

establish their own individual **databases**.<sup>442</sup> BANM also points out that the regional databases that CMRS providers need to access may not all be in place, given the lack of any deadline for establishment of the databases and the possibility of statewide **databases**.<sup>443</sup> In addition, argues BANM, because many CMRS providers' service areas are not defined by **MSAs**, they often will not match the **landline** database **regions**.<sup>444</sup>

132. BANM urges the Commission to defer wireless number portability until **wireline** number portability is complete, and the record shows it is **necessary**.<sup>445</sup> BANM claims that the 1996 Act's explicit exclusion of CMRS providers from the definition of a LEC, and standards set forth in earlier Commission orders, require the Commission to demonstrate a "clear cut need" before regulating CMRS providers, and that the Commission did not do so.<sup>446</sup> According to BANM, the record does not support the Commission's conclusion that CMRS number portability rules are competitively important or are justified on other **grounds**.<sup>447</sup> If the Commission decides to maintain its rules, however, BANM argues, then no CMRS provider should have to provide number portability until June 30, 1999, and then only (1) six months after receiving a request, and (2) after regional or statewide databases are **available**.<sup>448</sup>

133. MCI opposes what it characterizes as delay tactics by the CMRS providers and observes that their arguments are reminiscent of the arguments advanced by portability opponents in the 800 portability **proceeding**.<sup>449</sup> MCI argues that they do not provide a compelling reason for the Commission to retreat from its CMRS number portability **requirements**.<sup>450</sup> MCI argues that the monitoring and reporting mechanism established during the implementation of 800 number portability worked well, and the similar mechanism established for CMRS number portability will provide an opportunity for the industry to

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<sup>442</sup> Id. at 3-4.

<sup>443</sup> BANM Petition at 9.

<sup>444</sup> Id.

<sup>445</sup> Id. at 10.

<sup>446</sup> Id. at 4 (citing Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order, 10 FCC Rcd 7025, 703 1 (1995) (CT DPUC Petition)).

<sup>447</sup> BANM Petition at 5-6.

<sup>448</sup> Id. at 10.

<sup>449</sup> MCI Opposition at 20.

<sup>450</sup> Id.

address implementation issues quickly? MCI opposes petitioners' requests for delay pending further study, establishing targets rather than deadlines, and granting authority to the Chief of the Wireless Telecommunications Bureau to defer indefinitely or suspend the portability requirements.<sup>452</sup> TRA urges the Commission to resist efforts by CMRS providers to limit number portability in wireless markets.<sup>453</sup>

134. Discussion. We decline at this time to alter the implementation schedule imposed by the First Report & Order for wireless carriers. We recognize that the wireless industry has lagged behind the **wireline** industry in developing a method for providing number portability, and that the wireless industry faces special technical challenges in doing so. Nonetheless, we find that the schedule for implementation of number portability by cellular, broadband PCS, and covered SMR providers is reasonable and takes into account the current stage of development for wireless number portability. We find that a period of nearly two years is sufficient for wireless carriers either to implement the upgrades necessary to perform the database queries themselves, or to make arrangements with other carriers to provide that capability. We also believe it is reasonable to expect wireless **carriers** to implement long-term service provider portability, including roaming, in their networks in a period of more than two years. We continue to believe the monitoring and reporting mechanism established in the First Report & Order will ensure that wireless carriers will continue to work together to find solutions to technical problems associated with number portability, and to address quickly any implementation issues which may arise. As we provided in the First Report & Order, in the event a wireless carrier is unable to meet the Commission's deadlines for implementing a long-term number portability method, it may file a request for extension with the **Commission**.<sup>454</sup> If it becomes apparent that the wireless industry is not progressing as quickly as necessary to meet the deadlines for providing querying capability and service provider portability, the Wireless Telecommunications Bureau Chief may waive or stay the implementation dates for a period of up to nine **months**.<sup>455</sup> We find that enough flexibility has been incorporated into the implementation schedule for wireless carriers, and that no modification is needed.

135. We also decline to establish target **dates** in lieu of actual deadlines or to defer imposing number portability requirements on wireless carriers, as some petitioners have suggested. As we stated in the First Report & Order, requiring cellular, broadband PCS, and covered SMR providers to provide number portability is in the public interest because these

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<sup>451</sup> Id. at 20-21.

<sup>452</sup> Id. at 21.

<sup>453</sup> TRA Comments at 14.

<sup>454</sup> First Report & Order, 11 FCC **Rcd** at 8441.

<sup>455</sup> Id. at 8440-41.

entities are expected to compete in the local exchange market, and number portability will enhance competition among wireless service providers, as well as between wireless service providers and **wireline** service providers.<sup>456</sup> Service provider portability offered by wireless service providers will enable customers to switch carriers more readily and encourage the successful entry of new service providers into wireless **markets**.<sup>457</sup> Removing barriers, such as the requirement that customers must change phone numbers when changing providers, is likely to foster the development of new services and create incentives for carriers to lower prices and costs. In light of these positive competitive results that are likely to be produced, we continue to believe that number portability should be provided by wireless carriers with as little delay as possible. Setting specific deadlines, rather than amorphous “target dates,” is consistent with this goal.

136. In response to requests by CTIA and BANM, we agree that some clarification of our requirements under the schedule is necessary. Contrary to the petitioners’ claims, the schedule for CMRS providers is not stricter than the schedule for **wireline** service providers. Some carriers apparently misunderstood our First Report & Order to require wireless providers to provide number portability in areas outside the largest 100 **MSAs**, even if number portability is not requested in those areas. We require cellular, broadband PCS, and covered SMR providers to have the capability to query the number portability databases nationwide, or arrange with other carriers to perform the queries, by December 31, 1998, in order to route calls from wireless customers to customers who have ported their numbers. We clarify that, by June 30, 1999, CMRS providers must (1) offer service provider portability in the 100 largest **MSAs**, and (2) be able to support nationwide roaming. Although we have not provided a specific phased deployment schedule for CMRS providers as we have for **wireline** carriers, we expect that CMRS providers will phase in implementation in selected switches over a number of months prior to the June 30, 1999, deadline for deployment.

