

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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

To: The Commission

**PETITION FOR DECLARATORY RULING OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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## SUMMARY

Since the FCC first adopted its wireless local number portability ("LNP") rule, the wireless industry has been working to develop the technical and operational standards necessary to achieve compliance with the mandate. Many of the issues presented by this dramatic change in wireless systems have been resolved by consensus in industry fora, including those bodies established and sanctioned by the FCC. Beginning in 1998, and on several occasions thereafter, the North American Numbering Council ("NANC"), an advisory committee commissioned by the FCC to make recommendations and coordinate number portability, presented to the FCC a list of outstanding policy and technical issues surrounding wireless number portability that could not be resolved absent more specific direction from the Commission. For over five years, therefore, the FCC has been on notice of certain specific obstacles to achieving wireless number portability -- obstacles seemingly immune from consensus among industry players yet critical to achieving number portability.

CTIA, through a petition filed on January 23, 2003, sought a formal declaration from the FCC with respect to one of these issues: whether historic wireline rate center boundaries can be used by carriers to limit consumers' access to wireless number portability. That petition remains outstanding. In this petition, CTIA seeks clarification of several other issues NANC presented to the Commission over the last few years. Specifically, CTIA seeks a declaration from the FCC determining whether carriers may (1) delay a customer's ability to port a telephone number by several days, at times making E911 unavailable, and ultimately nullifying the competition rationale on which the LNP mandate rests; and (2) impose unwieldy and unnecessary negotiation processes for the purpose of testing and agreeing to the terms and conditions of number portability. Without a declaration on these issues, consumers will have no idea as to their rights and carriers will have no idea as to their obligations.

CTIA also respectfully requests the FCC resolve several other outstanding matters that, in the specific and in the aggregate, will have a direct impact on consumer access to LNP. Expedited resolution of these matters is not only necessary to achieve number portability between wireless and wireline operators, but, as recent comments demonstrate, the extent of the obligations of wireless carriers to port numbers amongst themselves is also very uncertain.

A decision clarifying carrier obligations must be rendered in time to reduce legal duties to operational realities. The FCC's failure to act thus far has placed the industry in a precarious situation with its own customers. Until the Commission resolves the critical implementation issues addressed in this petition, it will be impossible for carriers -- or for the Commission -- to communicate with consumers about their rights and opportunities.

If number portability is to be successfully implemented, the FCC needs to issue orders in response to NANC submissions and ensure a uniform standard for wireless number portability (as it did for wireline number portability). The Commission's failure to address and resolve these obstacles to achieving wireless number portability has fostered an unstable environment that calls into question the underlying purpose and enforceability of the LNP rule. CTIA respectfully requests that the FCC decide these issues by September 1, 2003, which would give wireless carriers less than 90 days to implement the new rules. That window is the absolute minimum amount of time carriers require to load and test software and systems, install circuits, obtain numbering resources and train customer contact personnel.

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The Cellular Telecommunications & Internet Association (“CTIA”),<sup>1</sup> pursuant to section 1.2 of the Commission’s rules,<sup>2</sup> respectfully submits this Petition for Declaratory Ruling in the above-captioned proceeding.

**I. INTRODUCTION**

On January 23, 2003, CTIA filed a petition seeking a declaratory ruling that wireline carriers have an obligation to port their customers’ telephone numbers to a CMRS carrier whose service area overlaps the wireline carrier’s rate center.<sup>3</sup> In addition to this important issue, there

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<sup>1</sup> 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.

<sup>2</sup> 47 C.F.R. § 1.2.

<sup>3</sup> Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas, CC Docket No. 95-116, *Public Notice*, 18 FCC Rcd 832 (2003); *see Petition For Declaratory*

are other matters that must be addressed in sufficient time to permit the scheduled November 24, 2003 introduction of wireless number portability. Many of these matters were identified long ago, but have remained undecided. Now, with the number portability deadline only six months away, delay has become an unaffordable luxury. Even if wireless carriers have upgraded their networks, carriers will still require at least 90 days to implement the new rules and policies that have been awaiting resolution by the Commission. That window is necessary to load and test software and systems, install circuits, obtain numbering resources and train customer contact personnel.

Dating back to the first NANC report on wireless number portability in 1998, up to the most recent filings in this docket, the Commission's inaction has led to confusion and disagreement that now threatens the deployment of wireless number portability. And if carriers are confused, consumers are sure to be perplexed. It is clear then, in addition to clarifying the porting obligations raised in the *Rate Center Petition*, these additional matters must be clarified to "terminat[e] a controversy or remov[e] uncertainty."<sup>4</sup>

Even before the release of the *LNP First Report and Order*<sup>5</sup> the wireless industry was initiating steps to solve the unique difficulties CMRS providers face in implementing local number portability ("LNP").<sup>6</sup> While industry working groups successfully resolved most of

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*Ruling of the Cellular Telecommunications & Internet Association* (filed Jan. 23, 2003) ("*Rate Center Petition*").

<sup>4</sup> 47 C.F.R. § 1.2.

<sup>5</sup> Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) ("*LNP First Report and Order*").

<sup>6</sup> See Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315, ¶¶ 8-10 (1998) (detailing the significant efforts undertaken by

these issues, what remain for Commission resolution are the obstacles seemingly immune from consensus yet critical to achieving number portability as it was conceived in the *LNP First Report and Order*. These obstacles, none of which are new, have been raised primarily by wireline carriers in an effort to delay number portability, and are now being mirrored by some wireless carriers. Whether they fear the impact of additional competition that may result from number portability, or because they have different cultures and differing interpretations of their legal obligations, the wireline and wireless industries have reached an impasse that requires Commission resolution.

