the First Report and Order which will reduce the costs of local number portability, lead to more efficient deployment, and avoid unnecessary administrative burdens. Specifically, USTA respectfully requests that the Commission reconsider its decision to "effectively preclude"

¹In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, CC Docket No. 95-116 (July 2, 1996) ("First Report and Order"). Notice of this Order appeared in the Federal Register on July 25, 1996.

carriers' option to use the Query-on-Release (QoR) methodology for providing LRN-based number portability, reconsider its conclusion that the Communications Act requirement that LECs provide "number portability" includes portability for non-geographic numbers, and establish that the absence of a request for number portability by April 1, 1997, by any facilities-based competitor is grounds for a waiver of the deployment schedule. These changes will help ensure that the Commission's rules are more likely to fulfill its goals in this proceeding.

I. The Commission Should Reconsider Its Decision to "Effectively Preclude" A Carrier's Optional Use of the Query-On-Release Technique of Providing LRN-Based Local Number Portability

The First Report and Order adopted a number of performance criteria for any long-term local number portability method, including the requirement that the solution "not require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point." First Report and Order, para. 48. The Commission notes, however, that "this criterion does not prevent individual carriers from determining among themselves how to process calls, including a method by which a carrier voluntarily agrees to use the original service provider's network." Id., para. 53. The long-term solution also must not "result in unreasonable degradation in service quality or network reliability when implemented," nor result in any degradation of service quality when customers switch carriers. Id., para. 48.

The Commission then concludes that the requirement that the solution not require carriers to rely on facilities or services provided by other carriers "will effectively preclude carriers from implementing QoR." First Report and Order, para. 54. The Commission apparently bases this conclusion on two additional grounds: 1) QoR is technically inferior and does not meet the Commission's performance criteria; 2) there is no significant savings from QoR. See Id. But, as explained below, where one carrier elects to utilize QoR, this has absolutely no effect on how calls originated by customers of competing LECs are processed. QoR does meet the Commission's performance criteria, can be implemented in one carrier's network without

interoperability concerns, and actually restores service disparities created by the LRN method. Additionally, QoR can result in significant savings through reduced processing times, reduced capacity requirements, fewer database dips, and greater network reliability.

The QoR query methodology is straightforward in concept. In the network of a QoR deploying company, a carrier originating a call directs a data message to the switch in which the number was originally assigned. If the customer continues to be served by that switch, the call is completed. If not, a message to the switch originating the QoR request is returned, which indicates that a database lookup is required. Then, the lookup is then accomplished, and the call routed to the LRN provided in the database response. Without QoR, if a call is dialed to a number in an NPA-NXX code that is known to have at least one number which is "ported," the LRN scheme requires a database lookup to resolve the issue of whether the particular customer had moved to another service provider, or continues to be resident in the original serving switch. Thus, QoR eliminates unnecessary queries, and provides efficient call processing.

A. The Query-on-Release Technique Meets All of the Commission's Performance Criteria and Presents No Anti-Competitive Harm

The First Report and Order rejects the QoR technique because of statements by the large IXC's that QoR would force reliance on the incumbent LEC's network, increase post-dial delay and the potential for call blocking, result in inefficient routing, create significant network interoperability issues, treat ported and non-ported numbers "differently," and delay deployment of a long-term number portability method. First Report and Order, para. 54, citing ex parte presentations of AT&T and MCI. The First Report and Order ignores all of the record evidence which rebuts these assertions, see, e.g., Further Comments of Pacific Bell (March 29, 1996); Pacific Bell Erratum, (April 4, 1996); Reply Comments of Cincinnati Bell, (April 5, 1996); Further Supplemental Comments of Bell Atlantic (April 5, 1996), and makes no mention of several important facts about QoR.

Record evidence makes clear that QoR is not a different addressing scheme than LRN, it is an adjunct to LRN which permits calls to be routed through the most efficient means possible. LRN is a “routing methodology,” which can be implemented using a variety of “query methodologies.” See, e.g., Reply Comments of Cincinnati Bell, April 5, 1996, at 2 (“Although CBT believes LRN holds considerable promise as a long-term routing methodology, . . .the QoR query methodology described by Pacific Bell can be combined with the LRN routing methodology to achieve transparent number portability in a more cost efficient manner.”)(footnotes omitted).