137. In addition, consistent with our modification to the **wireline** schedule deployment requirements, CMRS carriers need only deploy local number portability by this deadline in the 100 largest **MSAs** in which they have received a specific request at least nine months before the deadline (i.e., a request has been received by September 30, 1998).<sup>458</sup> As in the **wireline** context, any **wireline** carrier that is certified, or has applied for certification, to provide local exchange service in the relevant state, or any licensed CMRS provider, must be allowed to make a request for deployment; and cellular, broadband PCS, and covered SMR providers must make available lists of their switches for which deployment has and has not

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<sup>456</sup> Id. at 8433.

<sup>457</sup> Id. at 8433-34.

<sup>458</sup> See supra ¶ 60. As explained above, for an MSA in the 100 largest **MSAs**, **LECs** need only provide number portability capability according to the implementation schedule, as modified in this First Order on Reconsideration, in those switches that provide service in that MSA for which carriers have, at least nine months before the deployment deadline, specifically requested deployment. Id.

been requested.<sup>459</sup> Additional switches within the 100 largest **MSAs** (i.e., those that are not requested initially) must be deployed upon request, after the June 30, 1999, deadline for wireless carriers, within the same time frames that we adopt here for **wireline** carriers, unless requesting carriers specify a later date.<sup>460</sup> The time frames for deployment of additional wireless switches are as follows: (1) Equipped Remote Switches within 30 days; (2) Hardware Capable Switches within 60 days; (3) Capable Switches Requiring Hardware within 180 days; and (4) Non-Capable Switches within 180 days.<sup>461</sup> As in the **wireline** context, carriers may submit requests for deployment of number portability in areas outside the 100 largest **MSAs** at any time. CMRS providers must provide number portability in those smaller areas within six months after receiving a request or within six months after June 30, 1999, whichever is later. As a result, the schedule for wireless providers is comparable to the one for **wireline** carriers in terms of timing.

138. We add one further requirement for any procedures that limit deployment in such fashion to requested wireless switches. The existing state procedures for limiting deployment of number portability capabilities within one of the 100 largest **MSAs** to requested **wireline** switches generally appear to require carriers to specify which switches located within the MSA the carrier wishes to be deployed.” We do not wish to disturb a number of state decisions concluding that it is preferable to limit the selection of **wireline** switches for deployment to switches located within the MSA rather than switches serving subscribers within the MSA. We recognize, however, that the wireless switches that provide service to areas within a particular MSA are more likely to be located outside the perimeter of that MSA than the **wireline** switches that provide service to areas within the MSA. We conclude, therefore, that, when limiting deployment within one of the 100 largest **MSAs** to particular requested wireless switches, carriers must be able to request deployment in any wireless switch that provides service to any area within that MSA, even if the wireless switch is located outside of the perimeter of that MSA, or outside any of the 100 largest **MSAs**.

139. By June 30, 1999, we expect that regional or statewide local number portability databases containing both wireless and **wireline** numbers will be widely available; therefore, we do not anticipate a need to condition the requirement that number portability be required on request after **June** 30, 1999, upon the existence of regional or statewide databases. If there is a delay in the development of the databases, the Wireless Telecommunications Bureau Chief has been delegated authority to waive or stay the deadline for CMRS providers.<sup>463</sup>

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<sup>459</sup> See *supra* ¶ 60.

<sup>460</sup> See *supra* ¶ 65.

<sup>461</sup> See *supra* 52, 66.

<sup>462</sup> See, e.g., Ameritech Reply at 3-5.

<sup>463</sup> *Id.* at 440-41.

140. In its petition for reconsideration, BANM questions the Commission's authority and its basis in the record for imposing number portability obligations upon CMRS providers.\* Specifically, BANM claims that we have previously held that our regulatory authority over CMRS providers is limited to instances in which there is a "clear cut need" for doing so, and that regulation of number portability is not clearly necessary in the CMRS market.<sup>465</sup> BANM advanced essentially the same argument previously in this proceeding, and its reconsideration petition raises no new issues. Accordingly, we **affirm** our prior rejection of this argument. As we stated in the First Report & Order, the CT DPUC Petition does not limit our authority to require CMRS providers to provide number portability to other 'CMRS or **wireline** carriers because that proceeding was restricted to the question of state authority to regulate rates of CMRS providers.<sup>466</sup> The CT DPUC Petition did not reach the question of the Commission's authority to impose number portability requirements on CMRS providers. We **affirm** our determination that we have authority to impose number portability obligations on CMRS providers based on our **findings** that this requirement will result in pro-competitive effects, and furthers our CMRS regulatory policy of establishing moderate, symmetrical regulation of **all services**.<sup>467</sup>

141. We recognize that the 1996 Act excludes CMRS providers from the definition of a LEC, thereby excluding them **from** the Section 25 1 (b) obligation to provide number portability, unless the Commission concludes that CMRS providers should be included in the definition of local exchange **carrier**.<sup>468</sup> In our Local Competition Order, we declined to **find** that CMRS providers should be treated as LECs for purposes of other LEC obligations under Section 25 1.<sup>469</sup> As we explained in the First Report & Order, however, we possess independent authority under Sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide number portability as we deem appropriate. These provisions of the Communications Act authorize us to ensure that the portability of telephone numbers within the United States is handled efficiently and fairly, as part of our obligation to ensure that "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service" is **available**.<sup>470</sup> Section 1 also establishes a significant federal interest in ensuring the efficient and uniform treatment of numbering, because such a system

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<sup>464</sup> BANM Petition at 3-7.

<sup>465</sup> First Report & Order, 11 FCC **Rcd** at 8432 (citing BANM Further Comments on Notice at 3 n.3).

<sup>466</sup> Petition of CT DPUC, Order, 10 FCC **Rcd** at 7025, 7032-33.

