

necessary. The Nebraska Companies will explain more fully in these comments why CTIA's arguments for LNP are flawed and why the Petition must be rejected.

II. CTIA's Simple "Service-Level" Porting Agreement Between Carriers Does Not Address A Rural Carrier's Section 251(f)(2) Rights.

In its Petition, CTIA states that "from a practical perspective, such porting requires only a service-level porting agreement between carriers."³ In an attempt to justify its claim, CTIA states that in many instances, the originating and terminating carrier will be the same so there will be no need for an interconnection agreement. And, in those cases where the carriers are not the same, CTIA claims that the traffic between the two carriers will be governed by an interconnection agreement already established between the two carriers.

CTIA's hypothetical situations do not apply to the Nebraska Companies. Since the Nebraska Companies do not have any wireless affiliates, the originating and terminating carrier will not be the same in any instance. Furthermore, in those rare cases where a Nebraska Company has an interconnection agreement with a Commercial Mobile Radio Services ("CMRS") provider, the CMRS carriers have not requested, nor has a Nebraska Company agreed to offer LNP. Therefore, the Nebraska Companies are not precluded from asserting their legal rights under Section 251(f)(2) of the Telecommunications Act of 1996 (the "Act") once such a request is made.

If a CMRS carrier requests LNP as part of an interconnection agreement, the Nebraska Companies may petition the State Commission for a suspension or modification of any Section 251(b) request. Since LNP is included as a local exchange carrier obligation pursuant to Section 251(b)(3) of the Act, the Nebraska Companies may

³ *Id.* at page 3.

petition for a suspension of the requirement to provide LNP pursuant to Section 251(f)(2) of the Act and the State Commission shall grant such petition if the State Commission determines that such suspension is necessary to: (a) avoid a significant adverse impact economic impact on users of telecommunications services generally; (b) to avoid imposing a requirement that is unduly economically burdensome; or (c) to avoid imposing a requirement that is technically infeasible; and (d) is consistent with the public interest, convenience, and necessity.

Granting the CTIA petition and applying it to all Incumbent Local Exchange Carriers (“ILECs”) including the rural ILECs such as the Nebraska Companies, would usurp the rights of the Nebraska Companies and the State Commissions under Section 251(f)(2) of the Act and must therefore be denied.

III. CTIA Attempts To Absolve Its CMRS Carrier Members Of Any Responsibility For Wireline To Wireless LNP And Attempts To Shift The Entire Financial, Technical, And Operational Burden To The LECs To Achieve An End For Which The Entire Benefit Accrues Solely To CMRS Carriers.

In discussing its authority to require CMRS providers to provide number portability, the Commission described its independent authority under Sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide LNP as the Commission deemed appropriate.⁴ The Commission recognized that LNP would promote competition between existing cellular carriers and providers of PCS.⁵ The Commission, however, limited its finding regarding the need for LNP between CMRS and wireline service providers to those situations where the CMRS providers

⁴ *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC No. 96-286 (“Telephone Number Portability Order”), Released July 2, 1996, at ¶ 153.

⁵ *Id.* at ¶ 157.

offered a local exchange service comparable to the wireline service provider or offered fixed commercial radio service.⁶ The Commission limited wireline to wireless LNP to those situations where the CMRS providers offer comparable local exchange service. CTIA's Petition seems to indicate that the Commission made the opposite finding, that is, wireline to wireless LNP is to be unlimited within a CMRS service area.

Yet, the CTIA Petition states that the Commission's 1997 decision limits wireline to wireless LNP to the existing rate center boundaries of the incumbent LEC. This decision was consistent with a previous decision made in 1996. Further, according to CTIA, 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."⁷ The Commission adopted the NANC recommendation and it is codified at Section 52.26 of the Commission Rules.

CTIA goes on to say that the majority of wireline customers will be located in a rate center where the wireless carrier of their choice has neither located a MSC nor previously drawn numbering resources and thus CTIA argues that a great majority of wireline customers will be artificially deprived of the opportunity to port their numbers to a wireless carrier. Rather than take the aforementioned actions to accommodate the porting of numbers from wireline to wireless service providers, CTIA attempts to shift all responsibility to the wireline service providers. Further, CTIA's request would shift the entire burden to the LECs, financially, technically, and operationally, to achieve an end that only benefits the interest of CTIA and its members. The Commission has made a

⁶ *Id.* at ¶ 160.

⁷ *The Petition*, at page 5.

finding on this issue in 1996, confirmed the finding in 1997, and should do the same in this instance by denying the CTIA Petition.

IV. CTIA's Argument That This Petition Is Not A Request For Location Provider Portability Is Flawed.

CTIA states that this Petition is not a request for location provider portability which the Commission has declined to require.⁸ Yet, CTIA acknowledges in the Petition that the term number portability, which the Commission has concluded is synonymous with the term service provider 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."⁹ CTIA argues that the Commission must take into account both the larger service area of the CMRS provider and the mobile character of the "location" of the wireless subscriber.¹⁰ Simply put, according to CTIA, "porting must be done throughout the CMRS service area."¹¹ Contrary to CTIA's argument, CTIA's Petition is all about location portability. Location portability is defined as 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, that is, outside the area served by the telecommunications user's current central office.¹²

According to CTIA's logic, the same location referred to in statute must mean any location within the CMRS service area, even though the Petition does not define the

⁸ *The Petition*, at footnote 5.

⁹ *Id.* at page 17.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, Released July 2, 1996, at ¶ 174.

geographical scope that may encompass a CMRS service area. Yet, by its own admission, CTIA is not asking for location portability, defined as moving from one physical location to another, even though CTIA states that the Commission must consider the mobile character of the location of the wireless subscriber.

