

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Telephone Number Portability)

CC Docket No. 95-116

To: The Commission

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PETITION FOR DECLARATORY RULING OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

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The Cellular Telecommunications & Internet Association (“CTIA”),¹ pursuant to section 1.2 of the Commission’s rules,² respectfully submits this Petition for Declaratory Ruling in the above-captioned proceeding. CTIA respectfully requests the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers’ telephone numbers to a CMRS provider whose service area overlaps the wireline carrier’s rate center and that no agreement between the two carriers, beyond a standard service-level porting agreement, is necessary.

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

41 C.F.R. § 1.2.

1. INTRODUCTION

As the Commission is aware, CTIA, along with several of its members, has appealed the FCC's decision to continue to impose number portability obligations on CMRS providers.³ The CMRS Local Number Portability ("LNP") requirement is set to become effective in November 2003, requiring carriers to undertake significant implementation expenditures (e.g., personnel hiring and training, billing system and network modifications). Although CTIA and the parties to the appeal have challenged the necessity of LNP for intermodal competition, the Commission continues to proffer LNP as an important factor in promoting such competition.⁴ Despite its position, the Commission has not clarified crucial implementation issues regarding intermodal porting. Absent such clarification, intermodal number portability will not, as a practical matter, occur in most instances, yet wireless carriers and their customers will be forced to shoulder its enormous burden,

If wireless number portability is to go forward on the basis and timetable the Commission has ordered, a declaratory ruling is necessary to remove uncertainty about the extent of wireline local exchange companies' obligation to meet consumer requests to port numbers to wireless

³ *Cellular Telecommunications & Internet Association and Celco Partnership, d/b/a Verizon Wireless v. FCC*, No. 02-1264 (D.C. Cir.). Intervenors in support of the Petition for Review are AT&T Wireless Services, ALLTEL, Cingular, Dobson, and Sprint PCS. Oral argument is scheduled for April 15, 2003.

⁴ The parties to the appeal have explained that the Commission's statements are no more than unfounded speculations, without support in the record, and that intermodal competition is developing without wireless-wireline LNP. CTIA notes that this issue will be addressed by the Court of **Appeals**. In contrast, the issue framed in this *Petition* is the Commission's need to address the unresolved rights of wireline customers to port their numbers to wireless carriers. The Commission's statements on intermodal competition, referenced herein, are provided solely for the purpose of describing the Commission's stated expectations regarding the rights of wireline customers.

carriers. This is neither a new nor difficult issue, but its correct and timely resolution is critical if the expectations of consumers -- expectations created by the Commission's own statements -- are to be met.

Section 251(b) requires LECs, and only LECs, to port numbers to other carriers. To date, some LECs have narrowly construed their LNP obligations with regard to CMRS, taking the position that portability is only required where wireless carriers already have a presence in the landline rate center. The Commission must confirm that wireline carriers have an obligation to port numbers to wireless carriers when their respective service areas overlap. In the case of wireless carriers, this generally means that numbers must be ported from a LEC to a CMRS carrier whose service area overlaps with the LEC's service area.⁵

Moreover, the Commission must affirm that a wireline carrier's obligation to port numbers to wireless carriers necessitates only a service-level porting agreement between the carriers. Number portability requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer. From a practical perspective, such porting requires only a service-level porting agreement between the carriers. In fact, in many instances, the originating and terminating carrier will be the same, and there will be no need for an interconnection agreement. In the event the originating carrier must deliver the call to a different carrier for termination, the traffic will be governed by the terms of the interconnection agreement already established between the two

This Petition is not a request for location provider portability which the Commission has declined to require. When a CMRS carrier's service area overlaps the wireline rate center, the wireless carrier is providing service within the rate center, thus satisfying the requirements for service provider portability.

carriers – there is no reason to treat a call delivered to a ported number any differently than a call delivered to a number that has never been ported.