As explained in the *Rate Center Petition*, intermodal number portability is a pillar of LNP, not a beneficent side effect.<sup>7</sup> Since adopting the requirements in the *LNP First Report and Order*, the Commission has reiterated on several occasions that “the wireless LNP requirement had been imposed to promote both wireless-to-wireless and wireless-to-wireline competition for the benefit of consumers.”<sup>8</sup> Failure to achieve this objective, while insisting on continued enforcement of the LNP mandate, fits squarely within the prohibition on arbitrary and capricious decision making.<sup>9</sup>

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the wireless industry to develop standards and modify network operations to implement the FCC’s number portability requirements).

<sup>7</sup> See *Rate Center Petition* at 12-16.

<sup>8</sup> See, e.g., 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) (citations omitted).

<sup>9</sup> See *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992) (“The Commission’s necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise, implies a correlative duty to evaluate its policies over time to ascertain whether they work -- that is, whether they actually produce the benefits the Commission originally predicted they would.”) (citations omitted); *Geller v. FCC*, 610 F.2d 973, 979-80 (D.C.

Furthermore, the ambiguity of carrier obligations created by the outstanding issues raised herein and in the *Rate Center Petition* are not limited to intermodal number portability. The lack of resolution is affecting the wireless industry as certain wireless carriers examine the extent of their obligations to participate in both intramodal and intermodal number portability. In response to the *Rate Center Petition*, some CMRS providers expressed support for the LEC rate center boundary and their intent to refuse ports outside a rate center.<sup>10</sup> The Commission too has yet to clarify the obligations of some rural wireless carriers to participate in number portability and has been presented several requests by other carriers that threaten to break ubiquitous nationwide roaming.

Fundamentally, the Commission's failure to take any role in implementing wireless number portability, except to impose artificial deadlines, its failure to issue orders in response to industry impass and NANC submissions, and its failure to ensure a uniform standard for wireless number portability (as it did for wireline number portability)<sup>11</sup> has fostered an unstable

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Cir. 1979) (remanding to the Commission a rule which no longer achieved its stated purpose); *Nat'l Ass'n of Regulatory Comm'rs v. FCC*, 525 F.2d 630, 638 (1975) ("The Commission retains a duty of continual supervision.").

<sup>10</sup> See *Rate Center Petition*, Reply Comments of Mid-Missouri Cellular at 1-2 (filed Mar. 13, 2003) ("While raised in the context of a wireline-to-wireless issue, the ruling sought by CTIA is central to wireless local number portability ("WLNP") in the wireless-to-wireless porting environment as well. . . . Just as in the case of wireline-to-wireless local number portability, the only obligations imposed on [CMRS] carriers are to provide WLNP where both carriers have numbering resources within the same rate center and interconnection facilities which would allow a call from a non-ported caller to a number ported from the original CMRS carrier, to be able to be routed and rated as a local call.").

<sup>11</sup> See 47 C.F.R. § 52.26 (incorporating NANC recommendations for wireline number portability into the Commission's rules); Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12281, ¶ 14 (1997) (explaining that the NANC recommendations that led to the adoption of the Commission's number portability rules "did not fully consider issues related to CMRS providers. . . . As a result, the NANC

environment that threatens the underlying purpose and enforceability of the LNP rules. The requirement to take action, and the consequence of not doing so, should come as no surprise. In 1997, the Commission understood that “it will probably be necessary to modify and update the current number portability standards and procedures in order to support wireless number portability.”<sup>12</sup> It directed the NANC to investigate CMRS number portability issues and requested a report within nine months. Having received such a report, along with two other formal NANC submissions, the Commission then neglected to take any follow-up steps to address the comments raised in the NANC recommendations.

The implications of this omission are not merely theoretical. The lack of uniformity in LNP standards will cause tremendous customer confusion that will negate any hoped-for benefits from the rule. For instance, absent Commission guidance, each carrier may adopt its own porting interval -- making it impossible for a wireless sales representative to inform a customer as to when a port might be completed. Customers may not be able to port a number unless they know what rate center they are in (given wireless carriers’ reliance on retail distribution channels, a salesperson at a large retail center cannot be expected to identify the two relevant rate centers and determine whether they overlap). A customer may not be able to port unless the underlying carriers have established some agreement for doing so (the salesperson presumably will need to know this too). Sales representatives will also be unable to determine whether a port will affect a customer’s ability to roam or to access E911. Simply put, this mandate lacks any clear direction except a November 24, 2003 deadline.

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did not make recommendations regarding the implementation of number portability by CMRS providers.”) (“*LNP Second Report and Order*”).

<sup>12</sup> *LNP Second Report and Order* ¶ 91.

With only six months remaining before the Commission's November 24, 2003 deadline, time is of the essence. Absent timely resolution of these issues, many of which were presented to the Commission several years ago, the competition policy underlying the requirement will go largely unmet and consumers will have been misled. CTIA, therefore, respectfully requests that the Commission clarify the duties of both wireless and wireline carriers, with respect to the following matters, by Labor Day, September 1, 2003:

- whether carriers may impose a porting interval that delays a number port by several days -- inconveniencing consumers and risking public safety -- ultimately nullifying the competition rationale on which the LNP mandate rests;
- whether carriers may impose unwieldy and unnecessary section 251 and 252 interconnection processes to implement the operational aspects of number portability;
- whether LECs can continue to interpose technically baseless objections to porting numbers to wireless companies; and
- whether rural wireless carriers will have to engage in and support number portability.