1. QoR Does Not Force Reliance on Another Carrier’s Network

The First Report and Order states that QoR will “force reliance” on incumbent LECs’ networks, and that QoR violates the Commission’s fourth performance criterion. See First Report and Order, para. 54; 47 C.F.R. § 52.3(a)(4). But in the first instance, any method for local number portability or any other scheme in which calls are placed by one carrier’s customer to another carrier’s customer requires dependence to a significant degree on the other carrier’s network. Without switching, signaling and transmission and interconnection capabilities on the part of both carriers, calls between their respective customers cannot be completed. In this respect, any local number portability methodology could be said to create reliance on other carrier’s networks. On the other hand, if this rule simply addresses how a carrier chooses to configure its network to originate and terminate calls, a LEC’s decision to utilize QoR in its own network creates no dependency on that LEC’s network.

Apparently, some parties object to QoR based on the notion that when a customer of an incumbent LEC changes carriers and “ports” a number which contains an NPA-NXX code which is resident in the incumbent LEC’s switch, that the new carrier is somehow “dependent” on the incumbent LEC to process calls to and from their new customer. This notion is based on a fundamental misunderstanding of how QoR operates. QoR does not require competing LECs to rely on the incumbent LEC to process calls originated by their customers, nor for calls to be

terminated to their customers.

Rather, QoR permits calls to numbers in a particular NPA-NXX code to be first routed to the original or “donor” switch where that NPA-NXX resides to determine whether or not the number has been ported. If a CMRS provider, CLEC or other incumbent LEC desires not to permit such routing, there is no requirement that they first route the call to the original switch. One carrier’s election to use QoR for its own network has absolutely no determining effect on another carriers’ decision to use QoR for processing their own originating calls. No other carrier will be required to have any capabilities other than LRN if they choose not to use QoR.

The Commission apparently believes that QoR’s “reliance” on the incumbent LEC’s network will increase the potential for call blocking. First Report and Order, para. 54. But record evidence on this point is thin. MCI’s consultant suggests that QoR does require CLECs to remain dependent on the incumbent LEC, and that there is an incentive for an incumbent LEC to “abuse this power,” - i.e., degrade quality of service in their own network to thereby degrade calls to customers who have ported to a competitor. Further Comments of MCI, April 1, 1996, Attachment B, at 2. To the contrary, QoR provides an option to complete a call without a database lookup, and actually reduces the likelihood of blocking. And as explained above, an incumbent LEC’s use of QoR in no way affects its dependency on the QoR deploying company’s network. A competing LEC remains free to use its own business judgment in determining whether to interwork on a QoR basis with another carrier.

Even where calls are routed over an incumbent LECs’ network, e.g., calls to the customer of an incumbent, these accusations of “call blocking” are ludicrous - any degradation of service quality in its own network would certainly affect the incumbent LEC’s own customers. Moreover, this argument flies in the face of a long-standing practice of cooperation among

carriers in providing service to the nation.²

The First Report and Order apparently agrees with MCI and AT&T that QoR would create “significant interoperability issues.” See First Report and Order, para. 54. When a carrier chooses to deploy QoR, interconnecting carriers are not required to use QoR. And, whether they do or not, QoR presents no interoperability problems. This is because QoR can be deployed in one carrier’s network without having any effect on calls placed by any other carrier’s customers to any terminating number, including those in the network of the QoR deploying carrier. In the LRN scheme, a non-QoR company’s customer dials a number, a database lookup occurs (or can occur) in the network of the company in which the call originated, and the call will be routed directly to its destination. The originating company has no dependence on the network of the terminating company beyond that which would occur as a result of the need to complete calls between those companies.

USTA does not ask that the Commission mandate that all carriers utilize the QoR query methodology, only that it permit carriers to use QoR in their own networks. See Further Comments of Pacific Bell, at 3 (advocating a system of “Carrier Choice,” which would permit each carrier to select a triggering mechanism that is most efficient). Additionally, consistent with the Commission’s determination to permit carriers to voluntarily enter into interconnection arrangements, and to not prevent individual carriers from determining among themselves how to process calls, carriers should be free to agree to utilize QoR when processing calls between their networks. Id., para. 53.