If the Commission believes that wireless LNP will enhance intermodal competition, there should be no doubt about the extent of the wireline industry’s obligation nor should there be any artificial limitation on competition (as threatened by wireline carriers). To be clear, even without the looming wireless LNP deadline, LECs have a statutory duty to port numbers to CMRS providers. The requirement is all the stronger because of the consumer expectations the Commission has created – that consumers will be able to port their numbers to other carriers, including CMRS providers, if they are so inclined. And, finally, the Commission should address this issue in timely fashion because it has let the matter lay before it for many years without resolution

II. FACTUAL BACKGROUND

Very early on in the course of identifying and resolving LNP deployment issues, the industry working groups recognized that the limited availability of number portability to wireline subscribers wishing to port their numbers to wireless carriers was an issue that needed to be resolved. Numbers can be ported from wireline to wireless carriers throughout the wireless carriers’ service area, while numbers can be ported from wireless to wireline carriers only within the wireline carriers’ rate center. This issue was the subject of substantial protest by wireline carriers; they argued that this “rate center disparity” was inconsistent with the statute and Commission orders. Therefore, the wireline carriers argued, wireless number portability could not and would not be implemented on this basis. The wireless industry took the opposite view. and the North American Numbering Council (“NANC”) could not resolve the matter.

The dispute was brought to the Commission's attention early and often, most extensively in a May 1998 submission to the then-Common Carrier Bureau Chief from the NANC. In that submission, as in numerous others, the matter was advanced correctly, as a policy, not a technical, issue.

A. The Rate Center Issue.

The rate center issue is the result of the Commission's decision in 1997 to limit *wireline* local number portability to the existing rate center boundaries of incumbent LECs. Pursuant to the *NANC Architecture and Administrative Plan for Local Number Portability*, "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns."⁶ This NANC recommendation was adopted by the Commission and is codified at section 52.26 of the Commission's rules.⁷ The wireline rate center boundary has been a working premise for wireline portability ever since. By contrast, the Commission has established the MTA as the local calling area for CMRS, permitting CMRS carriers to use a single switch to serve radio facilities over a very wide geographic area.⁸

The key issue, well recognized for years, is whether the wireline rate center has any relevance for wireless number portability. In comments filed on June 2, 1997, CTIA explained to the Commission that significant "holes" existed in the NANC plan to integrate wireless

⁶ North American Numbering Council Local Number Portability Administration Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 5 (§ 7.3) (rel. April 25, 1997).

⁷ 47 C.F.R. § 52.26.

⁸ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98; 95-185, *First Report and Order*, 11 FCC Rcd 15499, ¶ 1036 (1996).

camers into the number portability regime. Among the issues raised by CTIA was the difference in service area boundaries between wireless and wireline camers and how those differences would be accounted for in intermodal number portability.’ The competitive and consumer consequences are very large, since there is wireline-wireless “rate center” overlap (in contrast to local service overlap) on average in only one *of* eight rate centers across the country. In other words, wireless camers typically serve the same service area as a LEC by establishing a presence in one rate center where a LEC on average will have eight rate centers.¹⁰ Because the overwhelming majority of wireline customers will be located in a rate center where the wireless camer *of* their choice has neither located a MSC nor previously drawn numbering resources (*i.e.* in seven out of every eight rate centers, on average), a narrow view of wireline LEC number portability obligations would artificially deprive the great majority of wireline customers the opportunity to port their number to a wireless carrier.’”

In the *LNP Second Report and Order*, which adopted the rate center boundary for wireline-wireline number portability, the Commission briefly addressed the issue of rate center disparity for wireline-wireless number portability. Rather than attempt to resolve the disparity issue itself, the Commission directed the NANC to “consider other issues of concern to CMRS

⁴ See Telephone Number Portability, CC Docket No. 95-116, CTIA Comments at 3 (filed June 2, 1997).

¹⁰ This network architecture is the most technically and cost-effective means of providing CMRS and it efficiently utilizes scarce numbering resources by eliminating artificial demand for telephone numbers.

¹¹ For instance, the State *of* Washington has 293 wireline rate centers. One wireless camer has a switch in 37 or 1/8 rate centers. Another carrier has a switch in 24 or 1/12 rate centers. A third camer has a switch in 28 or 1/10 rate centers. In the State *of* Illinois there are 982 wireline rate centers. One wireless carrier has a switch in 13 or 1/76 rate centers. Two other camers have switches in 32 or 1/31 rate centers.

providers, such as how to *account for differences between service area boundaries for wireline versus wireless services . . .*”¹²