<sup>467</sup> See id. at 7033-34 (concluding that Omnibus Budget Reconciliation Act of 1993 validates the Commission's CMRS regulatory approach).

<sup>468</sup> See 47 U.S.C. § 153(26).

<sup>469</sup> Local Competition Order, 11 FCC **Rcd** at 15,995-96.

<sup>470</sup> 47 U.S.C. § 151.

is essential to the efficient delivery of interstate and international **telecommunications**.<sup>471</sup> In addition, Sections 2 and 332(c)(1) of the Act give the Commission authority to regulate commercial mobile service providers as common carriers, except for the provisions of Title II that we specify are **inapplicable**.<sup>472</sup> We found in the First Report & Order that implementation of long-term service provider portability by CMRS carriers will have an impact on the efficient use and uniform administration of the numbering resource. Section 4(i), moreover, grants the Commission authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended], as may be necessary in the execution of its **functions**.”<sup>473</sup> We conclude that the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access **services**.<sup>474</sup>

142. **BANM** has not introduced any new evidence or arguments that cause us to reconsider our conclusion in the First Report & Order that provision of number portability by CMRS carriers is important to competition. Previously in this proceeding, several PCS providers attested to the importance of number portability in fostering competition in the CMRS **industry**.<sup>475</sup> The record in this proceeding contains convincing evidence that service provider portability would enhance competition between wireless service providers, as well as between wireless and **wireline** service providers, by removing the requirement that a customer must change numbers when changing service providers. We also reject **BANM’s** argument that we failed to make a determination on the technical feasibility of wireless number **portability**.<sup>476</sup> The record in this proceeding supports our prior conclusion that cellular,

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<sup>471</sup> See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC **Rcd** 4596, 4602 (1995).

<sup>472</sup> 47 U.S.C. §§ 152, 332. Section 332 provides that “[a] person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person.” 47 U.S.C. § 332(c)(1)(A).

<sup>473</sup> 47 U.S.C. § 154(i).

<sup>474</sup> See Notice, 10 FCC **Rcd** at 12362; Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, 9 FCC **Rcd** 5154, 5158-59 (1994).

<sup>475</sup> First Report & Order, 11 FCC **Rcd** at 8426-27 (describing statements by Omnipoint, PCIA, and PCS Primeco supporting number portability for CMRS industry).

<sup>476</sup> See BANM Petition at 7-8.

broadband PCS, and covered SMR providers will be able to resolve any technical issues necessary to implement number **portability**.<sup>477</sup>

#### D. Deferral of Implementation Until Resolution of Cost Recovery Issues

143. **Background.** Section 251(e)(2) of the Act requires that the costs of establishing number portability “be borne by all telecommunications carriers on a competitively neutral basis as determined by the **Commission**.”<sup>478</sup> In conjunction with the **First Report & Order**, we adopted a **Further Notice of Proposed Rulemaking (Further Notice)** that seeks comment on appropriate cost recovery mechanisms for long-term number portability. We have not yet issued the **Second Report & Order** addressing these issues, although we intend to do so in the near future.

144. **Pleadings.** U S West argues that, as a matter of law and policy, the Commission must put in place a mechanism for full cost recovery prior to requiring any carrier to implement number **portability**.<sup>479</sup> According to U S West, it is not enough for the Commission to establish a cost recovery mechanism before carriers actually commence the provision of long-term number portability, because carriers will begin incurring costs now to meet the implementation **schedule**.<sup>480</sup> U S West asserts that carriers have a statutory and constitutional right to recover their “full” costs of number portability in a timely manner, because the number portability requirement is a federal **mandate**.<sup>481</sup> Furthermore, U S West claims that deferring the establishment of cost recovery to a future proceeding will cause “distorting effects” on investment decisions, the use of number portability facilities, and the relationships among providers and between providers and their **customers**.<sup>482</sup> U S West also asserts that deferring cost-recovery issues is inconsistent with the Commission’s own precedent, because the Commission recently made its **E911** requirements for wireless carriers

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<sup>477</sup> **First Report & Order**, 11 FCC **Rcd** at 8438 (citing pleadings of Competitive Carriers, Pacific, and PCIA, and INC Report).

<sup>478</sup> 47 U.S.C. § 251(e)(2).

<sup>479</sup> U S West Petition at 16-19.

<sup>480</sup> U S West Reply at 6; see also U S West January 16, 1997 **Ex Parte** Filing at 8 (estimating that the cost of deploying number portability in its top ten **MSAs** will be approximately \$310 million).

<sup>481</sup> U S West January 16, 1997 **Ex Parte** Filing at 16; U S West Reply at 8.

<sup>482</sup> U S West Petition at 17.

contingent upon adoption of a cost recovery **mechanism**.<sup>483</sup> JSI makes similar arguments with respect to rural **LECs**.<sup>484</sup>

145. Sprint argues that delaying the implementation of a long-term number portability solution until a cost recovery mechanism is in place is unwarranted because there is no basis for concluding that cost recovery issues will not be resolved before **LECs** must deploy long-term number portability in Phase I **markets**.<sup>485</sup> Moreover, claims Sprint, any cost recovery method adopted by the Commission may allow carriers to recover the reasonable costs of implementation that were already **incurred**.<sup>486</sup> ALTS points out that U S West was subject to an equal access requirement long before the Equal Access and Network Reconfiguration (**EANR**) access element was approved!<sup>487</sup> ALTS also argues that U S West's constitutional claim is premature, because U S West cannot show that it will necessarily fail to recover a constitutionally mandated **amount**.<sup>488</sup>

146. Discussion. We are not persuaded by the requests of U S West and JSI that **LECs** should be permitted to suspend ongoing preparations to meet the deployment schedule until the Commission has acted on the issues raised in the Further Notice in this proceeding that involve the **LECs**' recovery of their costs of providing number portability. As stated above, we plan to adopt a Second Renort & Or&r in this proceeding in the near future implementing the statutory provision that expenses incurred as a result of number portability be "borne by all telecommunications carriers on a competitively neutral **basis**."<sup>489</sup> U S West appears to suggest that it necessarily will be barred from assessing charges in the future that are intended to recover costs that it incurs in connection with the implementation of long-term number portability prior to our resolution of the cost recovery issues posed in the Further Notice. That speculative assertion is unfounded. We anticipate that the Second Renort & Order will be adopted well before a LEC is required by the deployment schedule to commence the provision of long-term number portability to the public in the Phase I markets. Moreover, we expect that **LECs** will maintain records of the costs that they incur in implementing the requirements of the First Renort & Order in this proceeding. Those records will enable the **LECs** to comply with the decisions we reach in the Second Renort & Order

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<sup>483</sup> U S West Reply at 6-7 & n.15.