²A number of concerns with QoR appear to rest on a presumption of evil intent on the part of incumbent LECs - intent to violate the Commission’s rules and other laws, and to directly sabotage another carriers network or disrupt their provision of service. On one hand, such a presumption is unsupported by any facts and should be rejected. On the other hand, if such a presumption is assumed as part of a competitive marketplace, such assumption would equally apply to a non-incumbent LEC.

2. Any Service Differential is Experienced by the Calling Customer Located in the QoR Deploying Company's Network

The Commission also apparently determined that QoR must be rejected because it would increase post-dial delay. First Report and Order, para. 54. It is true that in the event that the QoR sequence provides information that requires a database lookup, the time required for the QoR sequence is added to the call processing time. Of course, the same is true for LRN which effectively requires a database look-up on every inter-office telephone call. Information available to USTA is that the additional time is about .5 second maximum, and that additional time is imperceptible to the calling party. This point is supported on the record, even by the opponents of QoR. See Comments of MCI, April 1, 1996, Attachment B at 2 ("The additional delay may not be perceptible to the calling user").

In addition, it is the calling party, i.e., the customer in the QoR deploying network, that experiences whatever additional time is necessary to complete the QoR sequence. Thus, if there is any customer that will experience any additional delay, it is the customer of the company deploying QoR. There is no way that an incumbent LEC could use delay experienced by its own customers as a "marketing ploy" to discourage customers from porting their numbers, as suggested by MCI. See Further Comments of MCI, April 1, 1996, Attachment B at 2. The called customer, i.e., the customer of a competing LEC, has no way of knowing that the phone rang 0.5 second later than it might have.

3. The Communications Act Requires Non-Discriminatory Call Processing, Not Identical Call Processing, and Public Policy Favors Network Efficiencies

The Commission apparently believes that QoR must be rejected because ported and non-ported numbers would be treated differently. First Report and Order, para. 54. Similarly, MCI claims that number portability must be "competitively neutral," which can only exist when ported and non-ported numbers are treated identically with regard to calls made to them. Further

Comments of MCI, April 1, 1996, at 8-9. But ported and non-ported numbers are different, and there is no basis for requiring that their network routing be identical. All that is required is that service quality not be discriminatory. If a call to a ported number arrives at its destination with the same transmission quality, and within a comparable amount of time as a call to a non-ported number, and carriers are free to control the routing of their customers' calls, then the law is indifferent as to how it got there. Rather, network efficiencies are created by treating calls to ported and non-ported numbers in a non-discriminatory manner appropriate to each.

As Bell Atlantic explained on the record, as long as the arrangement does not impair the "quality, reliability, or convenience" of the service, it meets the statutory requirements. See 47 U.S.C. § 153 (30); see Further Reply Comments of Bell Atlantic, April 5, 1996, at 2; see also Bell Atlantic Reply at 2, n.8 (Noting that a federal district court previously rejected MCI's argument that equal access is not equal unless provided over technically identical facilities. The court instead required simply that consumers "perceive no qualitative differences").

Additionally, the discussion section of the Commission's Order does not reflect a series of facts that warrants consideration. If we assume arguendo that database lookups require additional processing time which represents disparate treatment, then LRN itself could be said to create service disparities. When a given customer in an NPA/NXX ports his or her number to a new service provider, all calls dialed to every number in that NPA/NXX combination (except for intraswitch calls) then require a database lookup. All customers, no matter whether across the country or in the next town, experience the slight additional delay required for the call suspension, database query, response, and call launch to be completed. One customer's decision to port has the result in adding additional processing time and expense to every call in the ported NPA/NXX. When QoR is deployed, the carriers deploying the capability continue to complete calls to customers who have not moved in essentially the same manner as before. Only the calls that require database dips for their completion experience the delay and expense of the dip. Seen in this light, QoR restores some of the disparity in call processing required by the LRN structure.

B. The Query-on-Release Technique Will Result in Significant Cost Savings

The Commission states that there is little evidence in the record to support the claim that the cost savings associated with the QoR query technique are significant. First Report and Order, para. 54. The Commission summarily dismisses the \$71 million dollar figure submitted on the record by Pacific Bell, and makes it appear minimal by instead referring to it as \$14.2 million per year. The Commission also notes that this figure is less than 0.2 percent of Pacific Bell's annual revenues, implicitly suggesting that any unnecessary increase in the costs of local number portability can be easily absorbed by all carriers involved. The Commission also compares these figures to the potential costs to competitors, which it does not quantify.