Consistent with the Commission’s direction, within one year, on May 18, 1998, the NANC submitted to the then-Chief of the Common Carrier Bureau the first Local Number Portability Administration Working Group Report on Wireless Wireline Integration.” This document contained an extensive presentation of the policy issue stemming from the asymmetry in porting capability between wireline and wireless carriers. It made plain that the source of the disparity is the historical reliance by wireline carriers on rate centers, not a technological problem that precludes the porting of numbers **by** wireline carriers beyond rate center boundaries.¹⁴ The *NANC First Report* included both a summary statement of the issue and two very thorough “Position Papers,” one each from the wireline industry and the wireless industry, setting forth their respective views

For their part, the wireline carriers made clear their unwillingness to proceed without further actions:

Parity between service providers is a minimum criteria for portability between wireless and wireline service providers. * * *
[T]he available method/architecture does not meet the definition of

¹² Telephone Number Portability, CC Docket No. 95-1 16, *Second Report and Order*, 12 FCC Rcd 12281, ¶ 91 (1997) (emphasis added) (“*LNP Second Report and Order*”).

¹³ North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-1 16 (filed May 18, 1998) (“*NANC First Report*”) (Attachment A).

¹⁴ *See id.* at 7 (§ 3.1.1) (“In the *Second Report and Order* [the FCC recommended that the geographic scope of Service Provider portability be limited to the wireline-established rate centers due to technical limitations associated with proper rating. Also in the *Second Report and Order* the FCC recognized these recommendations addressed wireline requirements and did not reflect wireless needs.”).

number portability found in the Telecommunications Act of 1996 and the FCC's First Report and Order Implementation of this method/architecture would not constitute compliance with the FCC's ordered implementation of CMRS number portability. . . .¹⁵

Wireless carriers in return insisted that the wireline rating convention could not displace the competitive goals at stake. The *NANC First Report* thus made clear that neither the relevant NANC working groups nor the NANC itself had been able to reach consensus on a solution to this issue.¹⁶ It therefore tendered for consideration three questions that only the Commission could resolve:

- Does the difference in the scope of porting capabilities between wireless and wireline service providers create a competitive disadvantage which would be inconsistent with the FCC's objectives for numbering?
- If so, is this competitive disadvantage overridden by the FCC's order to implement wireless - wireline portability to encourage CMRS - wireline competition?
- Would the inability in certain situations for a wireless end user, staying at the same location, to keep their telephone number when changing to a wireline service provider be acceptable from a statutory or regulatory perspective?"

The following month, June 1998, the Common Carrier Bureau sought comment on the *NANC First Report*.¹⁸ Many in both the wireline and wireless industries filed comments. BellSouth argued that "[t]he Commission should resolve the industry impasse over technology neutral intermodal number portability. . . . Until these critical policy issues are resolved, WNP

¹⁵ *Id.* at 42 (Appendix D, § 1.3).

¹⁶ *See id.* at 7 (§ 3.1.3).

¹⁷ *Id.* at 31 (Appendix D, § 1.1).

¹⁸ See Common Carrier Bureau Staff Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Interconnection, CC Docket No. 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

implementation cannot proceed.”” SBC asserted that “the Commission needs to give the industry guidance as to whether this disparity in porting is acceptable. A clear indication from the Commission is needed to avoid any claim that treating a wireline provider differently than a wireless provider in the ability to port violates any Commission rule.”” CTIA explained that “[m]aintaining rate centers by requiring wireless providers to conform to the rate center paradigm is no solution for achieving competitive parity.”” The Commission, however, failed to address the rate center questions set out in the *NANC First Report* despite commenters’ warnings that “WNP implementation cannot proceed’ without Commission action.

In its *Second Report on ~~Wireless~~ Wireline Integration* issued in 1999, the NANC once again formally brought the rate center issue to the attention of the Commission. The NANC explained that it was unable to reach consensus on the matter, and, absent Commission action, there had been no resolution.”

And on November 29, 2000, the NANC formally raised the issue with the Commission a third time. In submitting its *Third Report on Wireless Wireline Integration*, the NANC Chair forcefully requested Commission action on rate center disparity. He explained that the *NANC First Report* dealt primarily with the rate center disparity issue, and that, “[w]ith the integration

¹⁹ Telephone Number Portability, CC Docket No. 95-116, BellSouth Comments at 8-9 (filed Aug. 10, 1998).

²⁰ Telephone Number Portability, CC Docket No. 95-116, SBC Communications Comments at 4 (filed Aug. 10, 1998).

¹ Telephone Number Portability, CC Docket No. 95-116, CTIA Comments at 10 (filed Aug. 10, 1998).

