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

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

SECOND MEMORANDUM OPINION AND
ORDER ON RECONSIDERATION

Adopted: October 15, 1998 Released: October 20, 1998

By the Commission:

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I. INTRODUCTION

1. On June 27, 1996, the Commission adopted the First Report and Order and

*Further Notice of Proposed Rulemaking (First Report and Order)*¹ in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability.² Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, "to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."³ Section 251(e)(2) provides that "the costs of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."⁴ The Act defines "number portability" 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."⁵ In the *First Report and Order*, the Commission determined, among other things, that the Commission has authority under section 251 to promulgate rules regarding long-term and currently available number portability, as well as to establish cost recovery methods for each.⁶

2. Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order*; 19 parties filed oppositions or comments on the petitions; and 16 parties filed reply comments.⁷ On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration* in this proceeding, addressing a number of issues.⁸ In this *Second Memorandum Opinion and Order on Reconsideration*, we address

¹ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (*First Report and Order*).

² Section 251 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act).

³ 47 U.S.C. § 251(b)(2).

⁴ 47 U.S.C. § 251(e)(2).

⁵ 47 U.S.C. § 153(30).

⁶ *First Report and Order*, 11 FCC Rcd at 8370-71, 8409-8411, 8415, 8455, ¶¶ 36-37, 110-112, 121, 199.

⁷ A complete list of petitioners and commenting parties is attached as Appendix A.

⁸ *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236 (1997) (*First Order on Reconsideration*), further recon. pending, appeals pending sub nom., *Bell Atlantic NYNEX Mobile, Inc. v. FCC et al.*, No. 97-9551 (10th Cir. May 30, 1997), *U S WEST, Inc. v. FCC et al.*, No. 97-9518 (10th Cir. filed April 24, 1997). The *First Order on Reconsideration* addressed three primary issues. First, the Commission concluded that Query on Release (QOR) is not an acceptable long-term number portability method because it violates one of the performance criteria established in the *First Report and Order*. Second, the Commission extended the long-term number portability implementation schedule for wireline carriers, clarified the requirements imposed thereunder, and addressed issues related to rural LECs and certain

all remaining issues raised by the petitioners, except issues relating to cost recovery for currently available number portability, which will be addressed in a future order.⁹ We also address American Mobile Telecommunications' (AMTA) petition for reconsideration of the *First Order on Reconsideration*, which raises similar issues to those raised by AMTA in its petition for reconsideration of the *First Report and Order*.

II. BACKGROUND

3. In the *First Report and Order*, the Commission required all LECs to begin implementing a long-term service provider portability solution that meets the Commission's performance criteria in the 100 largest Metropolitan Statistical Areas (MSAs)¹⁰ no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998, in accordance with a phased implementation schedule.¹¹ In the *First Order on Reconsideration*, the Commission modified this schedule, extending the completion dates for the first two phases of the implementation schedule and clarifying that, within the 100 largest MSAs, LECs need only provide number portability in switches for which another carrier has made a specific request for the provision of portability.¹²

4. In the *First Report and Order*, the Commission also required all cellular, broadband personal communications services (PCS) and covered specialized mobile radio (SMR) providers to have the capability of delivering calls from their networks to ported numbers anywhere in the country by December 31, 1998, and to offer service provider

other parties. Third, the Commission affirmed and clarified the long-term number portability implementation schedules for wireless carriers. *First Order on Reconsideration*, 12 FCC Rcd at 7237, ¶ 1.

⁹ The Commission, in *Telephone Number Portability*, CC Docket No 95-116, Third Report and Order, FCC 98-82 (rel. May 12, 1998), *recon. pending*, set forth the principles governing cost recovery for long-term number portability, requiring that all telecommunications carriers bear in a competitively neutral manner the costs of providing long-term number portability.

¹⁰ Metropolitan Statistical Areas are geographic areas designated by the Bureau of Census for purposes of collecting and analyzing census data. The boundaries of MSAs are defined using statistics that are widely recognized as indicative of metropolitan character. See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Memorandum Opinion and Order, FCC 97-168 (rel. May 30, 1997), ¶ 17 n.26.

¹¹ *First Report and Order*, 11 FCC Rcd at 8355, ¶ 3.

¹² *First Order on Reconsideration*, 12 FCC Rcd at 7273, 7283, 7284, ¶¶ 60, 78, 80.

portability,¹³ including the ability to support roaming, throughout their networks by June 30, 1999.¹⁴ In the *First Order on Reconsideration*, the Commission concluded that these commercial mobile radio service (CMRS) providers need only deploy local number portability by the June 30, 1999, deadline in switches in the 100 largest MSAs for which they receive a request at least nine months prior to the deadline.¹⁵ On September 1, 1998, the Wireless Telecommunications Bureau extended the deadline for implementation of number portability by CMRS providers to March 31, 2000.¹⁶

5. In the *First Report and Order*, the Commission concluded, *inter alia*, that a system of regional number portability databases, managed by independent local number portability administrator(s) (LNPA(s)) would serve the public interest.¹⁷ The Commission directed the North American Numbering Council (NANC), an advisory committee established pursuant to the Federal Advisory Committee Act,¹⁸ to recommend as local number portability administrators one or more independent, non-governmental entities that are not aligned with any particular telecommunications industry segment within seven months of the initial meeting of the NANC.¹⁹ The Commission also directed the NANC to make recommendations regarding, *inter alia*, the duties of local number portability administrator(s), the location of

¹³ "Service provider portability" refers to the ability of end users to retain the same telephone numbers as they change from one service provider to another. In contrast, "service portability" refers to the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications service to another service provided by the *same carrier*. *First Report and Order*, 11 FCC Rcd at 8443, ¶ 172. "Location portability" refers to the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another. *Id.* at 8443, ¶ 174.

¹⁴ *First Report and Order*, 11 FCC Rcd at 8439-8440, ¶¶ 165-166.

¹⁵ *First Order on Reconsideration*, 12 FCC Rcd at 7313-14, ¶ 137.

¹⁶ *Telephone Number Portability*, CC Docket No. 95-116, *Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, Memorandum Opinion and Order, DA 97-2579 (rel. Sep. 1, 1998). The Commission currently has pending before it a petition from the Cellular Telecommunications Industry Association (CTIA), seeking forbearance from the CMRS number portability deadlines. See *Wireless Telecommunications Bureau Seeks Comment On CTIA Petition Requesting Forbearance from CMRS Number Portability Requirements*, Public Notice, CC Docket 95-116, DA 98-11 (rel. January 22, 1998).

¹⁷ *First Report and Order*, 11 FCC Rcd at 8399-8401, ¶¶ 91-92.

¹⁸ See 5 U.S.C. App. 2 (1988).

¹⁹ *First Report and Order*, 11 FCC Rcd at 8401, ¶ 93.

regional databases, and technical specifications for the regional databases.²⁰ In the *Second Report and Order*, the Commission adopted, with minor modifications, the *NANC LNPA Working Group Report*, containing the recommendations of the NANC regarding the selection of LNPAs, the duties of LNPAs, the locations of regional databases, and technical specifications for the regional databases.²¹

III. RECONSIDERATION ISSUES

A. Database Issues

1. Treatment of Industry Efforts to Implement Regional Databases Prior to Issuance of NANC's Recommendations

a. Pleadings

6. BellSouth and U S WEST argue that, given the relatively short time frame the Commission has allotted for carriers to implement number portability, the Commission should expressly approve carriers' efforts to implement regional service management system (SMS) database solutions taken prior to the issuance of the *NANC LNPA Working Group Report*.²²

b. Discussion

7. As noted above, the Commission has adopted the *NANC LNPA Working Group Report*, which contains NANC's recommendations with respect to regional database implementation, in a separate order.²³ In particular, in that order, the Commission adopted the NANC's recommendation that Lockheed Martin serve as local number portability database

²⁰ *Id.* at 8402, 8403-04, ¶¶ 95, 99.

²¹ *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281 (1997) (*Second Report and Order*).

²² BellSouth Petition at 17; U S WEST Petition at 11-12. An SMS is a computerized database and related protocols, not part of the public switched network, that, among other things: (1) interconnects to a service control point (SCP) and sends to that SCP the information and call processing instructions needed for a network switch to process and complete a telephone call; and (2) provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call. An SCP is a database in the public switched network that contains information and call processing instructions needed for a network switch to process and complete a telephone call. The network switches access an SCP to obtain such information. Typically, the information contained in an SCP is obtained from the SMS. *First Report and Order*, 11 FCC Rcd at 8402, ¶ 95, n.288.

²³ *See Second Report and Order*, 12 FCC Rcd at 12283-84, ¶ 3.

administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the local number portability database administrator for the Southeast, Western and West Coast regions.²⁴

8. On February 20, 1998, the Chief of the Common Carrier Bureau received a letter from the Chairman of the NANC informing him that the Limited Liability Corporations (LLCs) for the Southeast, Western, and West Coast regions reported to the NANC on local number portability implementation. The LLCs for the Southeast, Western, and West Coast regions reported that it was necessary to terminate their contracts with Perot Systems, with whom they had experienced repeated performance problems, and to enter into contracts with Lockheed Martin to serve as the LNPA to expedite implementation of local number portability. The NANC members supported unanimously the decision to change vendors as "essential in successfully implementing [number portability] in these regions."²⁵

9. We adopt the *NANC Perot Recommendation* to replace Perot Systems with Lockheed Martin as the LNPA in the Southeast, Western and West Coast regions. The record indicates that the NPAC database and associated facilities needed for long-term number portability in the regions where Perot Systems was the database administrator were not ready for intercompany testing as late as January 23, 1998, putting in jeopardy the dates for which number portability was required to be made commercially available in these regions. The record indicates that this delay was specifically due to the failure of the designated LNPA, Perot Systems, to provide a stable software and hardware platform.²⁶ We find that *NANC Perot Recommendation* supports timely implementation of local number portability.

10. We find it unnecessary to authorize expressly or approve automatically carriers' actions implementing regional database solutions that were taken prior to the issuance of the *NANC LNPA Working Group Report* or the Commission's order acting on the *NANC LNPA Working Group Report*. We conclude that the concerns raised by BellSouth and U S WEST in this area have become moot in light of subsequent industry actions to implement local number portability. Carriers, both on their own and through the regionally-based LLCs, have successfully worked with the NANC to implement regional SMS database solutions.