As discussed above, where carriers exercise the option to utilize the QoR technique in their networks, the potential costs to competitors are nil, because one carrier's decision to utilize QoR does not require reliance on that carriers' network, has no determining effect on other carriers' decision to use QoR, does not require than the other carrier be QoR release-capable, or create any other potential costs. Consequently, any cost savings from one carriers' decision to utilize QoR should not be compared to any "potential costs to competitors."

In fact, a considerable amount of economic costs may be avoided. This is true for all facilities-based carriers, including cable companies and CLECs who must pay for unnecessary queries on almost every call. Depending on the structure of a carriers' network, QoR can result in significant savings. These savings result from reduced processing times required for the QoR sequence as opposed to database dips that are otherwise required for each call. MCI claims that the cost savings from a reduced SS7 query load are insignificant because most of LNP cost will be incurred in upgrading infrastructure. Further Comments of MCI, April 1, 1996, Attachment B at 3. But the cost of upgrading infrastructure is directly related to the level of capacity required of that infrastructure. The reduced number of database dips results directly in a reduced need for SCP capacity, signaling links, and other infrastructure, again resulting in lower capital costs.

Different networks will give different results when the economies of QoR are fully known. Depending on the manufacturer of a particular switch, the pricing of the various features, and the condition of the switch (current software and processor status, etc.) QoR may provide considerable economies. Carriers should be free to determine these points and deploy QoR or not as the result of engineering and economic estimates and projections. Optional QoR permits carriers to jointly interact to their mutual benefit, and thereby serves the public interest.

As part of this proceeding, the Commission is examining the methods for cost recovery for the deployment of LRN. We know that these costs will be considerable, and that some carriers will reduce their investment requirement considerably by deploying QoR. This, in turn will reduce the cost recovery demand for these carriers. Thus, where carriers elect to deploy QoR, use of a more efficient call routing system can be correctly seen as a benefit to many, a harm to no one, and a potential tool for reducing the initial investment to implement LRN.

C. Optional QoR Enhances Network Reliability

The Commission states that the long-term solution also must not “result in unreasonable degradation in service quality or network reliability when implemented,” nor result in any degradation of service quality when customers switch carriers. *Id.*, para. 48. The additional option to complete a call with QoR enhances network reliability. Carriers’ ability to efficiently engineer their own networks is an essential requirement for ensuring the highest possible degree of network reliability. Moreover, carriers’ ability to engineer their networks to provide the best service at the lowest cost and highest reliability is an important factor in the development of effective competition. In order to do permit carriers to exploit these options, they should have the freedom to utilize a QoR query methodology, either individually or cooperatively.

The introduction of number portability will create enormous new requirements for the SS7 network and for call processing. Where artificial inefficiencies are introduced, particularly a substantial volume of unnecessary SS7 traffic, optimal network reliability becomes more

difficult to achieve. Conversely, where carriers are permitted to use QoR in their own networks, the burden on the SS7 network is reduced, and network reliability is enhanced.

II. The Commission Should Reconsider Its Decisions Regarding Portability of 500 and 900 Numbers

A. The Commission Should Recognize that LECs Are Not Obligated Under the Act to Offer Portability of 500 and 900 Numbers

The Commission correctly states that, under the Act, only LECs are subject to the obligation to provide number portability. First Report and Order, para. 197; see 47 U.S.C. § 251(b)(2). The Commission also apparently believes that the Act requires LECs to provide portability in numbers using 500 and 900 code assignments. First Report and Order, para. 197. The Commission therefore directs the INC to examine the technical feasibility of modifying the existing toll free database (used for 800 services) to make only those 500 and 900 numbers that are assigned to LECs portable. This process begins with an incorrect conclusion and is not likely to lead to a solution responsive to the needs of the industry and the Commission.

While only LECs are subject to the obligation to provide number portability, the Commission incorrectly states the nature of that obligation. According to the Act, “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. § 153(30)(emphasis added); see First Report and Order, para. 7. The inclusion of the phrase “at the same location,” effectively excludes non-geographic telephone numbers such as 500 and 900 numbers from the definition of number portability.³

A 500 subscriber who seeks to switch carriers has no “location.” The intent of 500

³The Commission correctly recognized this distinction in concluding that Section 251(b)(2) of the Act does not require LECs to offer “location portability.” First Report and Order, para. 181.

numbers, in fact, is to permit the offering of services where the network identifies the location of the called party through non-geographically determined routing instructions. Alternatively, if one reads the Act to mean that it is the number, and not the subscriber which has a location, then the provision makes no sense. It would be nonsensical to require numbers to remain at the same location when moving from one carrier to another - the intent of local number portability is to permit NPA-NXX codes to “move” from one switch to another. Accordingly, non-geographic numbers are excluded from the “number portability” which LECs are required to deploy.