Expedited resolution of these matters is critical if the Commission intends to adhere to its November 24, 2003 deadline for wireless carriers to implement LNP. Labor Day is less than ninety days before the November 24, 2003 implementation deadline. The Commission's failure to act so far has placed the industry in a precarious situation. Carriers will need at least ninety days, and probably more, to program their OSS and back office support programs; order, test, and place in service new intercarrier circuits; obtain new numbering resources from the North American Numbering Plan Administrator and Pooling Administrator; introduce new marketing plans; and properly train their sales and customer care employees about consumers' rights and carriers' obligations resulting from the Commission's number portability mandate. While the

industry is obviously far along in implementing many of these changes, a decision on all of the pending matters is sure to affect these efforts.<sup>13</sup>

## **II. THE COMMISSION SHOULD ADOPT A NUMBER PORTING INTERVAL THAT PROMOTES COMPETITION.**

Despite the impending November 2003 deadline, the Commission has failed to address the time interval in which intermodal and intramodal wireless ports must be achieved nor has it definitively resolved the implications that the porting interval will have on E911 services. These issues must be resolved by the Commission before CMRS LNP can be successfully implemented. As demonstrated below, the Commission has been informed of the magnitude of this issue for several years, yet it has repeatedly failed to take action.

The porting interval is the amount of time it takes for two service providers to complete the process of porting a telephone number when a customer changes providers but keeps the same telephone number. The lack of uniformity among carriers will hinder the porting process and frustrate customers looking to complete a timely service transition. CMRS carriers established a goal of processing ports within two and one half hours in order to mirror current wireless business practices with the expectation that wireless-to-wireless ports will be completed within one business day.<sup>14</sup> On the other hand, ports between wireline carriers take nearly a week (as long as four business days) to complete. As the NANC reports to the Commission demonstrate, wireline providers object to reducing the porting interval when porting with CMRS

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<sup>13</sup> For instance, an FCC order in response to the *Rate Center Petition* may affect carriers' decisions to request additional numbering resources in every rate center, if necessary, to ensure intermodal number portability.

<sup>14</sup> See North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116, at 10 (filed May 18, 1998) ("*NANC First Report*"). The three NANC Reports referenced herein were submitted as attachments to the *Rate Center Petition*.

carriers.<sup>15</sup> While this issue predominantly affects LEC-CMRS ports, it may also delay CMRS-CMRS ports where certain CMRS providers may refuse to complete a port within the agreed-upon time frames established by industry working groups.<sup>16</sup> Recent data make clear, however, that a long porting interval will frustrate the very purpose of the Commission's LNP rules.

**A. The Porting Interval Issue Has Been Before The Commission For Several Years And Will Not Be Resolved Without Commission Action.**

In May 1998, the NANC submitted the *NANC First Report* to the Common Carrier Bureau. It contained an extensive presentation of the policy issues stemming from the asymmetry in porting capability between wireline and wireless carriers. It 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. Among the issues presented was the dispute between wireless and wireline carriers concerning the porting interval and their failure to agree on an interval for intermodal ports.<sup>17</sup>

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<sup>15</sup> See North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116, at 7 (§ 3.2) (filed Nov. 29, 2000) ("*NANC Third Report*"). The current wireline porting intervals are also documented in NANC's *LNPA Technical & Operational Requirements Task Force Report*, dated Apr. 25, 1997.

<sup>16</sup> Because the Commission has not considered any of the details of CMRS porting in its orders or rules, CMRS carriers appear free to implement number portability in any manner they see fit, even if it conflicts with decisions reached in industry fora. Some providers have already expressed an interest in imposing their own unique requirements in addition to or instead of generally approved procedures.

<sup>17</sup> See *NANC First Report* at 12 (§ 3.3.3.2) and 21-22 (§ 7.1.2).

The following month, June 1998, the Common Carrier Bureau sought comment on the *NANC First Report*;<sup>18</sup> however, the Commission has failed to formally address the porting interval issue that was set out in the *NANC First Report* and the *Public Notice*.

In its *Second Report on Wireless Wireline Integration*, submitted in 1999, the NANC once again formally brought the porting interval issue to the Commission's attention.<sup>19</sup> This report dealt primarily with the porting interval issue and discussed three alternative solutions in detail.<sup>20</sup> These alternatives allow a carrier to activate a customer with a ported number prior to that number being disconnected by the previous provider -- a situation the working group referred to as a "mixed service" period. The customer would essentially have service with two carriers with the same phone number for some period of time. Although the "mixed service" option was considered a viable solution, concerns were expressed regarding issues that might arise during the mixed service period; primarily concerns over E911 service.<sup>21</sup>

On November 29, 2000, the NANC formally raised the issue with the Commission a third time. In its *Third Report on Wireless Wireline Integration*, the NANC again focused on the porting interval issue and presented two alternative solutions consolidated from the three

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

<sup>19</sup> North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) ("*NANC Second Report*").

<sup>20</sup> *Id.* at 5 (§ 1.1), 11-13 (§ 3.6).

<sup>21</sup> Mixed service could also occur for wireless-wireless ports where the new carrier immediately initiates service with the ported number, but the National Portability Administration Center ("NPAC") database has not yet been updated.

solutions outlined in the *NANC Second Report*. In this report, the NANC analyzed the technical aspects of the porting process and looked at what parts of the wireline porting process need to be improved to shorten the interval for simple LNP orders. The report concluded that in order to shorten the porting interval, the wireline industry must agree to automation and uniformity across all service providers.<sup>22</sup> Such steps toward a modern system have been taken by the CMRS industry, but continue to be resisted by LECs.

In preparing the *Third NANC Report*, the NANC consulted with the National Emergency Number Association (“NENA”), which expressed concern about impeding E911 service.<sup>23</sup> The report recommendations to the Commission state that because of the 911 issues associated with mixed service, the Local Number Portability Administration (“LNPA”), a technical consultant to the NANC, could not reach consensus to support these alternatives. Since the filing of the *Third NANC Report* three years ago, the wireline industry has made no effort to modernize its porting process. It is clear that the Commission needs to address the matter.