²² See North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116, at 28 (§ 6.1) (filed Nov. 4, 1999) (Attachment B).

of the Wireless industry into the portability process, these [number portability] guidelines become ineffective. This issue was referred to the FCC in February, 1998. *Iris a crucial issue that must be resolved prior to emergence of the Wireless Industry into the portability process.* This issue was also referred to in the 2nd report and is still a major concern in the 3rd report.””
The Commission again failed to address the matter.

On November 21, 2001, CTIA also requested Commission action on this issue. In a letter filed with the then-Chief of the Common Carrier Bureau, CTIA explained that the rate center issue is one of the most important problems associated with wireless-to-wireline portability. “The Commission must resolve these issues before Wireless-to-Wireline portability can proceed.”²⁴

Responsibility for resolving the rate center issue necessarily rests squarely with the Commission. When the Commission established the NANC in 1995 it did so not to reduce the Commission’s oversight of the North American Numbering Plan and of number portability implementation, but to increase its supervisory role. As the Commission explained, industry efforts at managing these issues, while helpful, were not wholly sufficient. As competition developed, it would be increasingly difficult for industry fora to address crucial numbering

²³ Letter from John Hoffman, NANC Chair, to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000) (enclosing *NANC Third Report*) (emphasis added). *See North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration*, September 30, 2000, <www.npac.com/cmas/documents.htm> (last visited Jan. 17, 2003) (Attachment C).

²⁴ *Numbering Resource Optimization*, CC Docket No. 99-200, *Ex Parte* Letter from Michael Altschul, Senior Vice President, General Counsel, CTIA, to Dorothy Attwood, Chief, Common Carrier Bureau at 8 (filed Nov. 21, 2001).

issues.²⁵ Although its role as the final arbiter was implicit, the Commission took the trouble to make the NANC recommendation process explicit. Thus, the Commission established the NANC to provide consensus advice and to enable *the Commission* “to make timely, informed decisions on numbering policy issues,” especially where competitive concerns made it impossible for industry to reach consensus.” At the same time, the Commission itself recognized that it “must assume a more active role in numbering policy development and issue resolution than it ha[d] in the past.”

In 1997, the NANC’s role was expanded to include “general oversight of number portability administration on an ongoing basis.”²⁸ Carriers were directed to work through the NANC to resolve implementation issues and the NANC was to serve as a forum for dispute resolution. In fact, the Commission adopted specific procedures for those instances where the NANC could reach consensus on a recommended course of action, and parties were permitted to seek assistance “ultimately by the Commission” which “retains ultimate authority over number portability matters. . . .”²⁹ Of course, this is required under the Federal Advisory Committee Act, which makes clear that “[d]eterminations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be

²⁵ See Administration of the North American Numbering Plan, CC Docket No. 92-237, *Report and Order*. 11 FCC Rcd 2588, ¶ 45 (1995).

²⁶ *Id.*

²⁷ *Id.* ¶ 43

²⁸ *LNP Second Report and Order* ¶ 128

²⁹ *Id.* ¶¶ 129-131.

made solely by the President or officer of the Federal Government.”³⁰ Thus, the Commission by operation of law and its own undertaking has the obligation to act to resolve an outstanding issue that has been pending before it for almost five years.

B. The Commission Has Found Wireline-Wireless Competition To Be An Element Of Local Number Portability.

Congress did not require CMRS carriers to provide LNP; the Commission alone has mandated wireless carriers support LNP. While the Commission’s imposition of the LNP mandate on CMRS carriers is being challenged on appeal, the Commission has sought to promote greater competition between wireless carriers and incumbent LECs across a broad range of decisions.³¹ No matter how misplaced, the Commission has similarly described wireline to wireless number portability as enhancing intermodal competition. When the Commission imposed local number portability for CMRS providers in 1996 it proclaimed that “[w]e base this conclusion on our view...that cellular, broadband PCS, and covered SMR providers will

³⁰ 5 U.S.C. App. 2 § 9(b).