B. The Commission Should Not Require Portability for LEC-Assigned 500 and 900 Numbers Only

Even if the Commission determined, on its own authority, to require portability for 500 and 900 numbers, it should not require portability for LEC-assigned numbers only. If customer demand justifies portability of numbers in these codes, then all carriers who provide services using those codes should participate in a portability plan. Selective deployment of the portability function would create disparate cost burdens, and competitive distortions. Customers would only be able to port 500-NXX numbers which had originally been assigned to LECs, which would unfairly prejudice certain carriers and subscribers. Companies who sought to compete for customers who originally took service from an IXC would be forced to persuade that customer to change their number and would be at a competitive disadvantage. This arrangement is inherently discriminatory with regard to competition between LECs and IXCs. Since the record establishes that most customers of 500 and 900 services obtained service from an IXC, there would be little benefit to LEC-only portability for these numbers. See First Report and Order, paras. 196-97.

Moreover, differing obligations would preclude effective consideration of whether the existing 800 database system can be used for additional non-geographic numbers in the industry forum process⁴. Many in the industry have expressed dissatisfaction in the industry forum

⁴As USTA explained in comments, the system which supports service provider portability for 800 services is only capable of performing that function and cannot be modified easily and

process because of the time it takes to reach conclusions. INC is an open forum in which representatives of multiple interests work to resolve issues of importance to the industry. USTA supports that activity and is committed to resolve many of the industry's issues there that require broad consensus in order to reach meaningful resolution. But to refer this issue to INC in a situation where different interests have different obligations in regard to the outcome is not likely to lead to any meaningful resolution.

Development of a plan for portability in these codes has multiple competitive aspects in which companies that have different obligations will inevitably advocate positions that cannot be accepted by those that would be heavily impacted to their competitive detriment. This "gaming" of the issues would not be the result of any nefarious intent of any of the participants, but would be the expected and inevitable result in such a situation. What the Commission wants and the industry needs is resolution to these issues in such a manner that the result is a level competitive playing field in provision of 500 and 900 service.

USTA recommends that the Commission determine, either by summary determination supported by the record already available, or by FNPRM, that all providers of 500 and/or 900 service have the same standing as regards their obligations for service provider portability. Only in such a situation can INC be expected to reach any meaningful conclusions. If the Commission maintains its position that only LECs are obligated to provide portability, then the LEC industry must be permitted to develop a plan for portability which includes provisions for maintaining different protocols for different codes within the same NPA assignment.

inexpensively to route 900 calls. Also, because of the differing structures of services associated with 500 and 900 numbers, a solution for 900 portability may not be able to utilize the same platform as that for 500 number portability. See Comments of USTA, September 12, 1995. Finally, by order of the Commission, the 800 database system is administered jointly by the seven RBOCs, under terms and conditions governed by a jointly filed interstate access tariff. This administrative arrangement must also be modified if the 800 database system is to be expanded to other uses.

III. The Commission Should Recognize That the MSA Boundaries Are Only Proxies for Regions Where Competition Will Immediately Occur

At this time, USTA does not ask the Commission to reconsider its decision to mandate deployment of local number portability, rather than leave that decision to the states, as USTA recommended. See Comments of USTA (September 12, 1995), at 5.⁵ However, the Commission's decisions will, in some respects, not attain the goals to which they are directed.

In the First Report and Order, the Commission adopted the suggestion of certain commenters who requested that the Commission mandate all local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability commencing on October 1, 1997, pursuant to a specified deployment schedule. See, e.g., Order, para. 70; Further Comments of AT&T at 8 (March 29, 1996). But mandated expenditures related to number portability in a set of specified markets ignores whether or not competition is yet present in those areas. There is simply no basis for deploying the ability of a subscriber to retain his/her telephone number when switching carriers in locations in which subscribers do not yet have the option of switching carriers.