<sup>484</sup> JSI Petition at 10 (arguing that it is unwise and unfair to mandate rural LEC implementation of long-term number portability before settling long term cost recovery issues).

<sup>485</sup> Sprint Opposition at 12-13; see also NEXTLINK Opposition at 6.

<sup>486</sup> Sprint Opposition at 12-13.

<sup>487</sup> ALTS Opposition at 6 n.7.

<sup>488</sup> Id.

<sup>489</sup> 47 U.S.C. § 251(e)(2).

with respect to their recovery of long-term number portability costs. The Act does not mandate that we complete action on cost recovery issues prior to the **LECs'** commencement of the planning and other steps required to deploy long-term number portability consistent with the schedule adopted in the First Report & Order. Indeed, permitting carriers to suspend their ongoing preparations to meet the deployment schedule for number portability until we have adopted specific cost recovery rules may be inconsistent with the statutory mandate that carriers must provide number portability "to the extent technically **feasible**."<sup>490</sup>

147. The fact that we made the implementation of **E911** contingent on the adoption of cost recovery mechanisms by state and local governments does not require us to defer implementation of number portability until a federal cost recovery mechanism is **adopted**.<sup>491</sup> In other instances, we have made cost recovery determinations after **LECs** had incurred costs in compliance with our orders and have permitted carriers to recover such previously-incurred costs as part of a cost-recovery **scheme**.<sup>492</sup>

148. We **also** conclude that U S West has not described, much less documented, the specific "distorting effects" on investment decisions, the use of number portability facilities, and the relationships among providers and between providers and their customers that it claims will ensue from our brief deferral of long-term number portability cost recovery **issues**.<sup>493</sup> We further agree with ALTS that U S West's constitutional claim is **premature**,<sup>494</sup> because it is impossible for any party to establish that a cost recovery mechanism that has not yet been adopted is **unconstitutional**.<sup>495</sup> Finally, because the arguments advanced by JSI on behalf of rural carriers with respect to these cost recovery issues repeat the points asserted by U S West, we reach the same **conclusions**.<sup>496</sup>

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<sup>490</sup> 47 U.S.C. § 251(b)(2).

<sup>491</sup> In the **E911** proceeding, the Commission made implementation of **E911** service contingent upon the adoption of a cost recovery mechanism (in that case, by a state or local government), but declined to prescribe a particular cost recovery methodology. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-102, at ¶¶ 89-90 (rel. July 26, 1996) (**E911 Order**).

<sup>492</sup> See, e.g., Provision of Access for 800 Service, Second Report & Order, 8 FCC Rcd 907, 911 (1993) (stating that **LECs** are allowed to treat as exogenous the reasonable costs they incurred specifically for the implementation and operation of the basic 800 data base service required by prior Commission orders).

<sup>493</sup> See U S West Petition at 17.

<sup>494</sup> ALTS Opposition at 6 n.7.

<sup>495</sup> See, e.g., Illinois Bell Co. v. FCC, 911 F.2d 776 (D.C. Cir. 1990) (claim that Commission's rate base policies were confiscatory is not ripe prior to a Commission determination regarding the rate of return to be applied to that rate base).

<sup>496</sup> See, e.g., JSI Petition at 10.

**Iv. ORDERING CLAUSES**

149. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), **4(j)**, 201-205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 251 and 332, Part 52 of the Commission's rules, 47 C.F.R. § 52, is AMENDED as set forth in Appendix B hereto.

150. IT IS FURTHER ORDERED that the Petitions for Reconsideration and/or Clarification ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

151. IT IS FURTHER ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED, effective 30 days after publication of a summary of this **First Reconsideration Order** in the Federal Register, except for collections of information subject to approval by the Office of Management and Budget (OMB), which are effective 150 days following publication in the Federal Register.

152. IT IS FURTHER ORDERED that the Motion to Accept Late-Filed Comments of Telecommunications Resellers Association and the Motion to Accept Late-Filed Reply Comments of U S West ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

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**APPENDIX A - LIST OF PARTIES****Petitions for Reconsideration/Clarification, filed 8/26/96:**

**AirTouch** Communications, Inc. [**AirTouch**]  
American Communications Services, Inc. [ACSI]  
American Mobile Telecommunications, Inc. [AMTA]  
Bell Atlantic  
Bell Atlantic NYNEX Mobile, Inc. [**BANM**]  
**BellSouth** Corporation and **BellSouth** Telecommunications, Inc. [**BellSouth**]  
Cellular Telecommunications Industry Association [CTIA]  
Cincinnati Bell Telephone Company [CBT]  
GTE Service Corporation [GTE]  
John Staurulakis, Inc. [JSI]  
KMC Telecom, Inc. [KMC]  
MCI Telecommunications Corporation and **MCIMetro** [MCI]  
National Exchange Carrier Association, Inc. [**NECA**]  
National Telephone Cooperative Association and Organization for the  
Promotion and Advancement of Small Telecommunications Companies  
[**NTCA/OPASTCO**]  
Nextel Communications, Inc. [**Nextel**]  
**NEXTLINK** Communications LLC [**NEXTLINK**]  
NYNEX Telephone Companies [**NYNEX**]  
Pacific Telesis Group, Pacific Bell, Nevada Bell, Pacific Bell Mobile Services [Pacific]  
SBC Communications Inc. [SBC]  
United States Telephone Association [**USTA**]  
U S West, Inc. [U S West]