²⁴ *Second Report and Order*, 12 FCC Rec at 12303, ¶ 33.

²⁵ Letter from Alan C. Hasselwander, Chairman, North American Numbering Council, to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, FCC, February 20, 1998 (*NANC Perot Recommendation*).

²⁶ See Letter from West Coast Portability Services, LLC, to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, FCC, January 23, 1998, filed in response to *Common Carrier Bureau Seeks Comment on the NANC Recommendation to Delay Filing of 47 C.F.R. § 52.3(e) Waiver Requests by Individual Carriers for Local Number Portability Phase 1 Implementation*, CC Docket 95-116, Public Notice, DA 98-109 (rel. Jan. 21, 1998).

2. Scope of the NANC's Responsibilities

a. Pleadings

11. BellSouth and Pacific contend that the Commission should clarify and, in certain respects, restrict the scope of the NANC's responsibilities for implementation of number portability.²⁷

b. Discussion

12. We find moot BellSouth's request that the NANC should address only SMS database administration. The recommendations contained in the *NANC LNPA Working Group Report*, adopted by the Commission in the *Second Report and Order*, address technical specifications related to SMS database administration only and do not address SMS/SCP pairs.²⁸

13. In addition, we find moot BellSouth's request that carriers, and not the NANC, propose standards for interfaces between regional SMS and downstream SCP databases. In the *Second Report and Order*, the Commission adopted the NANC's recommended standards for interfaces between regional SMS and downstream SCP databases.²⁹ The carriers sharing in the costs of developing, establishing and maintaining the regional databases had ample opportunity, through the NANC, to participate in the development of interface recommendations.³⁰

²⁷ BellSouth Petition at 18; Pacific Petition at 13.

²⁸ See generally *NANC LNPA Working Group Report* at § 5 (reports of task forces on local number portability architecture and technical and operational requirements).

²⁹ *Second Report and Order*, 12 FCC Rcd at 12318, ¶ 62. In directing the NANC to develop such standards, the Commission sought to ensure consistency in the administration of number portability, provide a national perspective on number portability issues and reduce the costs of implementing a national number portability plan. *First Report and Order*, 11 FCC Rcd at 8401, ¶ 93.

³⁰ The participants in the NANC working group on number portability include: AirTouch Communications, Ameritech, APCC, Inc., AT&T, Bell Atlantic, Bellcore, BellSouth, BellSouth Wireless, California Public Utilities Commission, Cox, Florida Public Service Commission, Frontier, GTE, Interstate Fibernet, Lucent Technologies, Maryland Public Service Commission, MCI, Nextel, Nortel, NYNEX, Ohio Public Utilities Commission, PACE Long Distance Service, Competitive Telecommunications Association, Pacific Bell, Perot Systems, SBC, Selectronics, Sprint, Sprint PCS, Personal Communications Industry Association, Stentor, Telefonica de Puerto Rico, Teleport, Time Warner, National Cable Television Association, U S WEST, United States Telephone Association, and WorldCom.

14. Finally, we find moot Pacific's request that we direct an industry group other than the NANC to address operational and technical issues that will arise as number portability is implemented. In the *Second Report and Order*, the Commission found that the NANC represents a broad cross-section of the industry, has developed substantial expertise in number portability issues, and provides a valuable forum in which carriers are able to consider, at the national level, possible ways to resolve the issues that arise as number portability is deployed within each number portability region.³¹ As a result, the Commission charged the NANC with the task of addressing technical and operational issues related to local number portability that may arise in the future.³²

3. Effect of Implementation of Long-Term Number Portability on Interim Number Portability Methods

a. Pleadings

15. GTE interprets the *First Report and Order* as permitting LECs to withdraw interim number portability methods when long-term number portability becomes available to competing carriers. GTE is concerned, nevertheless, that some new competitors may want to continue using interim number portability measures even after long-term number portability is available because, GTE contends, the Commission's cost recovery methods for interim number portability give significant cost breaks to new entrants, relative to long-term methods.³³ GTE also claims that the location routing number method of long-term number portability may impose significantly greater costs on competing LECs than interim measures will.³⁴ In addition, GTE contends that retention of interim number portability methods after long-term number portability has been implemented will increase the risk of design inefficiency, confusion, and technical problems within the network.³⁵ According to GTE, "a database solution to portability is most beneficial and efficient only if all inter-switch calls to ported numbers make use of the system."³⁶

³¹ *Second Report and Order*, 12 FCC Rcd at 12351-52, ¶ 129.

³² *See id.* at ¶¶ 69, 128-132.

³³ GTE Petition at 16-17.

³⁴ *Id.* at 17.

³⁵ *Id.*

³⁶ *Id.* at 17-18.

b. Discussion

16. We clarify that all LECs must discontinue using transitional number portability methods in areas where a long-term number portability method has been implemented. In the *First Report and Order*, the Commission concluded that the Act "contemplates a dynamic, not static, definition of technically feasible number portability methods."³⁷ Based on this finding, the Commission required LECs to offer number portability, as soon as reasonably possible upon receipt of a specific request, through remote call forwarding (RCF),³⁸ direct inward dialing (DID)³⁹ and other comparable methods, because these are the only methods that currently are technically feasible.⁴⁰ However, the Commission also stated that:

[W]hen a number portability method that better satisfies the requirements of section 251(b)(2) than currently available measures becomes technically feasible, LECs *must* provide number portability by means of such method. In addition, we find that the existing measures fail to satisfy our criteria set forth for any long-term solution For these reasons, we do not believe that long-term use of the currently available measures is in the public interest.⁴¹

Because transitional number portability methods do not meet the performance criteria

³⁷ *First Report and Order*, 11 FCC Rcd at 8409, ¶ 110.

³⁸ RCF is an existing LEC service that redirects calls in the telephone network and can be adapted to provide service provider number portability. See *First Report and Order*, 11 FCC Rcd at 8499, App. E, ¶ 10. If a customer transfers his or her existing telephone number from Carrier A to Carrier B, any call to that customer is routed to the central office switch operated by Carrier A that is designated by the "NXX code" of the customer's telephone number. Carrier A's switch routes that call to Carrier B, translating the dialed number into a number with an NXX corresponding to a switch operated by Carrier B. Carrier B then completes the routing of the call to its customer. The change in terminating carriers is transparent to the calling party. See *id.*

An "NXX code" is the portion of ten-digit telephone number that identifies the central office switch to which a telephone number had been assigned. Under the North American Numbering Plan, telephone numbers consist of ten digits in the form NPA-NXX-XXXX, where N may be any number from 2 to 9 and X may be any number from 0 to 9. Numbering plan areas (or NPAs) are known commonly as area codes. *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2593-94 (1995) (Numbering Plan Order).

³⁹ DID works similarly to RCF, except the original service provider routes calls to the dialed number over a dedicated facility to the new service provider's switch instead of translating the dialed number to a new number. *First Report and Order*, 11 FCC Rcd at 8499, App. E, ¶ 11.

⁴⁰ *First Report and Order*, 11 FCC Rcd at 8409, 8411, ¶¶ 110, 114.

⁴¹ *Id.* at 8411-12, ¶ 115 (emphasis added).

established for long-term number portability, LECs may not continue to utilize such measures once long-term solutions have been implemented. This conclusion is consistent with the Commission's finding in the *First Report and Order* that the Act "clearly contemplates that [currently available] methods should serve as only temporary measures until long-term portability is implemented."⁴² In reaching this decision, we find it unnecessary to consider whether competing carriers would, as GTE claims, have incentives to continue to use currently available methods of number portability after long-term methods are available, if given the choice.

17. We also wish to clarify that, under the rules adopted in the *First Report and Order*, RCF and DID are not the *exclusive* methods of providing number portability that LECs are obligated to provide today. Section 52.27 of the Commission's rules provides:

All LECs shall provide transitional measures, which may consist of Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (DID), or any other comparable and technically feasible method . . . until such time as the LEC implements a long-term database method for number portability in that area.⁴³

As the Commission stated in the *First Report and Order*, "LECs are required to offer number portability through RCF, DID, and other *comparable* methods because they are the only methods that currently are technically feasible."⁴⁴ In specifically identifying RCF and DID as technically feasible number portability methods, the Commission did not imply that RCF and DID are the *only* methods through which LECs must port numbers until a permanent number portability solution is implemented. Clearly, the references to RCF and DID were illustrative of the types of measures that LECs must provide on a transitional basis. The Commission's rules require that LECs must provide, on a transitional basis, any technically feasible method of number portability comparable to RCF and DID.⁴⁵

⁴² *Id.*

⁴³ 47 C.F.R. § 52.27 (emphasis added).

⁴⁴ *First Report and Order*, 11 FCC Rcd at 8409, ¶ 110 (emphasis added).

⁴⁵ In the *Telephone Number Portability*, Notice of Proposed Rulemaking, 10 FCC Rcd 12350 (1995) (*Telephone Number Portability NPRM*), the Commission sought comment on the costs, availability, offsetting benefits, limitations and disadvantages of RCF, DID, and their derivatives. The Commission identified several derivatives of RCF and DID, such as Route Indexing - Portability Hub, which require routing of incoming calls to the terminating switch identified by the NXX code of the dialed phone number. *Telephone Number Portability NPRM*, 10 FCC Rcd at 12370. These derivative methods of transitional number portability considered in the *Telephone Number Portability NPRM* are comparable to RCF and DID but differ in that they

18. In the two years since adoption of the *First Report and Order*, a number of state commissions have ordered carriers to provide Route Indexing - Portability Hub (RI-PH)⁴⁶ and Directory Number Route Indexing (DNRI),⁴⁷ based on findings of technical feasibility. In particular, the California Public Utilities Commission ordered Pacific Bell and GTE to provide RI-PH;⁴⁸ Indiana has ordered Ameritech and GTE to provide RI-PH and DNRI;⁴⁹ arbitrators in

use LEC tandem switches to aggregate calls to a particular competing service provider before those calls are routed to that provider. *Id.*

⁴⁶ Under the RI-PH method, a call is routed to the LEC switch corresponding to the NXX code of the dialed number. The LEC switch inserts a 1XX prefix onto the front of the telephone number. This 1XX code identifies the competitive service provider to which the call will be routed. This 10 to 13-digit number (telephone number with the 1XX prefix) is transmitted to the LEC tandem switch to which the competitive exchange provider is connected. The tandem switch strips the 1XX prefix from the dialed number, and routes the call to the competitive exchange provider's switch, where the routing of the call is terminated. *First Report and Order*, 11 FCC Rcd at 8500, App. E-7, n.42. AT&T asserted in its comments to Ameritech's application to provide in-region, interLATA service in Michigan that RI-PH is less likely than RCF or DID to impair service quality and network reliability in serving medium to large business customers. *In the Matter of Application by Ameritech Michigan for Authorization Under Section 271 of the Telecommunications Act to Provide In-Region, InterLATA Service in Michigan*, CC Docket No. 97-137, AT&T Comments, Exh. H, Affidavit of Judith D. Evans on Behalf of AT&T Corp., at 3, 10 (filed June 10, 1997) (*AT&T's Evans Affidavit*).