A. The Commission Should Establish That Absence of A Competing Carrier Warrants a Waiver of the LNP Deployment Schedule

Directly to the point, Congress explained that requiring LECs to undertake the significant expense needed to offer number portability in areas where no specific request has been made is absurd. As the Conference Report puts it, "[t]he conferees note that the duties imposed under new 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

⁵Of course, the Communications Act does permit states to grant suspensions or modifications of certain requirements, including number portability, to companies with less than 2% of the nation's access lines. See 47 U.S.C. § 251(f)(2). Consequently, the decisions of state regulatory commissions may have some impact on a particular company's obligations under the Commission's deployment schedule for local number portability.

services using the LECs' network." Joint Explanatory Statement at 121. Thus, LECs who have not received a specific request from another carrier seeking to provide competing services, either through interconnection or unbundled network elements, should not be required to make the investments required to provide local number portability.

No other obligation of the new Telecommunications Act must be undertaken without a specific request from a competitor, or at least the presence of competition. No telecommunications carrier is required by Section 251(a) to interconnect with another "just in case" that other carrier desires to use its network. Incumbent LECs are not required to reconfigure their networks to offer unbundled elements absent a specific request identifying the elements to be unbundled. See, e.g., First Report and Order, CC Docket 96-98, FCC 96-325 (August 8, 1996)("Interconnection Order"), para. 268 ("Access' to unbundled elements means that incumbents must provide the facility or functionality to requesting carriers")(emphasis added). Other obligations of Section 251(b) have not been interpreted to exclude the requirement of an actual request - LECs are not required to reconfigure pole attachments, ducts, conduit or other rights-of-way to afford access to hypothetical parties who are "likely" to request pole attachments. See, e.g., Interconnection Order, para. 23. There is no basis to read the prerequisite of a request from a competing carrier out of Section 251(b)(2).⁶

As the presence of a competing carrier was intended by Congress to be a prerequisite for a LECs' obligation to offer local number portability, there is no basis to claim that such a requirement would undermine the pro-competitive goals of the Act. The First Report and Order notes that competition has already begun in several MSAs, and that competitive local service providers are likely to be providing services in the major metropolitan areas soon. First Report and Order, para. 82. In each of those cases, a competing carrier was likely required to, at a

⁶Additionally, reading the specific request requirement out of the Act would essentially eliminate any significance for the rural telephone company exemption from the duty to negotiate the terms and conditions of interconnection, including number portability. See First Report and Order, para. 83, citing 47 U.S.C. § 251(c).

minimum, notify the state commission of the areas in which they intended to offer service, and make a specific request of an incumbent LEC for some type of interconnection arrangement. The incremental burden of requiring such competing carriers to also specify the exchanges in which they are requesting the ability to port numbers is absolutely nil.

The First Report and Order delegates to the Chief, Common Carrier Bureau, the authority to waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability. First Report and Order, para. 85. This waiver provision appears to contemplate only circumstances where a LEC has undertaken to deploy number portability, but is unable to meet the deployment deadline because of some technical problem or the failure of a third-party, e.g., an equipment supplier, to meet an agreed upon deadline.

USTA proposes that the Commission adopt an alternative grounds for waiver - the absence of a specific request from another telecommunications carrier. The Commission should retain the deployment schedule established in the First Report and Order, but require LECs within those MSAs to make a request of another LEC which specifies from which switches they intend to require the ability to port numbers. Given the applicable duty to negotiate interconnection arrangements in good faith, existing processes occurring at the state level, and the technical requirements of network operations, the administrative burden of such a request is likely to be minimal. Requesting LECs would be entitled to receive that ability within the time frame established by the Commission's deployment schedule.

However, where no request is received by April 1, 1997, this would constitute extraordinary circumstances beyond the LECs' control, and entitle that LEC to a waiver. Such waiver would continue in effect until such time as the LEC receives a request from another carrier. At that time, the LEC would have 9 months (or some other time specified by the Chief, Common Carrier Bureau) in which to deploy local number portability. See First Report and Order, para. 85 (Bureau Chief delegated authority to waive or stay deployment dates for a period

not to exceed 9 months).

This modification would serve the public interest in a number of ways:

- 1) It would better permit the deployment of number portability in response to market forces;
- 2) It would allow all LECs to more efficiently deploy number portability and assist in network planning, thus promoting cooperation among LECs;
- 3) It would reduce the costs of local number portability, and reduce strain on vendors.