**Petitions for Reconsideration/Clarification, late-filed 8/30/96:**

Small Business in Telecommunications, Inc. [SBT]

**Oppositions/Comments to Petitions for Reconsideration, filed 9/27/96:**

ALLTEL Telephone Services Corporation [ALLTEL]  
AT&T Corp. [AT&T]  
Association for Local Telecommunications Services [ALTS]  
Bell Atlantic  
**BellSouth**  
CTIA  
CBT  
GTE

IntelCom Group (USA), Inc. [ICG]  
MCI  
NEXTLINK  
NYNEX  
RAM Mobile Data USA Limited Partnership [RMD]  
Rural Telecommunications Group [RTG]  
Pacific  
Sprint Corporation [Sprint]  
Time Warner Communications Holdings, Inc. [Time Warner]  
USTA

**Oppositions/Comments to Petitions for Reconsideration, late-filed 9/30/96:**

Telecommunications Resellers Association [TRA]

**Replies, filed 10/7/96:**

Ameritech  
NEXTLINK  
Teleport Communications Group [TCG]  
Rural Cellular Association [RCA]  
NTCA/OPASTCO

**Replies, filed 10/10/96:**

ACSI  
Bell Atlantic  
**BellSouth**  
CBT  
GTE  
MCI  
NYNEX  
Pacific  
SBC  
USTA  
U S West

## APPENDIX B - FINAL RULES

## AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 52 - NUMBERING

1. Section 52.23 is amended by revising paragraphs (a)(4) through (a)(8), removing paragraph (a)(9), and revising paragraphs (b) and (g) to read as follows:

**§ 52.23 Deployment of long-term database methods for number portability by LECs.**

(a) \* \* \*

(4) Does not result in unreasonable degradation in service quality or network reliability when implemented;

(5) Does not result in any degradation in service quality or network reliability when customers switch carriers;

(6) Does not result in a carrier having a proprietary interest;

(7) Is able to migrate to location and service portability; and

(8) Has no significant adverse impact outside the areas where number portability is deployed.

(b)(1) All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998, in accordance with the deployment schedule set forth in the Appendix to this part, in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (b)(2) of this section.

(b)(2) Any procedure to identify and request switches for deployment of number portability must comply with the following criteria:

(i) Any **wireline** carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state;

(ii) Carriers must submit requests for deployment at least nine months before the deployment deadline for the MSA;

(iii) A LEC must make available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested; and

(iv) After the deadline for deployment of number portability in an MSA in the 100 largest MSAs, according to the deployment schedule set forth in the Appendix to this part, a LEC must deploy number portability in that MSA in additional switches upon request within the following time frames:

(A) For remote switches supported by a host switch equipped for portability ("Equipped Remote Switches"), within 30 days;

(B) For switches that require software but not hardware changes to provide portability ("Hardware Capable Switches"), within 60 days;

(C) For switches that require hardware changes to provide portability ("Capable Switches Requiring Hardware"), within 180 days; and

(D) For switches not capable of portability that must be replaced ("Non-Capable Switches"), within 180 days.

\* \* \* \* \*

(g) Carriers that are members of the Illinois Local Number Portability Workshop must conduct a field test of any technically feasible long-term database method for number portability in the Chicago, Illinois, area. The carriers participating in the test must jointly file with the Common Carrier Bureau a report of their findings within 30 days following completion of the test. The Chief, Common Carrier Bureau, shall monitor developments during the field test, and may adjust the field test completion deadline as necessary.

2. Section 52.31 is amended by revising paragraph (a) to read as follows:

**§ 52.31 Deployment of long-term database methods for number portability by CMRS Providers.**

(a) By June 30, 1999, all cellular, broadband PCS, and covered SMR providers must provide a long-term database method for number portability, in the MSAs identified in the Appendix to this part in compliance with the performance criteria set forth in section 52.23(a), in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (a)(1) of this section.

(1) Any procedure to identify and request switches for deployment of number portability must comply with the following criteria:

(i) Any **wireline carrier** that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state;

(ii) For the **MSAs** identified in the Appendix to this part, **carriers** must submit requests for deployment by September 30, 1998;

(iii) A cellular, broadband PCS, or covered SMR provider must make available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested;

(iv) After June 30, 1999, a cellular, broadband PCS, or covered SMR provider must deploy additional switches serving the **MSAs** identified in the Appendix to this part upon request within the following time frames:

(A) For remote switches supported by a host switch equipped for portability ("Equipped Remote Switches"), within 30 days;

(B) For switches that require software but not hardware changes to provide portability ("Hardware Capable Switches"), within 60 days;

(C) For switches that require hardware changes to provide portability ("Capable Switches Requiring Hardware"), within 180 days; and

(D) For switches not capable of portability that must be replaced ("Non-Capable Switches"), within 180 days.

(v) Carriers must be able to request deployment in any wireless switch that serves any area within that MSA, even if the wireless switch is outside that MSA, or outside any of the **MSAs** identified in the Appendix to this part.

(2) By June 30, 1999, all cellular, broadband PCS, and covered SMR providers must be able to support roaming nationwide.