Responsibility for resolving the porting interval dispute rests squarely with the Commission, because, as CTIA explained in its *Rate Center Petition*, the NANC is purely an advisory body.<sup>24</sup> However, notwithstanding all of the advisory reports from the NANC and public comment received on the *NANC First Report*, the Commission has yet to resolve the porting interval dispute. No public comment was sought on the *Second NANC Report* or the *Third NANC Report*, nor has the Commission given service providers any formal guidance on

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<sup>22</sup> See *NANC Third Report* at 11 (§ 3.4.1).

<sup>23</sup> Letter from John Hoffman, NANC Chair, to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000) (enclosing *NANC Third Report*) (“*Hoffman Letter*”).

<sup>24</sup> See *Rate Center Petition* at 10-11.

this issue. In submitting the *Third NANC Report* over three years ago, the NANC and LNPA strongly urged the Commission to put forth all of the NANC reports for public comment.<sup>25</sup>

The Commission was again alerted to the porting interval issue earlier this year when CTIA requested Commission action on outstanding LNP issues, and commenters noted the importance of the porting interval and the fact that it remains to be resolved.<sup>26</sup>

**B. Failure To Address The Porting Interval Poses Unnecessary Risks To Public Safety.**

The “mixed service” period is not only an inconvenience, it may pose a threat to public safety by degrading the availability of E911. The NANC has identified several risks to the E911 system, depending largely upon the LEC's progress in completing the porting process. First, if a wireless phone is activated for service prior to the completed port activation by the NPAC, and the customer calls 911, a call back attempt by a PSAP would be routed through the old wireline switch to the fixed location, not to the wireless caller. Second, a different risk could arise during the “mixed service” period if a call is placed from the wireline phone and the 911 operator attempts to reestablish connectivity; the PSAP’s call could be routed to the wireless phone instead of the wireline phone from which the emergency was reported.<sup>27</sup> Accordingly, the pace of LEC efforts to complete a port, *i.e.*, the porting interval, will significantly affect the

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<sup>25</sup> *See Hoffman Letter.* By failing to address the various NANC reports, and codifying standards on such issues as the porting interval, the Commission has not only neglected a continuing disagreement between wireless and wireline carriers, it has opened the door for certain wireless carriers to impose their own unique porting interval rules.

<sup>26</sup> *See, e.g., Rate Center Petition*, Comments of ALLTEL Corporation at 6-7 (filed Feb. 26, 2003) (“[t]here does not appear to be any definitive resolution of the time frame in which an intermodal port must be achieved, nor have the implications of intermodal ports to E-911 service been definitely resolved.”).

<sup>27</sup> *See NANC Second Report* at 29-30 (§ 5.3) and *NANC Third Report* at 14-16 (§ 4.1.3).

availability of critical E911 services to all consumers. The CMRS industry has consistently advocated shorter porting intervals -- for both intermodal and intramodal ports.

The *NANC Third Report* highlights the liability issue associated with these public safety concerns.<sup>28</sup> The report states that some service providers continue to express concern with possible liability should a PSAP not be able to reestablish connectivity with a caller, and it further states that the Local Number Portability Working Group does not believe it has the legal expertise to adequately address the liability issue.<sup>29</sup> The NANC explained that because of the 911 issues associated with the porting interval, it could not reach a consensus.<sup>30</sup>

The Commission has long considered E911 services to be of great significance, and it needs to resolve this outstanding issue. Call back capability is an essential component of E911, and it is an important public safety tool.<sup>31</sup> Recently, the Commission emphasized the importance of call back when it concluded:

A delayed or less than adequate response to an E911 call can be disastrous regardless of whether a small carrier or a large carrier is involved. The importance of PSAP call back capability in wireless E911 situations is that, in the excitement of a crisis situation, the caller could easily forget to provide the PSAP with location information and, the PSAP might not be able to trace the location of a wireless phone because the individual could be moving from place to place, and may not be able to call the handset user back to verify a location. The PSAP would, at worst, be unable to respond, or would respond on a delayed basis.<sup>32</sup>

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<sup>28</sup> See *NANC Third Report* at 15 (§ 4.1.3).

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 16 (§ 4.1.4).

<sup>31</sup> The requirement for wireless call back capability is set forth in 47 C.F.R. 20.18(d)(1).

<sup>32</sup> See In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11491, at Appendix B-5, "Initial Final Regulatory Flexibility Analysis" (2001).

As a result of the unreasonably long porting interval proposed by the LECs, the call back feature could be unavailable for several days causing an unnecessary risk to public safety.<sup>33</sup> The Commission cannot ignore this concern.<sup>34</sup> As NENA emphasized to the Commission last year, number portability must result in “no loss or diminution of 9-1-1 service and access to emergency services/public safety.”<sup>35</sup>

The Commission itself acknowledged the importance of E911 services when it extended the wireless LNP deadline by one year. It found that extending the LNP implementation deadline until November 24, 2003 would allow adequate time to resolve all outstanding issues, including public safety coordination.<sup>36</sup> Commissioner Copps concurred, explaining that “a short delay is appropriate to allow carriers and public safety answering points to coordinate so there are no negative effects on 911 emergency response.”<sup>37</sup> However, this issue has not been resolved by the industry, because wireline carriers refuse to implement an efficient porting interval that is beneficial to consumers and protects public safety. It is time for the Commission to step in to resolve the public safety coordination issue.

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<sup>33</sup> The Commission’s rules account for the fact that call back may not always be available to wireless carriers and provides only for the transmission of call back information to PSAPs where it is technically feasible. *See* 47 C.F.R. 20.18(d)(2).

<sup>34</sup> Similar issues would exist for mixed service in CMRS-CMRS ports, but the threat is significantly reduced because wireless ports should be completed much quicker.

<sup>35</sup> *See* Letter from James Hobson, Counsel for NENA, to Magalie Salas, Secretary, CC Docket Nos. 94-102 *et. al.*, WT Docket No. 01-184, at 3 (filed Jan. 30, 2002).