USTA expects that these types of waiver requests would not be commonplace - the majority of carriers with operations within the top 100 MSAs will receive a request, and face competition from at least one facilities-based carrier. Additionally, LECs who obtain these waivers would still be required to make network upgrades in order to route calls to ported numbers, and therefore will be able to respond to a specific request in a reasonable period of time. But the Commission should allow for some adjustment which accounts for the fact that the MSA is only an educated guess as to where number portability will be most urgently required.

The Commission intended that its phased deployment schedule would fully take into account the differing levels of local exchange competition that are likely to emerge in the different geographic areas around the country, see First Report and Order, para. 82. But some parts of an MSA are rural in nature, are served by small or rural telephone companies, and may not have competition available within the time frames for number portability deployment established in the First Report and Order. See, e.g., Comments of USTA, CC Docket 95-116 (August 16, 1996, at Appendix A (List of small telephone companies with operations in the top 100 MSAs)).

Most commenters agree that the public interest is served by minimizing the costs of local number portability. See, e.g., Further Comments of Time Warner at 7, n. 21 ("Under the TWComm plan, states would require deployment only where competition is likely to develop . .

[i]n addition to limiting the required initial investment for the large incumbent LECs, this approach . . . would also minimize the impact of number portability on rural LECs that are unlikely to face competition in the near future”). Avoiding the costs of number portability in portions of the MSA where no competitor intends to immediately serve will free other resources for deployment in areas considered more urgent, and also reduce the level of costs which must be recovered through any cost recovery plan.

B. The Commission Should Consider LECs With a De Minimis Presence in the MSA To Be Subject to the Deployment Schedule for Carriers Outside the MSA

The First Report and Order requires “local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability.” First Report and Order, para. 77. USTA respectfully requests that the Commission clarify the meaning of “operate,” and establish a threshold de minimis exemption for carriers who have facilities located within the MSA, but either do not provide service there, who provide service to a very small percentage of the MSA, or whose operations within the MSA are a very small percentage of their total operations. Such carriers should be considered outside the MSA, and should be excluded from the deployment schedule established for the MSAs. See First Report and Order, para. 80. (“After December 31, 1998, each LEC must make long-term number portability available in smaller MSAs within six months after a specific request).

A number of USTA members have switches or other facilities located within the MSA, but have very few subscribers who reside within the MSA. Under one meaning of the term “operate,” these LECs might be required to incur the significant expense associated with upgrading their network for number portability within the deadlines specified in the deployment schedule. But there is no sound basis for subjecting them to this requirement. The purpose of selecting the top 100 MSAs was to concentrate initial deployment in areas in which competition was emerging or likely to emerge. Competition focuses on end user customers, not facilities. Consequently, the Commission should interpret the term “operate” to mean that only LECs who

provide service to some meaningful number of end users who reside within the MSA are subject to the deployment schedule.

Some USTA members provide service to as few as 10 or 12 subscribers who happen to reside within the MSA. These members are primarily small and rural telephone companies who provide service to rural and/or suburban areas, where communities of interest have been arranged in such a manner that part of an exchange is within the boundary used to determine the scope of the MSA. As referred to above, the MSAs are only a proxy for “areas in which local competition is present or likely to be present.” While the MSAs represent a reasonable basis for a proxy, the Commission should adjust for the imperfections in the MSA proxy by adopting a de minimis exception to the deployment schedule.

Such a de minimis exception should be available to carriers with less than 5% of the subscribers in a given MSA. Another possible way to demonstrate a de minimis presence would be for a company to show that its operations in the MSA were a de minimis percentage of its operations, e.g., only 10% of a company’s access lines are within the MSA. These LECs would be exempt from the deployment schedule, and governed instead by the provisions in paragraph 80 of the First Report and Order. This de minimis exception will help ensure that the Commission’s intention to limit its deployment schedule to firms in larger metropolitan areas is more closely fulfilled.

CONCLUSION

The Commission should reconsider its First Report and Order on local number portability consistent with the recommendations described above.

Respectfully submitted,
UNITED STATES TELEPHONE ASSOCIATION

BY

A handwritten signature in black ink, appearing to read "C. D. C.", is written over a horizontal line. The signature is stylized and somewhat cursive.

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