\* \* \* \* \*

3. The Appendix to Part 52 is revised to read as follows:

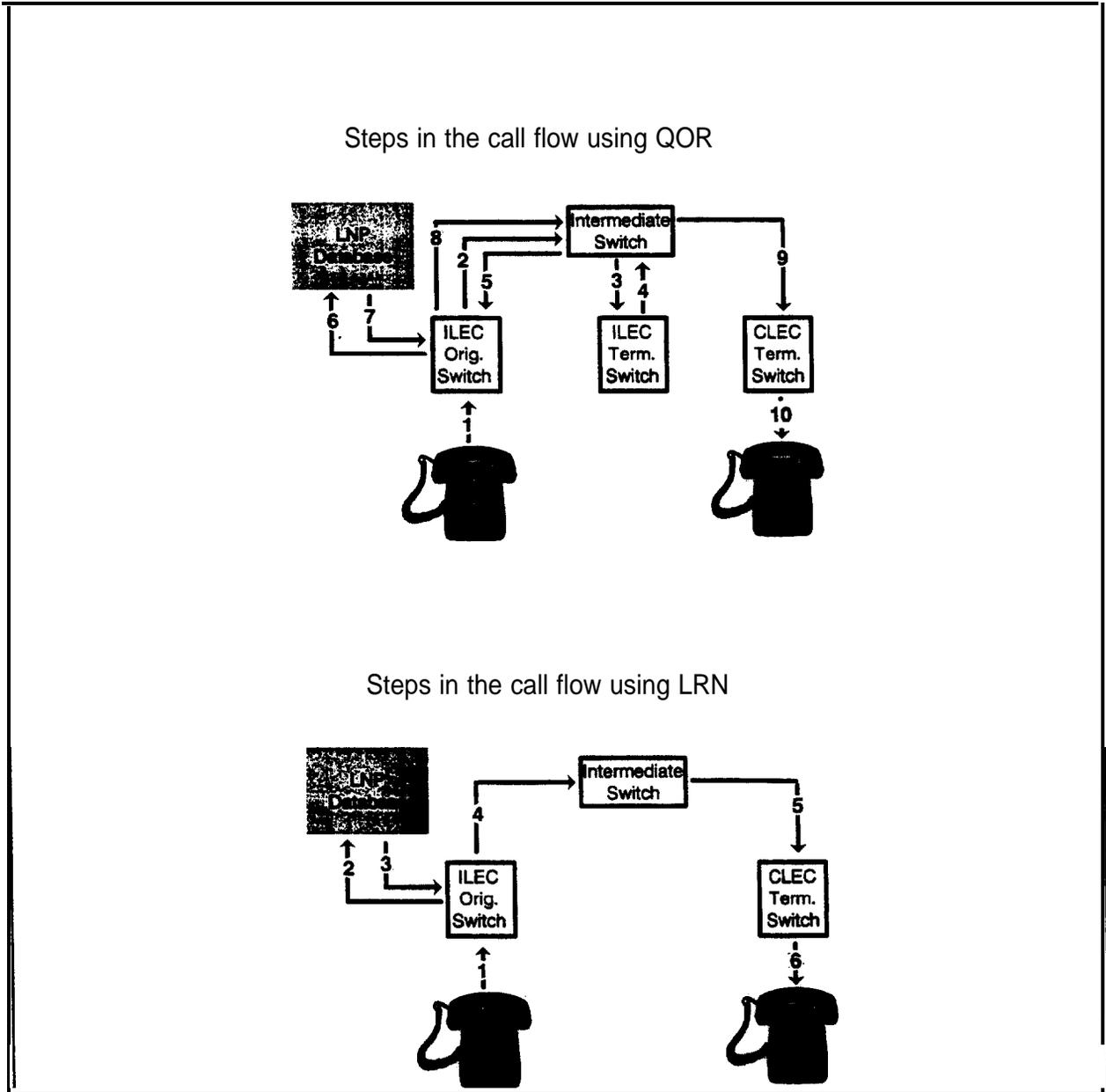
**APPENDIX to Part 52 - Deployment Schedule  
for Long-Term Database Methods for Local Number Portability**

Implementation must be completed by the carriers in the relevant MSAs during the periods specified below:

<b>Phase I -- 10/1/97-3/31/98</b>	<b>Phase II -- 1/1/98-5/15/98</b>	<b>Phase III -- 4/1/98-6/30/98</b>
Chicago, IL 3	Detroit, MI 6 Cleveland, OH 20	Indianapolis, IN 34 Milwaukee, WI 35 Columbus, OH 38
Philadelphia, PA 4	Washington, DC 5 Baltimore, MD 18	Pittsburgh, PA 19 Newark, NJ 25 Norfolk, VA 32
Atlanta, GA 8	Miami, FL 24 Fort Lauderdale, FL 39 Orlando, FL 40	New Orleans, LA 41 Charlotte, NC 43 Greensboro, NC 48 Nashville, TN 51
		Las Vegas, NV 50
	Cincinnati, OH 30	
	Tampa, FL 23	
New York, NY 2	Boston, MA 9	Nassau, NY 13 Buffalo, NY 44
Los Angeles, CA 1	Riverside, CA 10 San Diego, CA 14	Orange Co, CA 15 Oakland, CA 21 San Francisco, CA 29
		Rochester, NY 49
Houston, TX 7	Dallas, TX 11 St. Louis, MO 16	Kansas City, KS 28 Fort Worth, TX 33
		Hartford, CT 46
Minneapolis, MN 12	Phoenix, AZ 17 Seattle, WA 22	Denver, CO 26 Portland, OR 27

Phase IV -- 7/1/98-9/30/98		Phase V -- 10/1/98-12/31/98	
Grand Rapids, MI	56	Toledo, OH	81
Dayton, OH	61	Youngstown, OH	85
Akron, OH	73	Ann Arbor, MI	95
Gary, IN	80	Fort Wayne, IN	100
Bergen, NJ	42	Scranton, PA	78
Middlesex, NJ	52	Allentown, PA	82
Monmouth, NJ	54	Harrisburg, PA	83
Richmond, VA	63	Jersey City, NJ	88
		Wilmington, DE	89
Memphis, TN	53	Birmingham, AL	67
Louisville, KY	57	Knoxville, KY	79
Jacksonville, FL	58	Baton Rouge, LA	87
Raleigh, NC	59	Charleston, SC	92
West Palm Beach, FL	62	Sarasota, FL	93
Greenville, SC	66	Mobile, AL	96
		Columbia, SC	98
Honolulu, HI	65	Tulsa, OK	70
Providence, RI	47	Syracuse, NY	69
Albany, NY	64	Springfield, MA	86
San Jose, CA	31	Ventura, CA	72
Sacramento, CA	36	Bakersfield, CA	84
Fresno, CA	68	Stockton, CA	94
		Vallejo, CA	99
San Antonio, TX	37	El Paso, TX	74
Oklahoma City, OK	55	Little Rock, AR	90
Austin, TX	60	Wichita, KS	97
		New Haven, CT	91
Salt Lake City, UT	45	Omaha, NE	75
Tucson, AZ	71	Albuquerque, NM	76
		Tacoma, WA	77