⁴⁷ DNRI is a method of number portability under which calls are first routed to the switch originally assigned the NPA-NXX code. DNRI then routes ported calls to the new service provider either through a direct trunk or by attaching a temporary "pseudo NPA" to the number and using a tandem, depending on availability. *First Report and Order* at Appendix E-7, n.42; Letter at 2, from Mary McDermott, USTA, to William Caton, FCC, CC Docket No. 95-116, filed Apr. 4, 1996 (USTA April 4, 1996 *Ex Parte* Letter); see also *First Report and Order* at 11 FCC Rcd at 8362, ¶ 20.

⁴⁸ *In re the Petition of AT&T Communications of California Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement with Pacific Bell*, Application No. 96-08-040, Arbitrator's Report at 10-11 (Cal.P.U.C. Oct. 31, 1996) *aff'd*, opinion at 24 (Dec. 11, 1996), *appeal pending sub nom.*, *Pacific Bell v. AT&T Communications of California, Inc.*, Case No. C-97-0080S1 (N.D.Cal. Jan. 8, 1997); *In re the Petition of AT&T Communications of California, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to establish an Interconnection Agreement With GTE California, Inc.*, Application No. 96-08-041., Arbitrator's Report at 7-8 (Cal. P.U.C. Oct. 31, 1996), *aff'd*, Opinion Approving Arbitrated Agreement at 5 (Jan. 13, 1997), *appeal pending sub nom.*, *GTE California, Inc. v. AT&T Communications of California, Inc.*, Case No. C-97-1756S1 (N.D.Cal. Jan. 14, 1997).

⁴⁹ *In re the Petition by AT&T Communications of Indiana, Inc. Requesting Arbitration of Certain Terms, Conditions, and Prices for Interconnection and Related Arrangements for Indiana Bell Tel. Co.*, Cause No. 40571-INT-01, Memorandum at 17-18 (Ind. Util. Reg. Comm'n Nov. 27, 1996), *appeal pending sub nom.*, *Ameritech Corp. v. AT&T Communications of Indiana, Inc.*, Case No. IP97-0662C (S.D.Ind., April 25, 1997); *In re the Petition by AT&T Communications of Indiana, Inc. Requesting Arbitration of Interconnection Terms, Conditions, and Prices from GTE North Inc. and Contel of the South, Inc.*, Cause No. 40571-INT-02, Memorandum at 7 (Ind. Util. Reg. Comm'n Dec. 12, 1996).

Kansas and Missouri have ordered SBC to provide interim number portability using RI-PH and DNRI;⁵⁰ and GTE has been ordered to provide RI-PH and DNRI in Florida, Missouri, South Carolina, and Texas,⁵¹ and to provide RI-PH in Alabama and DNRI in Virginia.⁵² Additionally, several LECs have voluntarily agreed to provide RI-PH and DNRI: NYNEX, prior to its merger with Bell Atlantic, agreed to provide DNRI in the six states in its service territory;⁵³ BellSouth has agreed to provide both RI-PH and DNRI in all nine of the states in its service territory;⁵⁴ U S WEST agreed to provide RI-PH and DNRI in each of the fourteen

⁵⁰ *In re the Petition by AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 (b) of the Telecommunications Act of 1996*, Docket No. 97-AT&T-290-ARB, Arbitration Order at 68-70 (Kan. State Corp. Comm'n Feb. 6, 1997), *aff'd*, Commission Order at 10 (Mar. 10, 1997); *In re AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket No. TO-97-40, Arbitration Order at 19-20 (Mo. P.S.C. Dec. 11, 1996).

⁵¹ *In re Petitions of AT&T et al. for Arbitration with GTE*, Docket No. 960847-TP, Final Order on Arbitration at 120-21 (Fla. P.S.C. Jan. 11, 1997); *In re AT&T Communications of the Southwest, Inc.'s Petition for Arbitration to Establish an Interconnection Agreement between AT&T and GTE Midwest, Inc.*, Arbitration Order at 47 (Mo. P.S.C. Dec. 10, 1996); *In re the Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with GTE South, Inc.*, Docket No. 96-375-C - Order No. 97-211, Order on Arbitration at 9 (S.C. P.S.C. Mar. 17, 1997); *Petition of AT&T, et al., for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and GTE*, Arbitration Award at 67 (Tex. P.U.C. Dec. 12, 1996).

⁵² *In re the Petition of AT&T Communications of Va., Inc. for Arbitration of Unresolved Issues from Interconnection Negotiations with GTE South, Inc.*, Case No. PUC 960117, Order Resolving Non-pricing Issues and Requiring Filing of Interconnection Agreement at 10 (Va. State Corp. Comm'n Dec. 11, 1996); *In re Petition of AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Alabama, Inc. and Contel of the South, Inc.*, Docket 25704, Arbitration Report and Recommendation at 35 (Ala. P.S.C. Jan. 31, 1997); *see also AT&T Communications of the Southern States, Inc., Petition for Arbitration with BellSouth Telecommunications, Inc.*, Docket No. P-140, SUB 50, Recommended Arbitration Order at 34-35 (N.C. Utils. Comm'n Dec. 23, 1996), *appeal pending sub nom., BellSouth v. AT&T Communications of the Southern States, Inc.*, Case No. 5-97-CV371 (E.D.N.C. May 9, 1997).

⁵³ *AT&T's Evans Affidavit*, *supra* note 46, at 27; *see, e.g., Proceeding on Motion of the Commission to Examine Issues Related to the Continued Provision of Universal Service and to Develop a Framework for the Transition to Competition in the Local Exchange Market*, Case 94-C-0095, Tariff Filings Regarding Interim Number Portability (N.Y.P.S.C. October 15, 1996).

⁵⁴ *See Direct Testimony of William V. Atherton of BellSouth in Tennessee Regulatory Authority Docket No. 96-01152* (September 26, 1996) at 4, 12-13; *In the Matter of Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Brief in Support of Application by BellSouth at 56 (*BellSouth Brief in Support of Second Louisiana 271 Application*); *In the Matter of Application by BellSouth Corporation,*

states in its service territory;⁵⁵ and Sprint Local has agreed to provide RI-PH to AT&T nationwide.⁵⁶ To date, LECs in more than half the states have either agreed or been ordered to provide RI-PH and DNRI as technically feasible methods of providing number portability prior to deployment of a database method. We therefore conclude, consistent with the Commission's prior findings in this docket⁵⁷ and with the rules and policies established in the Commission's *Local Competition Order*,⁵⁸ that RCF, DID, DNRI and RI-PH are comparable and technically feasible transitional methods of providing number portability.⁵⁹ We conclude that state commissions may determine that additional methods are comparable and technically feasible, as well.

19. In adopting the requirements for transitional number portability in the *First Report and Order*, the Commission relied on the fact that no network modifications would be necessary in order to provide number portability on a transitional basis, prior to implementation of a long-term database solution. In particular, in adopting section 52.27, the Commission concluded that it is not unduly burdensome for LECs to provide number

BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Brief in Support of Application by BellSouth at 51 (*BellSouth Brief in Support of South Carolina 271 Application*).

⁵⁵ *AT&T's Evans Affidavit*, *supra* note 46, at 25.

⁵⁶ *Id.*

⁵⁷ *First Report and Order*, 11 FCC Rcd at 8404, ¶ 100.

⁵⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996) (*Local Competition First Reconsideration Order*), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996) (*Local Competition Second Reconsideration Order*), *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 97-295 (rel. Aug. 18, 1997) (*Local Competition Third Reconsideration Order*), *further recon. pending, cert. granted sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998). The Eighth Circuit specifically upheld the Commission's jurisdiction to adopt rules relating to number portability. *Iowa Utils. Bd.*, 120 F.3d at 794, n.10.

⁵⁹ In reaching this conclusion, we hereby respond to the primary jurisdiction referral of the Western District of Texas. *See AT&T v. Southwestern Bell Telephone Company*, No. A-97-CA-029-SS, slip. op. at 8-9 (W.D. Tex. filed Aug. 19, 1998) (noting the dynamic definition of number portability, and referring to the FCC the issue of whether route indexing is a comparable and technically feasible method of interim number portability because of "(i) the open-ended and ever changing obligation of incumbent LECs to provide number portability, and (ii) the explicit and unambiguous statutory mandate that the FCC implement the number portability requirement") (citing 47 U.S.C. § 251(b)(2)).

portability through RCF and DID because these methods are offered as retail services in a number of states today.⁶⁰

20. Since adoption of the *First Report and Order*, certain new entrants have sought other transitional methods of number portability that are better suited, in their view, to their particular business needs. A number of carriers make available other transitional methods of number portability, such as RI-PH and DNRI, only if requested by a competing carrier.⁶¹ We conclude that it is not *per se* unreasonable for a LEC to make available transitional number portability methods only upon request, provided that the LEC does not deliberately use the request process to delay competitive entry. We would expect a LEC to respond expeditiously to a request for a particular method of transitional number portability.

21. The *First Report and Order* did not address the issue of which carrier has the right to select the particular transitional method of number portability to be provided when there is more than one technically feasible method. We amend the Commission's rules, on our own motion, to clarify that a LEC is required to furnish the specific method of currently available number portability that a competing carrier requests, provided that provision of the requested method is not unduly burdensome. We believe that the burden of fulfilling a competing carrier's request for a specific method of providing number portability will be minimal if the functionality described by a requested currently available method already exists in the network. As the Commission noted in the *First Report and Order*, the capability to provide number portability through currently available methods, such as RCF and DID, already exists in most networks, and no additional network upgrades should be necessary in order to provide number portability in this manner.⁶² We clarify this finding by adding that, to the extent no network upgrades are necessary in order to provide number portability through methods other than RCF or DID, a LEC must make such methods available upon request as well.