<sup>36</sup> *See 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, ¶ 23 (2002) (“*Verizon Wireless LNP Forbearance Order*”).

<sup>37</sup> *Id.*, Separate Statement of Commissioner Michael Copps at 1.

**C. The Stated Purpose Of The LNP Rule Will Be Frustrated If The Porting Interval Issue Is Not Resolved.**

A primary goal the Commission established in imposing LNP for CMRS providers is fostering competition both among wireless carriers and between wireless and wireline service providers.<sup>38</sup> If the November 24, 2003 deadline arrives, and the Commission has not addressed the porting interval issue, along with all of the other issues raised by CTIA, the benefits advanced by the Commission for imposing the number portability mandate on wireless carriers will not be realized. Intermodal competition (and perhaps intramodel porting) will largely go unrealized because consumers will have to wait too long for the port to complete. Recent reports by Wall Street analysts demonstrate that the competitive benefits of number portability are largely thwarted if the porting interval is too long. A report released by JP Morgan last month emphasizes this point. The report states:

It is somewhat intuitive that the length of the porting period. . . will have an impact on a subscriber's willingness to use WNP, as the inconvenience of having to wait several days or even weeks to have a number ported will offset some of the benefit. . . While this may appear to be a minor inconvenience, countries with porting periods greater than a week, such as the Netherlands and the U.K., showed little increase from WNP in churn, indicating that the porting period was a concern for consumers.<sup>39</sup>

A similar report by Merrill Lynch noted that LNP has, thus far, been a relatively insignificant event in the UK where porting intervals can be as long as nine days.<sup>40</sup>

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<sup>38</sup> CTIA discussed this at length in its *Rate Center Petition*, and the full discussion will not be repeated here. See *Rate Center Petition* at 12-16.

<sup>39</sup> See JP Morgan North American Equity Research, *Wireless Number Portability: Not Positive for ROIC, but Potential Upside Exists*, at 11 (released Apr. 14, 2003) (“*JP Morgan Report*”).

<sup>40</sup> See Merrill Lynch, *Wireless Services. WNP: Coming in November 2003 or Not?*, at 1 (released Jan. 9, 2003) (“*Merrill Lynch Report*”).

The Merrill Lynch report, released in January 2003, predicts that subscribers are more likely to port when the process is convenient and inexpensive, and it notes that, as far as consumers are concerned, the time it takes for a port to complete is a hurdle to promoting connection through LNP.<sup>41</sup> These lessons are applicable to the U.S., where it seems clear that consumers will not avail themselves of LNP to switch service providers if the porting interval is too long, as well as unpredictable, thus calling into question the basis for the rule in the first place.

The two and one half hour porting interval proposed by the wireless industry is pro-competitive, because it minimizes consumer inconvenience with porting numbers, and it minimizes the public safety issues associated with improper routing of “call back” for 911 calls. On the other hand, the wireline industry continues to advocate a porting interval that will stifle competition and cause consumers to hesitate to change service providers.

It is clear the Commission’s objectives with respect to promoting intermodal competition will fail to materialize without prompt attention to this dispute. This 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, the underlying purpose of the rule will be frustrated as consumers elect not to port numbers due to the inconvenience of lengthy porting intervals. The question before the Commission, therefore, is whether it will force carriers to adopt a pro-competitive stance with respect to the porting interval or whether, following the approach of certain other countries, it will require number portability but allow it to be implemented in an ineffectual manner.

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<sup>41</sup> See *id.* at 4.

### **III. NUMBER PORTABILITY SHOULD BE ACHIEVED WITHOUT REQUIRING INTERCONNECTION NEGOTIATIONS.**

One of the issues raised in the *Rate Center Petition* is the coordinating mechanism which carriers will use to support number portability. Because the Commission has ordered number portability, as a practical matter, some sort of agreement must be reached to govern the terms under which carriers will test with and port numbers to one another. Absent specific Commission direction, CTIA and its members developed a template for a Service Level Porting Agreement (“SLA”) based in large part on the terms and conditions wireline carriers have utilized for years. The point of the SLA is to further number portability (both wireless-wireless and wireless-wireline) in a comprehensive and streamlined manner.

As demonstrated by their comments to the *Rate Center Petition*, incumbent LECs have resisted this means of reaching agreement, opting instead for negotiations under the procedures provided for in section 252 of the Act. Thus, while the wireless industry has acted on its own to develop a process for facilitating number portability, recent LEC filings demonstrate that they intend to erect obstacles to intermodal portability by interposing an inappropriate requirement that will lead to protracted negotiations and delayed dispute resolution.<sup>42</sup> Both SBC and BellSouth have made clear to the Commission their opposition to SLAs, arguing that “an agreed upon document that sets out the terms and conditions by which incumbent LECs provide number portability is an interconnection agreement and must be filed with the appropriate state commission [under section 252].”<sup>43</sup> In response to the LEC opposition to the *Rate Center*

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<sup>42</sup> Wireless carriers are not bound by any one method of achieving intercarrier agreements to support number portability. In the absence of specific direction from the Commission, it is not clear whether all wireless carriers will enter into streamlined negotiations and reach satisfactory agreements to engage in number portability with one another.

<sup>43</sup> *Rate Center Petition*, SBC Comments at 8 (filed Feb. 26, 2003).

*Petition*, and their well-known opposition to SLAs, CTIA set forth a detailed legal basis for dismissing the LECs' position.<sup>44</sup> That analysis will not be restated here. However, the Commission's recent submission to the Court of Appeals further reinforces the fact that the LEC approach has no basis in law or policy.

Essentially, the LEC position amounts to a dispute over numbering administration masquerading as an interconnection issue. Either way, the LEC position is a threat to the Commission's exclusive jurisdiction over numbering administration<sup>45</sup> and its unique authority over LEC-CMRS relationships. Proper resolution of this matter is therefore critical to ensuring the achievement of a uniform, nationwide numbering policy that conforms with Congressional intent for the regulation of CMRS.