³¹ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report, 10 FCC Rcd 8844, ¶ 75 (1995). Examples include: permitting Southwestern Bell Mobile Systems, Inc. to own local exchange facilities outside of Southwestern Bell’s service area in order to “promote significant Commission objectives by encouraging local loop competition.” Motion of Southwestern Bell Mobile Systems, Inc., CWD-95-5, Memorandum Opinion and Order, 11 FCC Rcd 3386, ¶¶ 18-20 (1995); adopting an auction licensing mechanism to speed deployment of PCS and thereby “create competition for existing wireline and wireless services.” Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, ¶¶ 2-3 (1994); **and** deciding to permit foreign investment in Sprint Corporation based, in part, on a finding that a portion of that investment would be used to fund PCS competition with wireline local exchange providers in the U.S. market. See Sprint Corporation, I-S-P-95-002, Declaratory Ruling and Order. 11 FCC Rcd 1850, ¶¶ 78-82 (1996).

compete directly with one another, and potentially will compete in the future with wireline carriers.”³²

In the *LNP First Report and Order*, the Commission stated that it had relied on the “independent authority” found in sections 1,2, 4(i) and 332 of the Communications Act of 1934, as amended (“Act”), to require wireless number portability.” While CTIA and its members are challenging the statutory basis for this reliance, the fact remains that the FCC has declared that LNP would foster competition not only among CMRS providers, but also *between* CMRS and wireline service providers.³⁴

Central to the Commission’s determination was the belief that CMRS providers would eventually offer comparable local exchange services and compete in the local exchange marketplace.” The FCC indicated that “development of CMRS is one of the several potential sources of competition that we have identified to bring market forces to bear on the existing LECs.”³⁶ Importantly, the Commission explained that “service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhance flexibility for

³² Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 155 (1996) (“*LNP First Report and Order*”).

³³ *See id.* ¶¶ 152-53.

³⁴ *See id.* ¶ 155.

³⁵ *See id.* ¶ 160.

³⁶ *Id.* (quoting Southwestern Bell Mobile Systems, Inc., 11 FCC Rcd at 3386, ¶ 20 (1995)).

users of telecommunications services.”³⁷ There can be no dispute that the elimination of a perceived barrier to intermodal competition was a central motivating factor in the Commission’s decision to require wireless LNP. This goal has continued to influence the Commission’s decisions on this matter

In 1997, in the *LNP First Memorandum Opinion & Order on Reconsideration*, the Commission again pronounced that requiring CMRS operators “to provide number portability is in the public interest because these entities are expected to compete in the local exchange market, and number portability will enhance competition among wireless service providers, as well as between wireless service providers and wireline service providers.”³⁸ In the *Second Annual CMRS Competition Report*, released in March 1997, the Commission emphasized its belief that number portability would be important in achieving its goal of greater wireline-wireless competition.³⁹ It stated that “the ability to carry a telephone number from one service provider, whether they be wireline or wireless, to another provider is an important element in the transition of CMRS services from a complementary telecommunications service to a competitive equivalent to wireline services.”⁴⁰ In describing the FCC’s regulations aimed at fostering “the

¹⁷ *Id.* (citing Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 9 FCC Rcd 5154, ¶ 1 (1994)).

³⁸ Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, ¶ 135 (1997). *See also Telephone Number Portability*, CC Docket No. 95-116, *Third Report and Order*, 13 FCC Rcd. 11701, ¶ 18 (1998).

³⁹ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, and Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service*, *Second Report*, 12 FCC Rcd 11266 at 11269 (1997).

⁴⁰ *Id.* at 11325-26

continued development of wireless services as a potential competitor to LEC services,” the Commission concluded that extending number portability to CMRS carriers would “facilitate entry by providers of new and innovative service offerings, such as the wireless local loop.”⁴¹

In the 1999 *CMRS LNP Forbearance Order*, the Commission asserted that “the competitive reasons that led us to mandate wireless number portability in the *First Report and Order* remain fundamentally valid.”⁴² It went on to explain that by requiring wireless number portability, it “sought to increase competition both within the CMRS marketplace and with wireline carriers, and found that this competition would provide incentives for all carriers to provide innovative service offerings, higher quality services and lower prices.”⁴³

One year later, in 2000, the Commission acknowledged that “the wireless LNP requirement had been imposed to promote both wireless-to-wireless and wireless-to-wireline competition for the benefit of consumers.”⁴⁴ Most recently, in the July 2002 order extending the wireless LNP implementation deadline to November 24, 2003, the FCC recounted its decision that the “implementation of LNP...would enhance competition between carriers as well as

⁴¹ *Id.* at 11330-31

⁴² Cellular Telecommunications Industry Association’s Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092, ¶ 40 (1999) (“*1999 CMRS LNP Forbearance Order*”).