⁶⁰ *First Report and Order*, 11 FCC Rcd at 8365-66, ¶ 25. For example, NYNEX offered RCF and DID to MFS and Cablevision Lightpath, two competitive exchange providers certified by the New York Public Service Commission, as an interim type of number portability. See, e.g., *Cablevision Lightpath, Inc.*, Case No. 92-C-0680, July 8, 1993 (1993 WL 564541 (N.Y.P.S.C.)); *MFS Intelenet of New York, Inc.*, Case No. 92-C-0803, March 17, 1993 (1993 WL 278869 (N.Y.P.S.C.)).

⁶¹ See, e.g., *BellSouth Brief in Support of Louisiana 271 Application*, *supra* note 54, at 56 (RI-PH and DNRI are available through the Bona Fide Request Process); *BellSouth Brief in Support of South Carolina 271 Application*, *supra* note 68, at 51 (RI-PH and DNRI are available through the Bona Fide Request Process); *In re the Petition of AT&T Communications of Va., Inc. for Arbitration of Unresolved Issues from Interconnection Negotiations with GTE South, Inc.*, Case No. PUC 960117, Order Resolving Non-pricing Issues and Requiring Filing of Interconnection Agreement at 10 (Va. State Corp. Comm'n Dec. 11, 1996) (GTE ordered to make DNRI available upon request).

⁶² *First Report and Order*, 11 FCC Rcd at 8415-16, ¶ 122.

22. Given that a number of states have ordered LECs to provide RI-PH and DNRI, we presume that RI-PH and DNRI are not unduly burdensome to provide. We conclude that the burden should be on the LEC providing number portability to overcome this presumption. In particular, consistent with the pro-competitive goals of the Act, we conclude that the LEC shall bear the burden of demonstrating that a particular requested transitional number portability method is unduly burdensome, and therefore should not be provided to a requesting carrier. In determining whether a specific method is unduly burdensome, relevant factors are the extent of network upgrades needed to provide the requested method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.⁶³

4. Issues Related to Performance Criteria

a. Pleadings

23. Nextel and AirTouch raise issues related to the Commission's performance criteria for long-term number portability. While Nextel supports the Commission's decision not to choose a particular long-term number portability methodology, Nextel claims that the Commission's approach to number portability implementation will permit number portability methodologies to be deployed on a state-by-state basis.⁶⁴

24. According to Airtouch, language in the *First Report and Order* presupposes that all carriers will upgrade their networks⁶⁵ to Intelligent Network (IN), Advanced Intelligent Network (AIN) or Wireless Intelligent Network (WIN) capabilities in order to perform the

⁶³ We will determine how the costs for transitional number portability methods that do require some modification to the network shall be allocated and recovered in our forthcoming reconsideration order on cost recovery for currently available number portability methods.

⁶⁴ Nextel Petition at 3-4.

⁶⁵ Specifically, AirTouch urges the Commission to confirm that a carrier has three options for terminating calls to customers of carriers that are directly participating in number portability: (1) upgrade its network to IN/AIN/WIN capability, establish its own SCP databases and perform its own database dips to determine the appropriate routing, and pass each call directly or indirectly to the terminating carrier; (2) upgrade to IN/AIN/WIN capability but arrange to use another entity's SCP, while still passing each call to the terminating carrier; (3) decline to upgrade its network and arrange with another carrier to perform the database dip and route the calls directly to the proper terminating carrier. AirTouch submits that the Commission will distort the competitive process if carriers are not given the flexibility to select among these options after cost efficiency and competitive concerns. AirTouch Petition at 5-9.

database dips needed to route calls to ported numbers.⁶⁶ AirTouch urges the Commission to clarify that carriers may arrange with other carriers to perform database dips and other routing functions.⁶⁷

b. Discussion

25. We reject Nextel's request that the Commission establish an industry committee to develop a single, nationwide number portability methodology. As a threshold matter, we disagree with Nextel's underlying premise that number portability methodology decisions will be made on a state-by-state basis. In the *First Report and Order*, the Commission specifically concluded that regionally deployed databases best serve the public interest.⁶⁸ Because the harm that Nextel raised in its petition (*i.e.*, the deployment of a different number portability plan in each state resulting in dramatically increased costs for multi-state providers) has not occurred and is not likely to occur, we conclude that it is unnecessary to grant Nextel's request.

26. In addition, we note that, to a great extent, the NANC already has served the function that Nextel asserts is necessary. The NANC was charged with developing recommendations regarding the implementation of number portability, in large part, "to ensure consistency and to provide a national perspective on number portability issues, as well as to reduce the costs of implementing a national number portability plan."⁶⁹ Further, the NANC includes representatives from each of the constituencies that Nextel identifies: state and federal officials, service providers, and equipment manufacturers.⁷⁰ Moreover, we point out that, to date, the industry and state/regional workshops have chosen the Location Routing Number (LRN) methodology as the preferred method of number portability,⁷¹ and carriers have proceeded to implement LRN. As such, it would appear that states have chosen the same number portability method, rather than several incompatible methods, as Nextel feared.

⁶⁶ AirTouch Petition at 1. AirTouch does not cite to any specific language in the *First Report and Order* that it believes supports this point.

⁶⁷ *Id.* at 6.

⁶⁸ See *First Report and Order*, 11 FCC Rcd at 8399-8400, ¶ 91.

⁶⁹ *First Report and Order*, 11 FCC Rcd at 8401, ¶ 93.

⁷⁰ See *supra*, n.30.

⁷¹ See *First Report and Order*, 11 FCC Rcd at 8356-8358, ¶¶ 6-10; *NANC LNPA Working Group Report* at Appendix D -- Architectural and Administrative Plan for Local Number Portability" at § 7.2.

27. We grant AirTouch's request for clarification that carriers may arrange with other carriers to perform database dips and other routing functions. Contrary to AirTouch's claims, we have not assumed, nor do we require, that all carriers must satisfy their number portability obligations by upgrading their networks to perform database dips. In the *Second Report and Order*, the Commission concluded that, although the carrier in the call routing process immediately preceding the terminating carrier shall be responsible for ensuring that number portability database dips are performed, that carrier can meet this obligation by either querying the number portability database itself or by arranging with another entity to perform database dips on its behalf.⁷²

B. Location Portability

1. Pleadings

28. SBC argues that the Commission should not address location portability at this time because the Act did not contemplate implementation of such portability.⁷³

2. Discussion

29. We decline to adopt SBC's proposal that the Commission decide now that we will not consider location portability until service provider number portability is successfully deployed in the 100 largest MSAs. The Commission concluded in the *First Report and Order* that the requirement that all LECs provide local number portability (*i.e.*, service provider portability) pursuant to section 251(b)(2) does not include location portability because the Act's number portability mandate is limited to situations when users remain "at the same location" when switching from one telecommunications carrier to another.⁷⁴ Although we did not require LECs to provide location portability when the *First Report and Order* was issued, we nevertheless concluded that nothing in the Act would preclude us from mandating location portability if, in the future, we determine that location portability is in the public interest.⁷⁵

⁷² *Second Report and Order*, 12 FCC Rcd at 12323-24, ¶¶ 73-75.

⁷³ SBC Petition at 11. In the *First Report and Order*, the Commission stated that location portability refers to the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability or convenience when moving from one physical location to another. At present, telephone subscribers must change their telephone numbers when they move outside the area served by their current end office. *First Report and Order*, 11 FCC Rcd at 8443-44, ¶ 174.

⁷⁴ *First Report and Order*, 11 FCC Rcd at 8447, ¶ 181.

⁷⁵ *Id.* at 8447, ¶ 182.

30. The Commission has no current plans to address location portability at this time. We need not and do not address the issue of whether it may be in the public interest to require the implementation of location portability at some point in the future.

C. 500 and 900 Number Portability

31. A consumer subscribing to 500 number service receives a 500 "area code" number that can be programmed to deliver calls to various locations.⁷⁶ A 900 number service is a calling service providing businesses with a method of delivering information, advice, or consultations quickly and conveniently by telephone.⁷⁷ Individuals calling 500 or 900 subscribers dial 500 or 900 plus a 7-digit number (NXX-XXXX). When a call is placed to a 500 or 900 service number, the originating LEC uses the NXX of the dialed number to identify the carrier serving either the 500 number subscriber, or the business operating the 900 number service. The LEC then routes the call over the appropriate carrier's network.⁷⁸ Although consumers can purchase 500 and 900 services from either LECs or interexchange carriers (IXCs), most users of 500 and 900 number services obtain their numbers from IXCs.⁷⁹ The *First Report and Order* concluded that, pursuant to section 251(b)(2) of the Act, LECs -- but not IXCs -- are obligated to make available service provider portability for 500 and 900 number service to the extent "technically feasible."⁸⁰

32. In the *First Report and Order*, the Commission concluded there was insufficient evidence in the record to determine whether it is technically feasible for LECs to make their assigned 500 and 900 numbers portable. The Commission directed the Industry Numbering Committee (INC)⁸¹ to examine this issue and to file a report of its findings with the Commission within twelve months of the effective date of the *First Report and Order*.⁸²

⁷⁶ See *id.* at 8449-50, ¶ 188.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 8453-54, ¶ 197.

⁸⁰ *Id.* at 8454, ¶ 198.

⁸¹ The INC is a standing committee of the Industry Carriers Compatibility Forum (ICCF), which in turn exists under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). ATIS sponsors a number of industry committees and forums, including the CLC, ICCF and INC. The CLC seeks to resolve, through consensus procedures, equal access and network interconnection issues arising on a communications industry-wide basis.

⁸² *First Report and Order*, 11 FCC Rcd at 8454, ¶ 198.