APPENDIX C - DESCRIPTION OF NUMBER PORTABILITY METHODS



## 1. Location Routing Number (LRN)

Under AT&T's LRN proposal, a carrier seeking to route a call to a ported number queries or "dips" an external routing database, obtains a ten-digit location routing number for the ported number, and uses that location routing number to route the call to the end office switch which serves the called party.<sup>1</sup> The carrier dipping the database may be the originating carrier, the terminating carrier, or the N-1 carrier (the carrier prior to the terminating carrier). Under the LRN method, a unique location routing number is assigned to each switch. For example, a local service provider receiving a seven-digit local call, such as 887-1234, would examine the dialed number to determine if the NPA-NXX is a portable **code**.<sup>2</sup> If so, the seven-digit dialed number would be prefixed with the NPA and a ten-digit query (**e.g.**, 679-887-1234) would be launched to the routing database. The routing database then would return the LRN (**e.g.**, 679-267-0000) associated with the dialed number which the local service provider uses to route the call to the appropriate switch. The local service provider then would formulate an SS7 call set-up message with a generic address parameter, along with the forward call indicator set to indicate that the query has been performed, and route the call to the local service provider's tandem for **forwarding**.<sup>3</sup>

LRN is a "single-number solution" because only one number (**i.e.**, the number dialed by the calling party) is used to identify the customer in the serving **switch**.<sup>4</sup> Each switch has one network address -- the location routing number. The record and the Industry Numbering Committee (INC) indicate that LRN supports custom local area signalling services (CLASS), emergency services, and operator and directory services, but may result in some additional post-dial delay.<sup>5</sup> LRN can support location and service as well as service provider **portability**.<sup>6</sup> Finally, LRN supports wireless-wireline and wireless-wireless service provider **portability**.<sup>7</sup>

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<sup>1</sup> See **Telephone Number Portability**, Notice of Proposed Rulemaking, 10 FCC **Rcd** 12350, 12364 (**Notice**). See also AT&T Comments on Notice at 18-23; AT&T February 6, 1996 **Ex Parte** Filing at 6-9.

<sup>2</sup> An NXX code, or central office code, is the second three digits of a ten digit telephone number and identifies the service provider switch that serves a specific customer location. See **Notice**, 10 FCC **Rcd** at 12354.

<sup>3</sup> This description of call flow employing the LRN method was adapted **from** the Proposed Final Draft on number portability produced by the Industry Numbering Committee. See **INC** Report at 49-51.

<sup>4</sup> AT&T Comments on **Notice** at 20; MC Report at 45.

<sup>5</sup> **INC** Report at 45.

<sup>6</sup> **Id.** at 46.

<sup>7</sup> **Id.** at 45-58.

## 2. Query on Release (QOR)

Also known as “Look Ahead,” QOR is a method which performs queries only for calls to ported **numbers**.<sup>8</sup> Prior to querying a routing database, the switch from which the call originates reserves the appropriate call path through the SS7 network and attempts to complete a call to the switch where the NPA-NXX of the dialed number resides. If the number is ported, the call is released back to a previous switch in the call path, which performs a query to determine the LRN of the new serving switch. The call then is routed to the serving switch. The switch that redirects the call also performs the query, thus eliminating the need for the carrier to which the number was originally assigned to provide routing **information**.<sup>9</sup> Pacific Bell indicates that QOR can support both location and service portability, since any call can be released back and routed through a non-incumbent provider’s network.”

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<sup>8</sup> Pacific Bell Further Comments on Notice at 4 n.10.

<sup>9</sup> Id. at 4 & n.10.

<sup>10</sup> Id. at 7 n.18.

**APPENDIX D****SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice). Commission sought written public comment on the proposals in the Notice. In addition, pursuant to Section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the First Report & Order. That FRFA conformed to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).<sup>1</sup> The Supplemental Final Regulatory Flexibility Analysis in this First Memorandum Opinion and Order on Reconsideration (First Reconsideration Order) (Supplemental FRFA) also conforms to the RFA.

**A. Need for and Objectives of this First Reconsideration Order and the Rules Adopted Herein**

2. The need for and objectives of the rules adopted in this First Reconsideration Order are the same as those discussed in the FRFA in the First Report & Order.<sup>2</sup> 1, our rules implement the statutory requirement that all LECs provide telephone number portability when technically **feasible**.<sup>3</sup> In this First Reconsideration Order, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the First Report & Order, in order to further the same needs and objectives. First, we conclude that QOR is not an acceptable long-term number portability method. Second, we extend our implementation schedule for **wireline** carriers, clarify the requirements imposed thereunder, and address issues raised by rural LECs and certain other parties. We conclude that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. Finally, we affirm and clarify our implementation schedule for wireless carriers.

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<sup>1</sup> 5 U.S.C. § 601 et seq. The SBREFA is Title II of the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

<sup>2</sup> First Report & Order, 11 FCC Rcd at 8486.

<sup>3</sup> See 47 U.S.C. § 251(b)(2).

**B. Analysis of Significant Issues Raised in Response to the FRFA**

3. *Summary of the FRFA?* In the FRFA, we concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation, and, accordingly, we did not address the impact of our rules on incumbent LECs.<sup>5</sup> We noted that the RFA generally defines the term “small business” as having the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup> According to the SBA’s regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern.\* This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.’