⁴⁴ Cellular Telecommunications Industry Association’s Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Order on Reconsideration*, 15 FCC Rcd 4727, ¶ 40 (2000) (*citing 1999 CMRS LNP Forbearance Order* ¶¶ 40-42).

promote competition between wireless and wireline carriers.”⁴⁵ This latter judgment was based on two interrelated views. First, as CMRS rates continued to decline, more people would potentially view their wireless phone as a substitute for their wireline phone.⁴⁶ Second, as more consumers choose to use wireless instead of wireline services, the adoption of wireless services might be slowed by those consumers who wish to use their wireline number as their mobile number.” On this basis, the Commission concluded that “the competitive reasons that lead the Commission to require wireless LNP remain valid today.”⁴⁷

While the Commission never conducted a cost-benefit analysis,⁴⁹ and CTIA continues to believe that wireless LNP would fail such analysis (either for wireless-wireless competition or intermodal portability), it is clear the Commission’s objectives with respect to promoting intermodal competition will fail to materialize without prompt action. The issue has been pending for nearly five years and, in that time, has been raised repeatedly by the NANC and commenters alike. Absent Commission action, CTIA is concerned that the wireline industry will improperly seek to limit their customers’ ability to port numbers to wireless service providers.

⁴⁵ Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 01-184, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, ¶ 2 (2002).

⁴⁶ *Id.* ¶ 16.

⁴⁷ *Id.* ¶ 18.

⁴⁸ *Id.* ¶ 1.

⁴⁹ *Cf. LNP First Report and Order* ¶ 36 (“[I]n light of Congress’ mandate to us to prescribe requirements for number portability, it is not necessary to engage in a cost/benefit analysis as to whether to adopt rules that require LECs to provide number portability in the first instance.”) (emphasis added).

III. THE COMMISSION MUST PROMPTLY CLARIFY THAT WIRELINE CARRIERS MUST PORT THEIR CUSTOMERS' NUMBERS TO CMRS PROVIDERS

Wireline companies must be required to provide wireline-wireless portability within wireless service areas without regard to whether the wireless carrier has other numbers in a particular rate center. The Act unambiguously imposes a duty on all local exchange carriers to provide number portability.⁵⁰ Number portability is defined by statute 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.”⁵¹ The Commission has concluded “that the statutory definition of [number portability] is synonymous with the ... definition of ‘service provider portability’”⁵² Service provider portability is “the ability to retain one’s number when changing service providers.”⁵³ With respect to porting from a wireline service provider to a wireless service provider, the requisite portability must be provided in a manner that accounts for both (1) the larger service area of the CMRS provider, and (2) the mobile character of the “location” of the wireless subscriber.⁵⁴ Put simply, porting must be done throughout the CMRS service area.

This LEC obligation is limited only by technical infeasibility. Section 251(b)(2) provides that “each local exchange carrier has the . . . duty to provide, to the extent technically feasible,

⁵⁰ 47 U.S.C. § 251(b)(2)

⁵¹ 47 U.S.C. § 153(30).

⁵² *LNP First Report and Order* ¶ 27

⁵³ *Id.* at n.15.

⁵⁴ This Petition is unrelated to location portability, which the Commission has declined to mandate. *Id.* ¶¶ 172-87.

number portability in accordance with requirements prescribed by the Commission.” Any effort to circumscribe the wireline firms’ duty to provide LNP throughout a wireless service area based upon some ground other than infeasibility is impermissible under the statute.

There is no debate regarding the technical feasibility of porting throughout the wireless service area that is also served by the LEC.⁵⁵ In the six years that this issue has been under review, no party to the debate or otherwise has suggested that there are technical or operational impediments.⁵⁶ The statutory obligation then must prevail: The FCC should promptly clarify that, notwithstanding any claimed “rate center disparity,” wireline firms must port throughout the wireless carrier’s service area

The FCC must resolve this issue promptly, and well before the November 24, 2003 deadline for CMRS LNP. Failure to do so would relegate the wireless industry and consumers to the wireline companies’ self-help solution – a ‘solution’ that defeats a very goal the regulation ostensibly seeks to achieve by effectively depriving nearly 90% of all wireline consumers of the ability to port their numbers to their preferred (wireless) supplier. Inaction, then, would constitute a reversal in policy, violating the fundamental requirement that departures from prior norms be explained.”