The Commission stated that "[u]pon receipt of this report, we will take appropriate action under the . . . Act."⁸³ The INC released its report on July 2, 1997.⁸⁴

1. Provision of 500 and 900 Number Portability By Carriers Other Than LECs

a. Pleadings

33. Several incumbent LECs contend that it is unfair for the Commission to make only 500 and 900 numbers provided by LECs portable, rather than requiring portability for 500 and 900 numbers provided by all carriers.⁸⁵ No IXC filed comments on this issue.

b. Discussion

34. The number portability requirements of section 251(b)(2) apply only to LECs. Specifically, section 251(b)(2) imposes a duty on "each local exchange carrier . . . to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."⁸⁶ Thus, we cannot rely on section 251 for authority to require IXCs or other non-LECs to provide number portability for 500 and/or 900 number service. We therefore affirm the Commission's conclusion in the *First Report and Order* that IXCs are not required under section 251(b)(2) to make their assigned 500 and 900 numbers portable to any other carrier offering 500 and 900 number service.⁸⁷

35. We, however, may possess independent authority under sections 1, 2 and 4(i) of the Act to require other carriers to provide number portability for 500 and/or 900 number service to the extent that such portability is in the public interest. Section 1 requires the Commission to make available to all people of the United States "a rapid, efficient, Nation-

⁸³ *Id.*

⁸⁴ *The Industry Numbering Committee's / Network Interconnection Interoperability Forum-Network Interconnection Architecture Committee's Report in Response to the Federal Communications Commission's First Report and Order and Further Notice of Proposed Rule Making, in the Matter of Telephone Number Portability*, filed July 2, 1997 in CC Docket No. 95-116 (*INC Report*).

⁸⁵ SBC Petition at 7-8; USTA Petition at 12; NYNEX Opposition at 7; GTE Opposition at 23-24; Pacific Comments at 5.

⁸⁶ 47 U.S.C. § 251(b)(2).

⁸⁷ *First Report and Order*, 11 FCC Rcd at 8454, ¶ 197.

wide, and world-wide wire and radio communication service."⁸⁸ Section 1 of the Act thus gives the Commission jurisdiction to ensure that the portability of *all* telephone numbers within the United States, including 500 and 900 numbers, is handled efficiently and fairly.⁸⁹ 500 and 900 number portability would promote this mandate. 500 and 900 number portability also would promote the efficient and uniform treatment of numbering that is essential to the efficient delivery of interstate and international telecommunications. Section 2 gives the Commission authority to regulate interstate common carriers, including those that provide 500 and 900 number services.⁹⁰ Section 4(i) grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions."⁹¹ The conclusion that we may possess independent authority to require all carriers to provide number portability for their assigned 500 and 900 numbers would be similar to the Commission's decision in the *First Report and Order* to rely on its general rulemaking authority to order number portability for CMRS providers,⁹² and to reserve the Commission's authority to require service and location portability, even though the Commission concluded that these types of number portability are not specifically required by section 251(b)(2).⁹³ This result would also be consistent with our exercise of authority under section 1, 2 and 4(i) to require the Bell Operating Companies and GTE to provide number portability for 800 numbers even prior to enactment of the 1996 Act.⁹⁴

36. As the Commission noted in the *First Report and Order*, most users of 500 and 900 number services today have obtained their numbers from IXCs.⁹⁵ Thus, "as a practical matter, portability for the vast majority of 500 and 900 numbers can occur only if the IXC

⁸⁸ 47 U.S.C. § 151.

⁸⁹ 47 U.S.C. § 151 (emphasis added).

⁹⁰ 47 U.S.C. § 152.

⁹¹ 47 U.S.C. § 154(i).

⁹² *First Report and Order*, 11 FCC Rcd at 8431-32, ¶¶ 152-153.

⁹³ *Id.* at 8447-49, ¶¶ 181-187.

⁹⁴ *Provision of Access for 800 Services, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 5421, 5427, n.46 (1991).

⁹⁵ *Id.* at 8454, ¶ 196. The Commission recognized that, over time, LECs may increasingly offer 500 and 900 services. *Id.* at ¶ 197.

releases to the new carrier management of the 500 or 900 number that is to be ported."⁹⁶ If only LECs were required to make their 500 and 900 numbers portable, the vast majority of 500 and 900 numbers would not be portable, and competing 500 and 900 service providers would face a significant impediment in persuading customers to switch carriers. Imposing portability obligations on all 500 and 900 service providers would make it possible for all customers of 500 and 900 services to switch providers without changing their numbers. This, in turn, would promote competition in the 500 and 900 services markets.

37. We decline to rule at this time, however, on our authority to require all carriers to offer 500 and 900 number portability. As discussed in paragraphs 38-43, below, we will first determine whether 500 and/or 900 number portability by all carriers is technically feasible. In the event that it is determined that 500 and 900 number portability by all carriers is technically feasible, we will address our authority to impose the same number portability requirements on all carriers that provide 500 and 900 services.

2. Implementation of 500 and 900 Number Portability

a. Pleadings

38. GTE argues that there is insufficient evidence in the record to determine whether 500 and 900 number portability is even technically possible.⁹⁷ Consequently, GTE argues that the Commission should decline to address 500 and 900 number portability in this proceeding.⁹⁸ USTA challenges the Commission's decision to delegate to the INC the task of reviewing the technical feasibility of 500 and 900 portability.⁹⁹ SBC argues that the Commission must consider the economic feasibility of 500 and 900 number portability as well as technical feasibility.¹⁰⁰

⁹⁶ *Id.* at 8454, ¶ 197.

⁹⁷ GTE Opposition at 23.

⁹⁸ *Id.* at 22; *see also* SBC Petition at 6.

⁹⁹ USTA Petition at 12-13.

¹⁰⁰ SBC Petition at 8.

b. Discussion

39. As a threshold matter, we are not persuaded by GTE that we should decline to address 500 and 900 number portability in this proceeding because we lack evidence on the technical feasibility of such portability. Instead we take further action to obtain the necessary evidence.

40. We reject USTA's suggestion that the Commission should not have directed the INC to review the technical feasibility of 500 and 900 number portability. The INC is an industry body that provides an open forum to address and resolve industry-wide issues associated with the non-policy-related planning, administration, allocation, assignment and use of numbering resources within the North American Numbering Plan (NANP) area.¹⁰¹ The INC worked diligently to fulfill its directive from the Commission in this docket, and released its report on July 2, 1997.¹⁰²

41. As discussed above, we decline to determine at this time whether we have independent rulemaking authority to require number portability for 500 and 900 numbers assigned to all carriers, if that would serve the public interest.¹⁰³ In its report, the INC expressly limited its analysis to the technical feasibility of porting numbers assigned to LECs between LECs; it did not address the technical feasibility of LEC-to-non-LEC, non-LEC-to-LEC, or non-LEC-to-non-LEC portability for 500 or 900 numbers.¹⁰⁴ In order to evaluate whether the public interest would be served by mandating 500 and 900 number portability for all carriers, we must first determine whether number portability for the entire 500 and 900 number resource is technically feasible. We therefore conclude that we should expand the scope of the inquiry that the Commission previously delegated to the INC. We direct the NANC, which may refer the issues to the INC, to examine the following questions:

1. Is it technically feasible for all 500 number service providers to implement 500 number portability using existing network and administrative database capabilities?

¹⁰¹ *First Report and Order*, 11 FCC Rcd at 8359-60, ¶ 13. The North American Numbering Plan is the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean. *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2590 (1995), ¶ 3.

¹⁰² *See generally* *INC Report*.

¹⁰³ *See supra* ¶ 37.

¹⁰⁴ *INC Report* at § 3.

2. If the answer to Question #1 is "No," is technology available to develop the appropriate network and administrative database capabilities to deploy 500 number portability in the future?
3. If the answer to Question #2 is "Yes," how long would it take to develop and deploy the necessary network infrastructure for 500 number portability, upon receipt of a regulatory directive?
4. Is it technically feasible for all 900 number service providers to implement 900 number portability using existing network and administrative database capabilities?
5. If the answer to Question #4 is "No," is technology available to develop the appropriate network and administrative database capabilities to deploy 900 number portability in the future?
6. If the answer to Question #5 is "Yes," how long would it take to develop and deploy the necessary network infrastructure for 900 number portability, upon receipt of a regulatory directive?

42. The NANC is directed to file a report addressing the questions referred to it in this *Second Memorandum Opinion and Order on Reconsideration* within twelve months of the effective date of this order. Upon receipt of the NANC's report, we will take appropriate action.

43. We decline to rule at this time on SBC's request that we consider economic feasibility, as well as technical feasibility, in evaluating the provision of 500 and 900 number portability. As a practical matter, we believe that it is premature to determine what factors may be appropriate to consider with respect to the possible implementation of portability for such numbers, if we ultimately conclude we have jurisdiction to order portability of those numbers for all carriers.

D. Wireless Issues

44. In the *First Report and Order*, the Commission concluded that number portability must be provided by cellular, broadband PCS, and covered SMR providers.¹⁰⁵ For the purposes of number portability,

[t]he term "covered SMR" means either 800 MHz and 900 MHz SMR licensees

¹⁰⁵ *First Report and Order*, 11 FCC Rcd at 8433, ¶ 155.

that hold geographic area licenses or incumbent wide area SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network either on a stand-alone basis or packaged with other telecommunications services. This term does not include local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular configuration, licensees offering only data, one-way, or stored voice services on an interconnected basis, or any SMR provider that is not interconnected to the public switched network.¹⁰⁶

45. With respect to wireless carriers, the Commission concluded that number portability will facilitate the entry of new service providers, such as broadband PCS and covered SMR, into CMRS markets currently dominated by cellular providers, and competition from these new entrants will provide incentives for incumbent cellular providers to lower prices and increase service choice and quality.¹⁰⁷ The Commission also noted that number portability will promote competition between CMRS and wireline service providers as CMRS providers offer comparable local exchange and fixed commercial radio services.¹⁰⁸ The Commission determined that it would not adopt a number portability schedule for other categories of CMRS providers (including SMR operators that do not fit the definition of "covered SMR") because these other providers offer services that "currently will have little competitive impact on competition between providers of wireless telephony service or between wireless and wireline carriers."¹⁰⁹

1. Definition of "Covered SMR"

a. Pleadings

46. Several parties ask the Commission to reconsider or clarify the definition of "covered SMR" set forth in section 52.21(c) of the Commission's rules in petitions for reconsideration of the *First Report and Order*. AMTA contends that the definition of covered SMR encompasses SMR licensees that the Commission did not intend to include, and does not accurately reflect the policy position articulated in the *First Report and Order*.¹¹⁰ AMTA argues that incumbent SMR providers had no choice but to obtain geographic area licenses to

¹⁰⁶ 47 C.F.R. § 52.21(c).