**A. CMRS Carriers Are Not Required To Enter Into Interconnection Negotiations For Number Portability.**

When the Commission ordered CMRS providers to engage in number portability it concluded that "the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services."<sup>46</sup> While the Commission did not detail how intermodal number portability would proceed, and it plainly did not consider the formal agreements necessary to complete this undertaking, it made clear that the decision to order intermodal number portability was made outside the scope of sections 251 and 252. Instead, the Commission decided to

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<sup>44</sup> *Rate Center Petition*, CTIA Reply Comments at 15-18 (filed Mar. 13, 2003).

<sup>45</sup> 47 U.S.C. § 251(e).

<sup>46</sup> *LNP First Report and Order* ¶ 153.

. . . include those [CMRS] carriers in our mandate to provide long-term service provider portability. . . pursuant to our authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934. *This mandate applies when switching among wireline service providers and broadband CMRS providers*, as well as among broadband CMRS providers, even if the broadband CMRS and wireline service providers or the two broadband CMRS providers are affiliated.<sup>47</sup>

In other words, CMRS-LEC number portability (like CMRS-LEC interconnection) is governed by a completely different regime than LEC number portability and it is subject to the Commission's unique jurisdiction over CMRS. As the Commission recently explained to the D.C. Circuit with respect to CMRS number portability, “[b]ecause the development of the wireless industry has a different history -- in which service already was provided by a number of carriers in 1996, and not through a monopoly -- Congress did not explicitly impose all of the obligations in section 251 on wireless carriers.”<sup>48</sup> Rather, Congress directed the Commission generally to regulate CMRS pursuant to the provisions of section 332, and the Commission specifically ordered CMRS number portability under those terms.

It is well-settled that section 332 is aimed at promoting a uniformly-regulated, efficient, competitive CMRS market. For this reason, Congress charged the Commission with implementing regulatory policies that foster the full development of CMRS “that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.”<sup>49</sup> Furthermore, Congress foresaw eventual local competition between CMRS providers and wireline carriers -- such as that which the Commission is attempting to promote

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<sup>47</sup> *Id.* ¶ 155 (emphasis added). Importantly, the Commission reiterated this position last month before the D.C. Circuit. See Brief for Respondents at 7, *Cellular Telecommunications & Internet Association and Cellco Partnership, d/b/a/ Verizon Wireless v. FCC*, (D.C. Cir.) (No. 02-1264).

<sup>48</sup> *Id.* at 34.

<sup>49</sup> H.R. Rep. No. 103-111, at 260 (1993) reprinted in 1993 U.S.C.C.A.N. 378, 587.

through intermodal number portability -- with minimal state regulation.<sup>50</sup> Subjecting CMRS-LEC number portability to section 251 and 252 would considerably undermine the regulatory scheme of section 332.

Moreover, the Commission's decision to regulate CMRS-LEC number portability under section 332 accords with its orders implementing sections 251 and 252.<sup>51</sup> In the *Local Competition Order*, the Commission expressly declined to treat CMRS providers as LECs under sections 251 and 252 and impose all of the costs and unnecessary procedures associated with opening the LEC monopolies. Instead it found that "because CMRS providers do not fall within the definition of a LEC under section 251(h)(1), they are not subject to the duties and obligations imposed on incumbent LECs under section 251(c)."<sup>52</sup> LEC insistence on detailed interconnection negotiations simply for the purpose of implementing number portability is at odds with the decision not to regulate CMRS providers as LECs under sections 251 and 252. Their request attempts to circumvent the Commission's decision in the *Local Competition Order* and require CMRS providers to engage in interconnection negotiations. This is impermissible

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<sup>50</sup> See, e.g., 47 U.S.C. § 332(c)(3)(A); H.R. Conf. Rep. No. 103-213 at 493 (1993) reprinted in 1993 U.S.C.C.A.N. 1088,1182 ("the Commission should permit States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, ... it is not the intention of the conferees that States should be permitted to regulate these competitive services..."). In other words, Congress specifically recognized, and approved of, wireless carriers providing "basic telephone service" in competition with wireline carriers, and only reserved the states' authority to regulate wireless carriers in the provision of such service if the wireless carrier was the sole local exchange carrier in the relevant geographic market.

<sup>51</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

<sup>52</sup> *Id.* ¶ 1006.

under the statute. Simply put, LECs cannot do that which Congress and the Commission have chosen not to do: impose section 251 and 252 obligations on CMRS providers.

Furthermore, the section 251(b)(2) LEC obligation to provide number portability is not absolute -- it is plainly limited by the Commission's specific authority to adopt rules governing number portability. Section 251(b)(2) provides:

[e]ach local exchange carrier has the following duties . . . (2) NUMBER PORTABILITY. -- The duty to provide, to the extent technically feasible, number portability *in accordance with requirements prescribed by the Commission.*"<sup>53</sup>

Thus, even if section 251 were applicable to CMRS-LEC number portability, the Commission is free to establish procedures governing the terms under which LECs engage in number portability. In this instance, the Commission should make clear that additional burdensome regulatory obligations are not required by the statute or by its rules. Nothing more than the SLA is necessary to ensure that consumers can port their numbers.<sup>54</sup>

The LEC position has no support in the Act or in Commission orders. Neither Congress nor the Commission has ever expressed any intent to include CMRS providers in the section 251(b) mandates or the state jurisdiction associated with section 252. Coupled with the fact that section 332 is meant to create a uniformly regulated CMRS industry, state by state review of CMRS number portability agreements would run afoul of congressional intent. The Commission should therefore make clear that the requirement for CMRS providers to engage in number portability does not also trigger a requirement to enter into interconnection negotiations as

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<sup>53</sup> 47 U.S.C. § 251(b)(2) (emphasis added).