⁵⁵ The Commission’s rules state that “[a] determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns” 47 C.F.R. §51.5.

⁵⁶ See **NANC First Report** (*passim*)

⁵⁷ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 56 (1983) (“While the agency is entitled to change its views on the acceptability of [a prior policy], it is obligated to explain its reasons for doing so.”); *MCI WorldCom Network Services v. FCC*, 274 F.3d 542, 548 (D.C. Cir. 2001) (“the Commission is ‘entitled to reconsider and revise its view as to the public interest and the means to protect that interest.’ so long as

The present state of regulatory uncertainty surrounding wireline-wireless number portability is not in the public interest and, as Chairman Powell has explained “[t]here is no greater threat to an entrepreneur, or any business, than uncertainty. A key government decision that hangs in suspended animation will kill the best-laid business plan.”⁵⁸ Courts too have consistently admonished the Commission against extensive delays such as this one, where it has been afforded repeated opportunity to make a determination in the public interest, yet it has failed to do so.⁵⁹ While the Commission is, of course, at liberty to address regulatory issues one step at a time, extensive delay which penalizes certain carriers and “impacts on their ability to compete” is unacceptable.⁶⁰

If the Commission allows the deadlock over internodal porting to extend beyond November 24, 2003, the reality of wireline to wireless porting will be at risk; and the Commission itself will be at fault for having misled the public into believing they can port their wireline number to a wireless carrier. Absent a resolution that permits wireline customers to port their numbers to the carrier -- including the wireless carrier -- of their choice, as Congress

it gives a reasoned explanation for the revision.”)(*quoting DirecTV, Inc. v. FCC*, 110 F.3d 816, 826 (D.C. Cir. 1997)).

⁵⁸ Remarks of Michael K. Powell, Chairman, Federal Communications Commission at the Association for Local Telecommunications Services, Crystal City, Virginia, November 30, 2001

⁵⁹ See *Radio-Television News Directors Association v. FCC*, 229 F.3d 269, 272 (D.C. Cir. 2000).

⁶⁰ *Cincinnati Bell Telephone v. FCC*, 69 F.3d 752, 768 (6th Cir. 1995)

directed. the Commission will have imposed significant costs on consumers with very limited corresponding benefit.⁶¹

⁶¹ Since the Commission repeatedly has found the CMRS market to be performing competitively, the high cost of wireless LNP cannot be justified solely on the grounds of enhancing competition in a market the Commission already determined to be competitive.

IV. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission remove any uncertainty associated with the service provider boundaries of wireline and wireless carriers and issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to a CMRS provider whose service area overlaps the wireline carrier's rate center and that no agreement between the two carriers, beyond a standard service-level porting agreement, is necessary.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**



Michael F. Altschul
Senior Vice President, General Counsel

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Its Attorney

January 23, 2003

ATTACHMENT A

DOCKET FILE COPY ORIGINAL *CC95-116*

May 18, 1998

Mr. A Richard Metzger, Jr
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street N W
Washington DC 20554

Dear Mr. Metzger

Enclosed is a copy of the *Local Number Portability Administration Working Group Report on Wireless Wireline Integration* including the *Architecture and Administration Plan for Local Number Portability*. These reports reflect many months of effort on the part of the Local Number Portability (LNP) Working Group of the North American Numbering Council (NANC) and the Wireless Wireline Integration Task Force of the LNP Working Group as well as several reviews by the NANC of the issues presented in the report. Our report also includes a document entitled *Support of Nation Wide Roaming*.

The NANC has adopted this report and is forwarding it to you as its recommendation in accordance with the directive of the Federal Communication Commission in its **Second Report and Order** in CC Docket No. 95-116

Three members of the NANC voted not to accept the report, *v u* GTE, OPASTCO and SBC Communications Inc. I have been instructed by these three members to indicate that their opposition is based on the tight timeframes allowed in the report for completing certain work still to be accomplished by the NANC (see particularly Section 3.33.3) and not on any generic disagreement with the need to implement the integration. While agreeing with the report, USTA expressed the same concern about the time allowed to complete these tasks

Sincerely,



Alan C Hasselwander
Chairman North American Numbering Council

Cc: Lawrence E. Strickland, Geraldine Matise, Erin Duffy, Jeannie Grimes

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