¹⁰⁷ *First Report and Order*, 11 FCC Rcd at 8436, ¶ 159.

¹⁰⁸ *Id.* at 8436, ¶ 160.

¹⁰⁹ *Id.* at 8433-34, ¶ 156.

¹¹⁰ AMTA Petition at 1.

ensure expansion opportunities on their channels, and therefore they fall within the definition of covered SMR even though they may have traditional SMR systems that do not compete in the consumer-oriented wireless market.¹¹¹ Moreover, AMTA asserts that all cellular and cellular-like PCS systems, unlike traditional, local SMR facilities, have an in-network switching facility. According to AMTA, in-network switching facilities enable wireless systems to reuse frequencies and thereby develop sufficient capacity to accommodate a mass market subscriber base, and to hand-off communications between sites seamlessly without subscriber intervention.¹¹² AMTA proposes that the definition of covered SMR reflect this distinction between SMR systems that have in-network switching facilities and those that do not.¹¹³ Alternatively, AMTA proposes that the Commission modify the definition of covered SMR to apply only to systems serving 20,000 or more subscribers nationwide, as only those larger systems will potentially compete with broadband CMRS and wireline providers.¹¹⁴

47. In addition, on May 15, 1997, AMTA filed a Petition for Reconsideration of the Commission's *First Order on Reconsideration* requesting that the Commission clarify the definition of "covered SMR" as requested in AMTA's pending petition for reconsideration.¹¹⁵ Further, because of the technical difficulties certain SMR licensees would confront in meeting their number portability obligations if included in the definition of covered SMR, AMTA requests that the Commission toll the number portability implementation deadlines for SMR systems until the Commission resolves the definitional issue.¹¹⁶ Because the two petitions for reconsideration filed by AMTA raise similar issues, we address them both in the instant decision.

48. Nextel urges the Commission to amend or clarify the definition of covered SMR to ensure the definition: (1) excludes local SMR licensees offering "mainly dispatch services to specialized customers in a non-cellular configuration"; and (2) encompasses those systems that offer two-way voice services using a mobile telephone switching facility.¹¹⁷

¹¹¹ *Id.* at 5-6.

¹¹² *Id.* at 7-8.

¹¹³ *Id.* at 7-8.

¹¹⁴ *Id.* at 9.

¹¹⁵ AMTA May 15, 1997 Petition at 1. See also Motorola June 5, 1997 Comments at 1; Nextel June 5, 1997 Comments at 2-5; PCIA June 5, 1997 Comments at 2.

¹¹⁶ AMTA May 15, 1997 Petition at 3-6; see also Motorola June 5, 1997 Comments at 5-7; Nextel June 5, 1997 Comments at 5-6; PCIA June 5, 1997 Comments at 2.

¹¹⁷ Nextel Petition at 6-7.

Nextel adds that the Commission should clarify that the definition of covered SMR should be applied on a system-by-system basis, rather than on a licensee basis.¹¹⁸

49. Small Business in Telecommunications (SBT) urges the Commission to delete part of the definition of covered SMR so as to remove the potential implication that SMR providers that operate in a non-cellular system configuration, but do not offer "mainly dispatch services," are covered SMR providers.¹¹⁹ According to SBT, these interconnected local SMR providers cannot compete in the mass market for real-time, two-way voice services.¹²⁰

50. In reply comments, RAM Mobile Data USA Limited Partnership (RMD) argues that the determination of whether an SMR system should be considered covered SMR for number portability purposes should turn on the functional uses of the system and the market in which it competes, not the size of the system, as suggested by AMTA.¹²¹ RMD explains that data-only systems compete in different markets and are subject to different competitive concerns than real-time, two-way voice SMR systems.¹²² Further, RMD asserts that customers of data-only systems have no telephone number to port; rather, these customers are assigned a unique identification code unrelated to local exchange telephone numbers.¹²³ Thus, RMD recommends that the Commission continue to exclude data-only SMR systems from number portability requirements.¹²⁴

b. Discussion

51. The term "covered SMR" was intended to include SMR licensees that offer services that compete, or potentially compete, with services offered by cellular and broadband PCS licensees. The Commission concluded that because cellular, broadband PCS, and certain SMR providers will compete directly with one another, and potentially will compete in the future with wireline carriers, number portability was sufficiently important to the development

¹¹⁸ *Id.* at 7-8. Nextel June 5, 1997 Comments at 4-5.

¹¹⁹ SBT Petition at 2, 3-5.

¹²⁰ *Id.* at 4.

¹²¹ RMD Reply Comments at 4.

¹²² *Id.* at 2.

¹²³ *Id.*

¹²⁴ *Id.* at 5.

of competition that it should be required for these carriers.¹²⁵ Within the SMR service, however, it was clear that some providers would be offering mass market, two-way, real-time, interconnected voice services that compete with the offerings of traditional cellular and broadband PCS providers, and others would not.¹²⁶ The definition of covered SMR is intended to distinguish between these two groups of SMR providers.

52. We agree with the petitioners that the existing definition of "covered SMR" imperfectly accomplishes its intended purpose. In particular, some wide-area licensees may offer primarily dispatch services that do not significantly compete with traditional cellular service. We further agree that the best indicator of an SMR provider's ability to compete with wireless and wireline providers in the two-way, real-time voice market is whether the provider's system has in-network switching capability. This switching capability would allow an SMR provider to hand-off calls seamlessly as subscribers move between sites in the service area, and would allow the provider to "reuse" the same frequency in different portions of the service area, as cellular and PCS systems do. Thus, the provider would be able to compete in the market for two-way, real-time voice services, while carriers who lack switching capability would not be competitive in this market.

53. We note also that it may be infeasible, from a technical standpoint, to require SMR providers whose systems lack an in-network switching capability to provide number portability. Traditional SMR providers may have several lines interconnecting their SMR systems to the public switched network, but the telephone numbers assigned to these lines by the LEC are typically shared by all of the SMR provider's customers.¹²⁷ Such providers may give their customers the option of paying more to be able to call and receive calls from customers on the public switched network ("interconnected service"). The SMR customers who choose this optional service are assigned a second number, analogous to a personal identification number (PIN), by the SMR provider; incoming callers dial both numbers to reach the SMR customer.¹²⁸ The SMR customer does not have its own number to be ported, because the first number (assigned by the LEC) is shared with the other SMR customers. Therefore, in order for a customer leaving an SMR system that is configured in this manner to port a public telephone number, all customers remaining with the system would be without

¹²⁵ *First Report and Order*, 11 FCC Rcd at 8433, ¶ 155.

¹²⁶ *See CMRS Resale Order*, 11 FCC Rcd at 18466, ¶ 19.

¹²⁷ *See Motorola Ex Parte Comments* at 3, from Mary E. Brooner, to David Furth, FCC, CC Docket No. 95-116, filed May 19, 1997 (*Motorola May 19, 1997 Ex Parte Comments*) (explaining that the traditional SMR service generally only allows a small percentage of its subscriber units to be programmed to allow subscribers to place calls to and receive calls from users of the public switched network).

¹²⁸ *See id.* at 4.

service for that particular line, which would have a negative impact on those customers.¹²⁹ Additionally, the SMR subscriber would be porting a number that was never uniquely associated with that subscriber.¹³⁰ We believe it is neither practical nor necessary to require traditionally configured SMR systems to reconfigure their systems so that every interconnected customer has its own public telephone number. Indeed, to require such reconfiguration would essentially force traditional SMR customers to utilize a type of service that presumably they have elected not to use, as these customers could have subscribed to cellular and PCS service if they wished to have their own public telephone numbers.

54. In addition, we conclude that the concept of applying number portability requirements only to certain categories of "covered" carriers should be extended to cellular and broadband PCS. Like SMR licensees, cellular and broadband PCS licensees should not be required to provide number portability if they do not compete in the market for two-way, interconnected, real-time voice services. Although cellular and broadband PCS providers generally offer the types of services that the number portability rule is intended to cover, the Commission's rules do not require them to offer only these services.¹³¹ Moreover, the likelihood that some providers may offer other services over cellular or broadband PCS spectrum is increased by recent rule changes and proposals allowing licensees to disaggregate their spectrum.¹³² Consequently, we conclude that any CMRS licensee providing primarily dispatch service with a non-cellular type of system, whether on spectrum allocated for SMR or on another frequency band, should be excluded from the number portability requirements. Thus, a CMRS licensee providing primarily dispatch service with a non-cellular type of system is exempt from offering number portability. Furthermore, we agree with RMD that the Commission's rule should continue to exclude data-only systems and other systems that do not offer two-way, real-time voice services, regardless of the type of CMRS system used. At the same time, we believe that CMRS systems that do compete with traditional cellular service should be covered regardless of the spectrum over which they operate.

55. For the foregoing reasons, we adopt, with some modification, the definition suggested by the petitioners:

¹²⁹ See *id.* at 5.

¹³⁰ *Id.*

¹³¹ See *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket 96-6, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965 (1996).

¹³² See *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees*, WT Docket 96-148, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21831 (1996).

"Covered CMRS" systems offer real-time, two-way switched voice service that are interconnected with the public switched network, and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls."

With this change, number portability must be provided by "covered CMRS" providers, which may hold licenses in cellular, PCS, SMR or any other services.

56. We also clarify, in response to Nextel's petition, that the definition of covered CMRS should be applied on a system-by-system basis. That is, an entity may hold more than one CMRS license, but the entity is required to provide number portability only with respect to licenses that satisfy the definition of covered CMRS.

57. In addition, we reject AMTA's proposal that the covered SMR definition apply only to systems serving 20,000 or more subscribers nationwide.¹³³ The approach we adopt above is a functional one, which is based on whether the provider offers a certain type of service. AMTA provides no basis for concluding that SMR providers would be more likely to be able to compete in the market for two-way, interconnected, real-time voice services simply because their systems serve more than 20,000 subscribers. Indeed, AMTA itself states that this solution "is not tailored as precisely to reflect the system distinctions identified by the FCC."¹³⁴ We agree with this assessment and find that determining whether an SMR system is required to provide number portability based on how many subscribers it serves would be arbitrary, and could discourage SMR providers from expanding their systems.