4. We did recognize that our rules may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission’s Common Carrier Bureau, we estimated that 2,100 carriers could be affected.<sup>10</sup> We also discussed the reporting requirements imposed by the First Report & Order.<sup>11</sup>

5. Finally, we discussed the steps we had taken to minimize the impact on small entities, consistent with our stated objectives.<sup>12</sup> We concluded that our actions in the First Report & Order would benefit small entities by facilitating their entry into the local exchange

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<sup>4</sup> For a summary of the IRFA and an analysis of the significant issues raised in response to the IRFA, see First Report & Order, 11 FCC Rcd at 8486-87.

<sup>5</sup> Id. at 8487.

<sup>6</sup> Id.; 15 U.S.C. § 632.

<sup>7</sup> First Report & Order, 11 FCC Rcd at 8487; 15 U.S.C. § 632.

<sup>a</sup> First Report & Order, 11 FCC Rcd at 8487; 13 C.F.R. § 121.201.

<sup>9</sup> First Report & Order, 11 FCC Rcd at 8487.

<sup>10</sup> Id. at 8487-88.

<sup>11</sup> Id. at 8488-89.

<sup>12</sup> Id.

market. We found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone **numbers**.<sup>13</sup> These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability, which will eliminate this barrier to **entry**.<sup>14</sup> We noted that, in general, we attempted to keep burdens on local exchange carriers to a minimum. For example, we adopted a phased deployment schedule for implementation in the 100 largest **MSAs**, and then elsewhere upon a carrier's request; we conditioned the provision of currently available measures upon request only; we did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and we did not require paging and messaging service providers, which may be small entities, to provide any number **portability**.<sup>15</sup>

### 1. Treatment of Small Incumbent LECs

6. *Comments.* NTCA/OPASTCO claims that the First Report & Order's Final Regulatory Flexibility Analysis does not address the impact of the rules on small incumbent **LECs**, and is thus inconsistent with the Local Competition Order.<sup>16</sup> NTCA/OPASTCO suggests that exempting rural **LECs** from number portability requirements absent a bona fide request would fulfill our responsibility under the Regulatory Flexibility Act.<sup>17</sup>

7. *Discussion.* Because the small incumbent **LECs** subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business **concerns**."<sup>18</sup> As we stated in the Local Competition Order,<sup>19</sup> we have found incumbent **LECs** to be "dominant in their field of operation" since the early **1980's**, and we

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<sup>13</sup> See id. at 8368, 8489.

<sup>14</sup> See id. at 8367-68, 8489.

<sup>15</sup> See id. at 8489.

<sup>16</sup> NTCA/OPASTCO Petition at 4 & n.6.

<sup>17</sup> Id. at 5.

<sup>18</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC **Rcd** 15,499, **16,144-45**, 16,150 (1996), motion for stay of the FCC's rules pending judicial review denied. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 11 FCC **Rcd** 11754 (1996), partial stay granted, Iowa Utilities Board v. FCC, No. 96-3321, 1996 WL 589204 (8th Cir. 1996) (Local Competition Order).

<sup>19</sup> Id. at 16,145.

consistently have certified under the RFA<sup>20</sup> that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses?’ We have made similar determinations in other areas.<sup>22</sup> Accordingly, our use of the terms “small entities” and “small businesses” does not encompass small incumbent LECs.<sup>23</sup> Although we are not fully persuaded on the basis of this record that our prior practice has been incorrect, in light of the special concerns raised by NTCA/OPASTCO in this proceeding, for regulatory flexibility analysis purposes, we will include small incumbent LECs in this Supplemental FRFA and use the term “small incumbent LECs” to refer to any incumbent LECs that arguably might be defined by SBA as “small business concerns.”<sup>24</sup> Out of an abundance of caution, therefore, we will include small incumbent LECs in the Supplemental FRFA in this First Reconsideration Order to remove any possible issue of RFA compliance.<sup>25</sup>

## 2. Other Issues

8. Although not in response to the FRFA, certain parties urge us to waive number portability requirements for rural **and/or** smaller LECs serving areas in the largest 100 MSAs until receipt of a bona fide request, or to grant an exemption from our rules on the basis of rural and/or smaller LEC status. We discuss these issues above in the First Reconsideration Order.<sup>26</sup>

### C. Description and Estimates of the Number of Small Entities Affected by this First Reconsideration Order

9. For the purposes of this First Reconsideration Order, the RFA **defines** a “small business” to be the same as a “small business concern” under the Small Business Act, 15

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<sup>20</sup> See 5 U.S.C. § 605(b).

<sup>21</sup> See, e.g., Expanded Interconnection with Local Telephone Company Facilities, Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, Report & Order, 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, Third Report and Order, 93 F.C.C. 2d 241, 338-39 (1983)).

<sup>22</sup> See, e.g., Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7418 (1995).

<sup>23</sup> See Local Competition Order, 11 FCC Rcd at 16,150.

<sup>24</sup> See id. at 16,145.

<sup>25</sup> See id.

<sup>26</sup> See First Reconsideration Order, supra ¶¶ 108-122.

U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its **activities**.<sup>27</sup> Under the Small Business Act, a “small business **concern**” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the **SBA**.<sup>28</sup> SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees.<sup>29</sup> We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories that may be affected by our rules, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

10. Consistent with our prior practice, we shall continue to exclude small incumbent **LECs** from the definition of a small entity for the purpose of this Supplemental FRFA. Nevertheless, as mentioned above, we include small incumbent **LECs** in our Supplemental FRFA. Accordingly, our use of the terms “small entities” and “small businesses” does not encompass “small incumbent **LECs**.” We use the term “small incumbent **LECs**” to refer to any incumbent **LECs** that arguably might be defined by SBA as “small business **concerns**.”<sup>30</sup>

11. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>31</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent **LECs** because they are not “independently owned and **operated**.”<sup>32</sup>

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<sup>27</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 5 U.S.C. § 632).

<sup>28</sup> 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

<sup>29</sup> 13 C.F.R. § 121.201.

<sup>30</sup> See 13 C.F.R. § 121.210 (SIC 4813).

<sup>31</sup> United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

<sup>32</sup> 15 U.S.C. § 632(a)(1).