<sup>54</sup> Many carriers already have interconnection agreements, and it is likely that some of these agreements will be amended to address number portability once the mandate goes into effect for CMRS. If carriers wish to proceed in this fashion, the Commission should not prohibit it.

defined in section 252. Rather, it is governed by the Commission's unique authority over CMRS.

**B. The Public Interest Would Be Harmed If CMRS Carriers Are Required To Enter Into Interconnection Negotiations For Number Portability.**

There is no sound basis in policy to subject competitive carriers to the expense of concluding complicated section 251 and 252 interconnection agreements simply to implement intermodal number portability.<sup>55</sup> Yet that is exactly what the LECs are requesting. As some LECs have noted, "there are many instances where a CMRS provider and LEC do not have an existing interconnection agreement, for example, where the CMRS provider interconnects indirectly through the tandem switch of another carrier."<sup>56</sup> In these instances, the LECs presumably intend to engage in lengthy and far reaching interconnection negotiations only to then subject those agreements to state review. One LEC representative has made it clear that "[i]f a CMRS carrier requests LNP as part of an interconnection agreement, [it] may petition the State Commission for a suspension or modification of any Section 251(b) request."<sup>57</sup>

Forcing CMRS providers to engage in interconnection negotiations which are later subject to state review would serve only two purposes: 1) to significantly delay the availability of number portability to consumers; and 2) to permit incumbent monopolists to raise their rivals' costs and inhibit competition. Ultimately, it is consumers who will be harmed by the LEC position. Specifically, it will be extremely improbable that any sales representatives selling the

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<sup>55</sup> Negotiations between competitive wireless carriers bears this out. CTIA expects that wireless carriers will largely rely on SLAs to implement wireless-wireless number portability.

<sup>56</sup> *Rate Center Petition*, CenturyTel Comments at 7 (filed Feb. 26, 2003).

<sup>57</sup> *Rate Center Petition*, Nebraska Independents Comments at 2 (filed Feb. 26, 2003).

multiple brands of wireless service will know whether a particular provider has reached agreement with another carrier to implement number portability.<sup>58</sup> Absent such information, it will be impossible to complete a sale involving number portability. Technically, the mandate will have been met by all parties, but the public will have seen no benefit from the rule or the investment made by carriers to comply with the mandate. This can only be avoided by a Commission mandate prohibiting carriers from imposing a duty to negotiate or modify interconnection agreements solely for the purpose of achieving number portability.

Seemingly, the only plausible objection to SLAs is SBC's concern that a service-level porting agreement would not provide for an arbitrator in the event of a dispute.<sup>59</sup> This, however, is a needless anxiety. Because the CMRS-LEC relationship falls squarely within the Commission's jurisdiction under section 332, it would resolve disputes involving intermodal number portability.<sup>60</sup> As the Commission recently explained to the D.C. Circuit, section 332

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<sup>58</sup> This uncertainty will be multiplied in wireless markets that include more than one state. Imagine a sales representative at a retail outlet in Virginia attempting to advise a Maryland resident who works in the District of Columbia about the availability and affects of utilizing number portability.

<sup>59</sup> *Rate Center Petition*, SBC Comments at 8 (filed Feb. 26, 2003).

<sup>60</sup> *See Qwest Corp. v. FCC*, 252 F.3d 462, 463-64 (D.C. Cir. 2001) (addressing whether the Commission had authority to enforce rules adopted under section 251 or whether such authority rested solely with the states in arbitrating interconnection agreements. The Commission had enforced the rule through adjudication of complaints brought by paging carriers under section 208, while the LECs objected, arguing that under section 251(c)(1) such disputes can only be resolved through state managed negotiation and arbitration. The issue before the court was whether section 51.703(b), as applied to CMRS, was derived solely from the 1996 Act, or whether it is validated by section 332. The court observed that if the rule relied upon section 332, then the Commission undisputedly has jurisdiction to adjudicate section 208 complaints. The court determined that this precise issue had been resolved by the Eighth Circuit in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); thus it saw no need to re-examine the issue. It understood the Eighth Circuit to mean that section 332 gives the Commission unique authority over LEC-CMRS

gives the FCC unique authority over the relationships between CMRS carriers and LECs, and this should be understood to include their number portability agreements.<sup>61</sup> In fact, this process would be significantly more efficient than that contemplated by SBC and other LECs; namely, renegotiating interconnection agreements in 50 states and potentially subjecting those agreements to 50 arbitrations.

Because the Commission has determined that the public interest will be served through intermodal number portability, and because the Commission based the CMRS number portability mandate on the obligation to offer intermodal number portability, the Commission has a responsibility to ensure the availability of intermodal number portability. SLAs will best achieve this goal. The alternative ‘solution’ proffered by the LECs will not achieve the objective of number portability, is contrary to the statute and Commission precedent, and is not in the public interest.<sup>62</sup>

#### **IV. THE COMMISSION MUST ADDRESS SEVERAL ADDITIONAL OUTSTANDING ISSUES AFFECTING NUMBER PORTABILITY.**

There are several other outstanding issues with respect to the LEC-CMRS relationship which the Commission must address if intermodal number portability is to be realized and the intent of the *LNP First Report and Order* is to be satisfied. These issues are less universal in

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interconnection to adopt special rules and adjudicate complaints between carriers. Such authority would naturally extend to adjudicating disputes over number portability.).

<sup>61</sup> See Brief for Respondent at 37, *Cellular Telecommunications & Internet Ass’n and Cellco Partnership, d/b/a Verizon Wireless v. FCC*, (D.C. Cir.) (No. 02-1264).