58. Further, we dismiss SBT's petition for reconsideration as untimely. Section 405 of the Act, as amended, provides, in relevant part, that: "[a] petition for reconsideration must be filed within thirty days from the day upon which public notice is given of the order, decision, report, or action complained of."¹³⁵ Section 1.4(b)(1) of the Commission's rules provides that the date of public notice "[f]or documents in notice and comment rule making

¹³³ The Commission has already rejected this proposal. See *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22705, ¶ 83 (1997) (rejecting AMTA's proposal that the definition of "covered SMR" apply only to systems serving 20,000 or more subscribers nationwide).

¹³⁴ AMTA Petition at 9.

¹³⁵ 47 U.S.C. § 405(a).

proceedings, including summaries thereof, [is] the date of publication in the Federal Register."¹³⁶ Public notice in this case was given on July 26, 1996, the date on which the *First Report and Order* was published in the Federal Register. Therefore, petitions to reconsider that decision were due on or before August 26, 1996. Because the time period for filing petitions for reconsideration is prescribed by statute, the Commission may not, except in extraordinary cases, waive or extend the filing period.¹³⁷ SBT has not demonstrated that its late-filed petition fits into this narrow exception; indeed, SBT has not even moved for leave to file its petition. As such, we dismiss SBT's petition.

59. Finally, we dismiss AMTA's petition for reconsideration of the *First Order on Reconsideration* as moot. By amending, in this Order, the Commission's rules to ensure that only those CMRS carriers that compete in the market for two-way, interconnected, real-time voice services are subject to the Commission's number portability requirements, we grant the relief that AMTA requests. Moreover, because we have clarified that CMRS licensees providing primarily dispatch service with a non-cellular type of system are exempt from the Commission's number portability requirements, there is no need to extend the implementation period for such licensees.

2. Geographic Scope of Number Portability for Wireless Carriers

a. Pleadings

60. AirTouch asks the Commission to limit the geographic scope of number

¹³⁶ 47 C.F.R. § 1.4(b)(1).

¹³⁷ *Graceba Total Communications, Inc. v. FCC*, 115 F.3d 1038, 1039 (D.C. Cir. 1997); *Reuters, Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986); see also *Applications of PDB Corporation, State College*, Memorandum Opinion and Order, 11 FCC Rcd 6198, 6199 (1996); *Application of Robert J. Maccini, Receiver Assignor*, Memorandum Opinion and Order, 10 FCC Rcd 9376, 9376 (1995); and *Burwood Broadcasting of Memphis, Ltd.*, MM Docket No. 85-205, Memorandum Opinion and Order, 4 FCC Rcd 827, 828 n.2 (1989). The narrow exception to the statutory filing period allows the Commission to extend or waive the 30-day filing period only in an "extraordinary case," such as where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought. *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976); see also *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993); *Applications of Stephen E. Powell*, Memorandum Opinion and Order, 11 FCC Rcd 11925, 11926 (1996); *Eight Applications for Authority to Construct and Operate Multipoint Distribution Service Stations*, Order on Reconsideration, 11 FCC Rcd 7008, 7009-10 (1996); *Applications of PDB Corporation, State College*, 11 FCC Rcd at 6199; *Application of Robert J. Maccini, Receiver Assignor*, 10 FCC Rcd at 9376. In such circumstances, the petitioner must demonstrate that the delay in filing is attributable to Commission error in giving notice and that it acted promptly upon discovering the adoption of the Commission's decision. *Applications of Stephen E. Powell*, Memorandum Opinion and Order, 11 FCC Rcd at 11926. SBT offers nothing to suggest that the Commission did not give adequate notice by the release of the *First Report and Order*, of which its late-filed petition seeks reconsideration.

portability as applied to wireless carriers. Specifically, AirTouch submits that number portability in a wireless environment should be limited to those carriers already serving the "area code" or "NPA" of the ported wireless number.¹³⁸ According to AirTouch, because the service areas of certain categories of wireless carriers overlap (*e.g.*, cellular and PCS), if a wireless subscriber were permitted to port its number to carriers that do not otherwise serve the NPA of the number to be ported, calls to that subscriber would no longer terminate in the geographic region associated with the NPA of the ported number, even if the service area of the customer's original carrier overlaps with the service area of the customer's new carrier.¹³⁹ Theoretically, by continuing to switch wireless carriers, each time porting its number to a new carrier with a service area that overlaps with the service area of its previous carrier, a subscriber thus could create a "daisy chain" of overlapping service areas and thereby port a number across the country, carrier by carrier.¹⁴⁰ This "daisy chain" effect would, AirTouch submits, result in *de facto* nationwide location portability.¹⁴¹ In addition, AirTouch contends that, without the NPA restriction it proposes, number portability would require an impossibly large database to allow queries by every carrier in the country that originates a call to the porting customer's NPA in order to locate the proper switches to terminate calls.¹⁴²

b. Discussion

61. As AirTouch suggests, requiring service provider portability in a wireless environment, without imposing any geographic boundaries, could theoretically result in *de facto* nationwide location portability, which the Commission explicitly declined to adopt in the *First Report and Order*.¹⁴³ Conversely, limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may thwart the pro-competitive goals of the Act. A single geographic area may now have multiple NPAs due to area code overlays. Typically, wireless carriers provide their customers with the choice of NPAs when they have more than one switch in the geographic market, but some new entrants may only have one or two switches with all numbers coming out of the same NPA. Limiting number portability in a wireless environment to those carriers already serving the NPA of the

¹³⁸ AirTouch Petition at 12.

¹³⁹ Airtouch acknowledges that many calls to wireless subscribers do not actually terminate in the geographic region associated with that subscriber's NPA due to roaming capabilities built into wireless networks.

¹⁴⁰ *Id.* at 12-13.

¹⁴¹ *Id.*

¹⁴² *Id.* at 13.

¹⁴³ *First Report and Order* at ¶ 181.

ported wireless number may discourage customers from switching wireless carriers if they cannot port their number to a different NPA even though the number continues to be used in the same geographic market. As noted above, wireless carriers are not obligated to port numbers until March 31, 2000.¹⁴⁴ Furthermore, the NANC is currently examining the myriad of complex issues surrounding wireless number portability.¹⁴⁵ Consequently, we defer a decision on this matter pending further analysis by the NANC. We encourage AirTouch to participate in the NANC's standards development process to ensure consideration of AirTouch's concerns.

3. Preemption of State Number Portability Requirements for CMRS Providers

a. Pleadings

62. Bell Atlantic NYNEX Mobile (BANM) and the Cellular Telecommunications Industry Association (CTIA) ask that the Commission explicitly preempt state CMRS number portability requirements. BANM claims that number portability has inseparable interstate and intrastate aspects, and that preemption is necessary to protect the federal objective of deploying a national number portability regime.¹⁴⁶ BANM argues that preemption is especially important for CMRS providers because many CMRS systems span state lines and cannot accommodate multiple portability requirements.¹⁴⁷ CTIA agrees that the Commission should preempt state CMRS number portability requirements, asserting that, even if it is possible for multi-state systems to accommodate multiple portability architectures and service requirements, inconsistent state policies will add unnecessary complexity and dramatically increase implementation costs for multi-state CMRS providers.¹⁴⁸

b. Discussion

63. We reject the request for preemption of state number portability requirements for CMRS carriers. While, under certain circumstances, the Commission has authority to preempt state law, the record is devoid of any evidence that such action is warranted at this time. Pursuant to the Supremacy Clause of the U.S. Constitution, Congress has the power to

¹⁴⁴ See *supra*, ¶ 4.

¹⁴⁵ *Second Report and Order*, 12 FCC Rcd at 12333-34, ¶¶ 90-92.

¹⁴⁶ Bell Atlantic NYNEX Mobile Petition at 10-11.

¹⁴⁷ *Id.* at 11.

¹⁴⁸ CTIA Comments at 3-4.

preempt state laws or regulations.¹⁴⁹ As explained by the Supreme Court in *Louisiana Public Service Commission v. FCC*:

Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible . . . or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.¹⁵⁰

Moreover, the Supreme Court has also made it clear that "[p]re-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation."¹⁵¹

64. The petitioners have failed to identify any specific state number portability requirements that apply to CMRS carriers that conflict with federal number portability mandates or objectives. Nor is there a basis in the current record for concluding that it will be impossible for carriers to comply with federal and state CMRS number portability requirements. Thus, we decline to consider the preemption of state number portability requirements for CMRS carriers based on the record before us.

65. In addition, despite the conclusory assertions of the petitioners to the contrary, the record does not indicate that there are, or will be, state number portability requirements applicable to CMRS carriers that will conflict with the requirements of any other state, such that CMRS carriers will be required to accommodate multiple portability architectures and/or service requirements. Indeed, the framework for implementing number portability is designed, in part, to minimize such burdens. For example, in the *First Report and Order*, the Commission directed one entity -- the NANC -- to develop recommendations for technical and operational standards with respect to regional number portability databases.¹⁵² Accordingly, we expect there will be a high degree of national uniformity in this regard. Moreover, as

¹⁴⁹ See e.g., *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368 (1986) (*Louisiana PSC*). State regulation of CMRS rates and entry is also preempted under Section 332(c)(3) of the Act, although states may regulate other terms and conditions of service. See 47 U.S.C. § 332(c)(3). We emphasize that our decision here does not affect the preemption of state rate and entry regulation of CMRS under Section 332, and we do not purport by this order to grant states such regulatory authority over CMRS.

¹⁵⁰ *Louisiana PSC*, 476 U.S. at 368-69 (citations omitted).

¹⁵¹ *Id.* at 369.

¹⁵² *First Report and Order*, 11 FCC Rcd at 8401-02, ¶¶ 93-95.

discussed above, the industry and state/regional workshops chose a single method as the preferred method for number portability.¹⁵³ In short, it is unlikely that CMRS systems that span state lines will be required to accommodate multiple portability architectures that differ significantly from one another.

¹⁵³ See *supra* ¶ 25.

IV. ORDERING CLAUSES

66. 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 20 of the Commission's rules, 47 C.F.R. § 20, and Part 52 of the Commission's rules, 47 C.F.R. § 52, are AMENDED as set forth in Appendix B hereto.