Since the Act mandates service provider portability and since the Commission has previously identified the multiple problems associated with location portability, CTIA attempts in the Petition to expand the definition of service provider portability to be equivalent to location portability in order to disguise wireline to wireless LNP as service provider portability.

V. CTIA’s Argument For Wireline to Wireless LNP Based Upon Technical Feasibility Is Void Of Any Acknowledgement Of Any Adverse Impacts Including Consumer Impacts.

CTIA states that there is no debate regarding the technical feasibility of porting throughout the wireless service area that is served by the LEC. According to CTIA, no party has suggested that there are technical or operational impediments.¹³ Further, CTIA states that any effort to circumscribe the wireline firm’s duty to provide LNP throughout a wireless service area based upon some ground other than infeasibility is impermissible under the statute.

Section 251(b)(2) of the Act states that each local exchange carrier has “the duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.” CTIA attempts to expand this statutory provision by implying that the Section 251(b)(2) number portability obligations apply “throughout a wireless service area.” However, there is nothing in the statute or report language indicating that Congress intended that the number portability obligations should

¹³ *The Petition*, at page 18.

apply “throughout a wireless service area.” Section 251(b)(2) applies to service provider portability, not to location portability. Therefore, consistent with the Commission’s findings, the Commission can and has considered economic and other factors in addition to technical feasibility.¹⁴

The Commission has found that most parties agree that implementation of location portability poses many problems, including: (1) loss of geographic identity of one’s telephone number; (2) lack of industry consensus as to the proper geographic scope of location portability; (3) substantial modification of billing systems and consumer confusion regarding the charges for calls; (4) loss of ability to use 7-digit dialing schemes; (5) the need to restructure directory assistance and operator services; (6) coordination of number assignments for both customer and network identification; (7) network and switching modifications to handle a two-tiered numbering system; (8) development and implementation of a system to replace 1+ as toll identification; and (9) possible adverse impact on E911 services.¹⁵ With regard to the possible adverse impact on E911 services and contrary to CTIA’s Petition, the National Emergency Numbering Association contends the statutory definition of “number portability” in its broadest interpretation would limit any requirement to provide location portability to the area served by the same central office.¹⁶

The Commission found that its decision not to implement location portability was consistent with the Act, which mandates the provision of service provider portability, but does not explicitly address location portability. The Commission found that the Act’s requirement to provide number portability is limited to situations in which users remain

¹⁴ *Telephone Number Portability Order*, at ¶ 36.

¹⁵ *Id.* at ¶ 176.

¹⁶ *Id.* at ¶ 178.

“at the same location” and switch from one telecommunications carrier to another. Thus the Act does not require location portability. See 47 U.S.C § 153 (30).¹⁷ Based upon the record presented, the Commission found that requiring location portability would not be in the public interest.¹⁸ CTIA’s Petition, which equates the definition of service provider portability with the definition of location portability, fails to address, let alone counter, any of the Commission’s findings that led the Commission to conclude that location portability is not in the public interest.

VI. The Commission Has Previously Found That The Extent Of Location Portability Is An Issue To Be Decided By The States.

The Commission found that the disadvantages of mandating location portability outweigh the benefits mainly due to the fact that users associate area codes with geographic area, and assume that the charges they incur will be in accordance with the calling rates to that area. The Commission found that location portability would create consumer confusion and result in consumers inadvertently making and being billed for toll calls. In addition, in order to avoid this customer confusion, carriers and ultimately consumers, would incur additional costs of modifying carriers’ billing systems, replacing 1+ as a toll indicator, and would increase the burden on directory, operator, and emergency services to accommodate 10-digit dialing and the loss of geographic identity.¹⁹ To avoid the consumer confusion and other disadvantages inherent in requiring location portability, the Commission found that state regulatory bodies should determine, consistent with the *Telephone Number Portability Order*, whether to require carriers to provide location portability. The Commission found that states should address

¹⁷ *Id.* at ¶ 181.

¹⁸ *Id.* at ¶ 182.

¹⁹ *Id.* at ¶ 184.

this issue because it recognized that rate centers and local calling areas have been created by individual state commissions and the degree of location portability that may be appropriately allowed without causing customer confusion may vary from state to state.²⁰ The Commission should reject CTIA's Petition as it has already deferred decisions on location portability to the states for the reasons cited above.

VII. Conclusion

According to CTIA, if the Commission has not made a decision on wireline to wireless LNP prior to November 23, 2003, "the Commission itself will be at fault for having mislead the public into believing they can port their wireline number to a wireless carrier."²¹ Nothing could be further from the truth. CTIA should not lay fault upon the Commission by virtue of CTIA's attempt to redefine "same location" to mean virtually any location within a CMRS service area. The Commission explained in detail in its *Telephone Number Portability Order* released on July 2, 1996, why location portability was not in the public interest. The Commission should reject CTIA's attempt to assign blame by rejecting the Petition for Declaratory Ruling.

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Respectfully submitted,

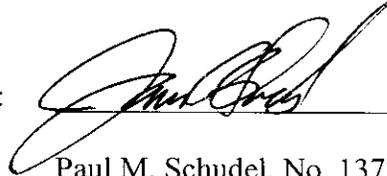
Arlington Telephone Company
Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco Inc.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,

²⁰ *Id* at ¶ 186.

²¹ *The Petition*, at page 19.

Hershey Cooperative Telephone Company,
Inc.,
Hooper Telephone Company,
K&M Telephone Company, Inc.,
Nebcom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Pierce Telephone Co.,
Rock County Telephone Company,
Stanton Telephone Co., Inc., and
Three River Telco

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