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February 26, 2003

Hon. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals II  
445 12 St., SW  
Washington, D.C. 20554

RE: Comments of the New York State Department of Public Service in the Matter of the Petition of the Cellular Telecommunications & Internet Association (CTIA) for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas; CC Docket No. 95-116

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") hereby responds to the Federal Communications Commission's ("Commission") Public Notice (Notice) issued January 3, 2003. The Notice seeks comment on a Cellular Telecommunications & Internet Association (CTIA) Petition for a Declaratory Ruling that wireline carriers must provide number portability for their customers who elect to retain their wireline telephone numbers

when switching to wireless carriers.<sup>1</sup> CTIA anticipates that wireline carriers will not implement the Commission's November 24, 2003 deadline requiring them to port telephone numbers to wireless carriers.

A wireless carrier typically serves an area ("serving area") that comprises a number of "rate center areas" (central office locations) of the wireline carrier. According to CTIA, wireline carriers are refusing to transfer a wireline customer's phone number to a wireless carrier if the wireless carrier does not have its own block of numbers (i.e. switch or "numbering resources") in the rate center area.<sup>2</sup> Therefore, CTIA asks the Commission to declare that a wireline carrier must port a customer's telephone number to a wireless carrier when the area served by the wireless carrier overlaps the rate center served by the wireline carrier.

The NYDPS has long supported the ability of customers to retain their numbers when selecting a new provider.

Consequently, we support CTIA's petition to clarify that

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<sup>1</sup> Number portability is the "ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 USC Section 153(30).

<sup>2</sup> "Numbering resources" are the blocks of telephone numbers that can be assigned to a telecommunications carrier.

wireline carriers must port numbers to wireless carriers where their serving areas and rate centers overlap. Artificial barriers to intermodal competition should not be condoned. Moreover, this dispute should not delay the November 24, 2003 Commission deadline for both wireline and wireless carriers to implement local number portability so that their customers can move to different carriers without losing their numbers.<sup>3</sup>

The Commission has held that the Telecommunications Act of 1996 (47 USC 153[30]) requires "LECs to implement number portability in such a way that LEC customers can keep their telephone numbers when they switch to any other telecommunications carrier, including, therefore, when they switch to a commercial mobile radio services (CMRS) provider." [footnote omitted]<sup>4</sup> (Emphasis added). The Commission has not required, as a condition of number portability, that a carrier,

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<sup>3</sup> See, Cellular Telecommunications & Internet Association and CellCO Partnership, d/b/a Verizon Wireless v. FCC, No. 02-1264 (D.C. Cir.) wherein the wireless carriers challenge the Commission's decision to impose number portability obligations on them.

<sup>4</sup> CC Docket No. 95-116, In the Matter of Telephone Number Portability, Third Report and Order (May 12, 1998), para. 18 (emphasis added) (hereinafter "Third Report.").

either wireline or wireless, obtain numbering resources in each rate center in order to provide service to customers.<sup>5</sup> Nor has the Commission found that there is a distinction between the wireline carrier's rate center and the wireless carrier's serving area center. Porting to a wireless service provider is technically feasible as long as the rate center (to which the ported number is assigned) is within the serving area of the wireless service provider<sup>6</sup> and the wireless carrier has an interconnection arrangement for incoming calls to the ported number.

If, in fact, wireline carriers create conditions that prevent wireless carriers from competing because customers must take new telephone numbers, then the Commission should grant the petition and find that the wireline carriers' actions would be inconsistent with previous Commission orders. The Commission should explicitly reaffirm that a wireline carrier must port a customer's telephone number to a wireless carrier if a wireless carrier's serving center overlaps the rate center of the wireline carrier. Such a declaration would eliminate any

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<sup>5</sup> In fact, the Commission has only required switches in the rate center. See, First Reconsideration Order, 12 FCC Rcd. at 7272-7277, *Rehearing on Other Grounds*.

<sup>6</sup> Given the large coverage areas of wireless carriers in metropolitan areas and suburban locations, porting from wireline to wireless carriers should not be an issue.

confusion as to what the Commission intends with regard to the implementation of local number portability.

CTIA's request for a Declaratory Ruling should not, however, delay implementation of wireless carriers' obligation to port telephone numbers for customers moving from wireless to wireline or other wireless carriers on November 24, 2003. Permitting additional delay would only serve to delay competition.

Very truly yours,

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