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

68. 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 *Second Reconsideration Order* in the Federal Register.

69. IT IS FURTHER ORDERED that the Petition for Reconsideration of Small Business in Telecommunications is hereby dismissed.

70. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by the Ameritech Mobile Telecommunications Association, Inc. on May 15, 1997, is dismissed as moot.

71. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Second Memorandum Opinion and Order on Reconsideration, including the Second Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

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 [Cincinnati Bell]
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

Cincinnati Bell
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
Cincinnati Bell
GTE
MCI
NYNEX
Pacific
SBC
USTA
U S WEST

Petition for Reconsideration (filed May 15, 1997):

AMTA

Comments to Petition for Reconsideration (filed June 5, 1997):

Motorola, Inc.

Nextel

Personal Communications Industry Association (PCIA)

APPENDIX B - Final Rules**AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS****PART 52 -- NUMBERING**

Part 52 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. Section 52.21 is amended by revising paragraph (c) to read as follows:

§ 52.21 Definitions.

(c) The term covered CMRS means broadband PCS, cellular, and 800/900 MHz SMR licensees that (1) hold geographic area licenses or are incumbent SMR wide area licensees, and (2) offer real-time, two-way switched voice service, are interconnected with the public switched network, and utilize an in-network switching facility that enables such CMRS systems to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

(q) The term *transitional number portability measure* means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF), Direct Inward Dialing (DID), Route Indexing - Portability Hub (RI-PH), Directory Number Route Indexing (DNRI) and other comparable methods.

2. Section 52.27 is amended by adding a sentence at the end of the section to read as follows:

§ 52.27 Deployment of Transitional Measures for Number Portability.

(a) All LECs shall provide transitional number portability measures, as defined in section 52.21(q) of this chapter, 47 C.F.R. § 52.21(q), as soon as reasonably possible upon receipt of a specific request from another telecommunications carrier, until such time as the LEC implements a long-term database method for number portability in that area.

(b) A LEC must provide the particular transitional number portability measure requested by a telecommunications carrier, except as set forth in subsection (c) below.

APPENDIX C

SECOND SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this docket (*Notice*).² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received on the IRFA were discussed in the *First Report and Order's* Final Regulatory Flexibility Analysis (FRFA-First Report and Order), which was incorporated as Appendix C to the *First Report and Order* in this docket.³ The FRFA-First Report and Order conforms to the RFA.⁴ On reconsideration of the *First Report and Order*, parties commented on the FRFA-First Report and Order. The comments received on the FRFA-First Report and Order were discussed in the Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporated into the *First Order on Reconsideration* in this docket.⁵ The Supplemental FRFA conforms to the RFA.⁶ This Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) is incorporated as an appendix to the *Second Order on Reconsideration* in this docket. This Second Supplemental FRFA also conforms to the RFA.⁷

A. Need for and Objectives of *Second Order on Reconsideration*

2. The need for and objectives of the requirements adopted in this *Second Order on Reconsideration* are the same as those discussed in the Final Regulatory Flexibility

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *Telephone Number Portability*, Notice of Proposed Rulemaking, 10 FCC Rcd 12350, 12376-77 (1995) (*Notice*).

³ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8486-89 (1996) (*First Report and Order*).

⁴ See 5 U.S.C. § 604.

⁵ *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7331, Appendix D (1996) (*First Order on Reconsideration*).

⁶ See 5 U.S.C. § 604.

⁷ See 5 U.S.C. § 604.

Analysis in the *First Report and Order*.⁸ The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), adopts requirements and procedures intended to ensure the prompt implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. These requirements are necessary to implement the provision in the Act requiring local exchange carriers (LECs) to offer number portability, if technically feasible. In implementing the statute, the Commission has the responsibility to adopt requirements that will implement most quickly and effectively the national telecommunications policy embodied in the Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace.

B. Summary of Significant Issues Raised By Public Comments in response to the IRFA,⁹ FRFA-First Report and Order, and Supplemental FRFA

3. The comments received on the IRFA were discussed in the FRFA-First Report and Order incorporated into the *First Report and Order*.¹⁰ The comments received on the FRFA-First Report and Order were discussed in the Supplemental FRFA incorporated into the *First Order on Reconsideration*.¹¹ No additional comments were sought or received for purposes of this Second Supplemental FRFA.

C. Summary of the FRFA-First Report and Order

4. In the FRFA-First Report and Order, 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 the Commission's requirements on incumbent LECs.¹² 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.¹³ A small

⁸ *First Report and Order*, 11 FCC Rcd at 8486.

⁹ For a summary of the IRFA and an analysis of the significant issues raised in response to the IRFA, see *First Report and Order*, 11 FCC Rcd at 8486-87.

¹⁰ *First Report and Order*, 11 FCC Rcd at 8486-89.

¹¹ *First Order on Reconsideration*, 12 FCC Rcd at 7331, Appendix D.

¹² *First Report and Order*, 11 FCC Rcd at 8487.

¹³ *Id.*; 15 U.S.C. § 632.

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).¹⁴ 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.¹⁵ This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.¹⁶

5. We did recognize that the Commission's requirements 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 personal communications services (PCS), and covered specialized mobile radio (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.¹⁷ We also discussed the reporting requirements imposed by the *First Report and Order*.¹⁸

6. Finally, we discussed the steps we had taken to minimize the impact on small entities, consistent with the Commission's stated objectives.¹⁹ We concluded that our actions in the *First Report and Order* would benefit small entities by facilitating their entry into the local exchange 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.²⁰ 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.²¹ 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

¹⁴ *First Report and Order*, 11 FCC Rcd at 8487; 15 U.S.C. § 632.

¹⁵ *First Report and Order*, 11 FCC Rcd at 8487; 13 C.F.R. § 121.201.

¹⁶ *First Report and Order*, 11 FCC Rcd at 8487.

¹⁷ *Id.* at 8487-88.

¹⁸ *Id.* at 8488-89.

¹⁹ *Id.*

²⁰ *See id.* at 8368, 8489.

²¹ *See id.* at 8367-68, 8489.

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.²²

D. Summary of the Supplemental FRFA

7. *Implementation Schedule.* In the *First Report and Order*, we required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in Appendix F of the *First Report and Order*.²³ In the *First Order on Reconsideration*, we extended the end dates for Phase I of our deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31, 1998, and in Phase II from January 1, 1998, through May 15, 1998. We also clarified 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. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.²⁴

8. In the *First Order on Reconsideration*, we reduced the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. We noted that the majority of parties representing small or rural LECs seeking relief asked that we only impose implementation requirements where competing carriers have shown interest in portability. Moreover, our extension of Phases I and II of our deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to

²² See *id.* at 8489.

²³ *First Report and Order*, 11 FCC Rcd at 8393.

²⁴ *First Order on Reconsideration* 12 FCC Rcd at 7340-42, ¶¶ 23-27.

test and resolve the problems of this new technology.²⁵

9. In the *First Order on Reconsideration*, we rejected several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. We rejected requests to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. We also rejected the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure we establish, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, we clarified that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.²⁶

E. Description and Estimates of the Number of Small Entities Affected by this Second Order on Reconsideration

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 Second Supplemental FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." Nevertheless, we include small incumbent LECs in our Second Supplemental FRFA. We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."²⁷

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

²⁵ *Id.*

²⁶ *Id.*

²⁷ See 13 C.F.R. § 121.210 (SIC 4813).

telephone services, as defined therein, for at least one year.²⁸ 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."²⁹ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this *Order on Reconsideration*.

12. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁰ According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.³¹ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

13. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect

²⁸ 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*).

²⁹ 15 U.S.C. § 632(a)(1).

³⁰ *1992 Census, supra*, at Firm Size 1-123.

³¹ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

annually in connection with the Telecommunications Relay Service (TRS) Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.³² Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

14. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.³³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

15. Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.³⁴ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would

³² Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (*TRS Worksheet*).

³³ *Id.*

³⁴ *Id.*

qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

16. Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.³⁵ Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

17. Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.³⁶ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

18. Wireless (Radiotelephone) Carriers. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were

³⁵ *Id.*

³⁶ *Id.*

1,176 such companies in operation for at least one year at the end of 1992.³⁷ According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.³⁸ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

19. Cellular Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services.³⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

20. Mobile Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services.⁴⁰ Although it seems

³⁷ 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).

³⁸ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

³⁹ *TRS Worksheet* at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

⁴⁰ *Id.*

certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

21. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁴¹ For Block F, an additional classification for "very small businesses" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁴² These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁴³ However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

22. SMR Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.⁴⁴ The rules adopted in this *Order on Reconsideration*.

⁴¹ See Amendment of Parts 20 and 24 of the Commission's rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96-278, WT Docket No. 96-59, ¶¶ 57-60 (released June 24, 1996) 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

⁴² *Id.* at ¶ 60.

⁴³ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

⁴⁴ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate

may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

23. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Order on Reconsideration* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this *Order on Reconsideration*.

24. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.⁴⁵ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

⁴⁵ *Id.*

F. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. There are no significant reporting, recordkeeping or other compliance requirements imposed on small entities by this *Second Order on Reconsideration* on other entities.

G. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

26. The Commission's actions in this *Second Order on Reconsideration* will benefit small entities by facilitating their entry into the local exchange market. The record in this proceeding indicates 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.⁴⁶ 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.⁴⁷

27. In general in this docket, we have attempted to keep burdens on local exchange carriers to a minimum. The regulatory burdens we have imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability in accordance with the statutory requirements. We believe that the *Second Order on Reconsideration* furthers our commitment to minimizing regulatory burdens on small entities. Based on the record before us, we do not find that any of the recommendations we adopt in the *Second Order on Reconsideration* will have a disproportionate impact on small entities.

28. Report to Congress: The Commission will send a copy of the *Second Order on Reconsideration*, including the Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Fairness Act of 1996.⁴⁸ A copy of the *Second Order on Reconsideration* and this Second Supplemental FRFA (or summary thereof) will also be published in the Federal Register and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.⁴⁹

⁴⁶ See *First Report and Order*, 11 FCC Rcd at 8368.

⁴⁷ See *First Report and Order*, 11 FCC Rcd at 8367-68.

⁴⁸ See 5 U.S.C. § 801(a)(1)(A).

⁴⁹ See 5 U.S.C. § 604(b).