<sup>62</sup> As CTIA explained in its *Rate Center Petition*, there is no need for carriers to amend existing interconnection agreements because these agreements address ongoing compensation for the exchange of traffic between carriers. Number porting, in contrast, requires only a notification to the NPAC database to change the identity of the carrier associated with the customer’s telephone number.

scope than the porting interval and nature of agreement issues. They tend to affect competition and consumption in a more geographically localized way. But in the specific and in the aggregate they are important. If they remain unresolved, it will be impossible to provide consumers with a coherent account of their opportunities and rights. It will preclude effective, efficient marketing and, in some cases, will adversely affect the quality of service available to CMRS subscribers.

LEC intransigence with respect to the issues raised here and in the earlier sections of this petition and in the *Rate Center Petition* reflects above all a concern about the potential threat of CMRS as a local services competitor. Just as with the issues addressed previously, the issues discussed in this section must also be resolved if LECs are to be prevented from raising obstacle after obstacle to number portability.

Specifically, the Commission must conclude its inquiry into the year-old rating and routing dispute between BellSouth and Sprint. In addition, the Commission must reaffirm the right of consumers to port their numbers, regardless of the type of interconnection the underlying carrier utilizes. The Commission must also resolve several CMRS-specific issues, such as which markets are part of the largest 100 MSAs and whether the bona fide request requirement will remain an element of the LNP rules. Resolution of these issues is critical if competition is to be enhanced by LNP.

**A. The Commission Should Promptly Resolve The Intercarrier Dispute Between BellSouth And Sprint.**

A little over a year ago, Sprint filed a petition with the Commission seeking confirmation that 1) an ILEC may not refuse to load telephone numbering resources of an interconnecting carrier; and 2) an ILEC may not refuse to honor the routing and rating points designated by that interconnecting carrier. The petition was released on Public Notice and comments were filed last

summer.<sup>63</sup> To date, the Commission has not resolved the issues raised in the petition, and the current uncertainty regarding LECs' obligations will lead to further delays in intermodal number portability.

As an initial matter, the dispute between Sprint and BellSouth largely concerns matters of intercarrier compensation, not numbering administration or number portability. However, the dispute has arisen because CMRS providers do not maintain a switch in every rate center. As is now well known, while CMRS providers serve customers and have facilities overlapping almost every wireline rate center, they maintain a switch (or otherwise establish a numbering presence) in approximately only one out of every eight rate centers. The difference in network architecture between CMRS and wireline carriers is fully explained in the *Rate Center Petition*. This difference serves as the basis for LEC refusals to differentiate between rating and routing points of calls which is at the heart of the Sprint-BellSouth dispute.

By failing to address this matter, the Commission has left open the door for other LECs to argue that they need not differentiate between rating and routing points for local calls. This situation will likely become more acute once number portability is implemented and customers attempt to port their numbers to wireless carriers. As one commenter stated, “[t]he *CTIA [Rate Center] Petition* raises the same transport and compensation issues for rural carriers that have come to light in connection with several other recent wireless carriers’ petitions.”<sup>64</sup> Once number portability is implemented, if carriers elect to continue to rate calls to their original rate center, rating and routing points must necessarily be disassociated. However, the LEC position

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<sup>63</sup> Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic, CC Docket No. 01-92, *Public Notice*, 17 FCC Rcd 13,859 (2002).

<sup>64</sup> *See Rate Center Petition*, NECA and NTCA Joint Comments at 6 (filed Feb. 26, 2003).

as well as that of several rural CMRS providers is clear -- disassociating numbers from their rate centers would conflict with “current rules [that] tie wireline number portability to the rate center.”<sup>65</sup> Thus, the issue raised in the Sprint-BellSouth dispute directly affects the availability of LNP to consumers and should be resolved in a manner that promotes number portability.

**B. The Commission Should Address BellSouth’s Claims With Respect To Number Portability By CMRS Providers Utilizing Type 1 Interconnection.**

In comments filed in response to the *Rate Center Petition*, and on several other occasions over the last few years, BellSouth has requested the Commission address matters involving number portability by wireless customers who are served by carriers that purchase Type 1 interconnection from LECs. The provision of Type 1 interconnection dates back twenty years to the initiation of cellular service. “Under Type 1 interconnection, the [LEC] owns the switch serving the [CMRS] network. Therefore, it performs the origination and termination of both incoming and outgoing calls.”<sup>66</sup> BellSouth recently explained to the Commission that “[a]ll traffic terminating to Type 1 wireless numbers route to the LEC Type 1 interconnection end office. Because of this interconnection arrangement, a wireline LEC will always be involved in the porting of a Type 1 wireless number, regardless of whether the port is between two wireless carriers or a wireless and wireline carrier.”<sup>67</sup> According to BellSouth, because number

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<sup>65</sup> *Rate Center Petition*, CenturyTel Comments at 4 (filed Feb. 26, 2003).

<sup>66</sup> The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Rep. No. CL-379, *Declaratory Ruling*, 2 FCC Rcd 2910 ¶ 46 (1987); see The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Rep. No. CL-379, *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 2369, ¶ 20, n.16 (1989).

<sup>67</sup> *Rate Center Petition*, BellSouth Reply Comments at 2 (filed Mar. 13, 2003).

portability for Type 1 interconnection always involves a LEC, it is necessarily more complicated and consensus on portability procedures for Type 1 lines has eluded the industry.<sup>68</sup>

BellSouth asserts that there are three issues affecting number portability by consumers whose carriers utilize Type 1 interconnection. First, BellSouth indicates that the wireline procedures for ‘rate center validation,’ which are designed to ensure that ports do not cross wireline rate centers (the wireline procedures must be utilized because the number resides in the wireline switch), will impair Type 1 ports.<sup>69</sup> Under the operating approaches adopted by wireline companies, rate center validation would inhibit the ability of consumers with Type 1 interconnection to port both intermodally or intramodally except in the unlikely event that the donor and recipient carrier are in the same rate center. Second, BellSouth explains that the procedures for code administration in the NPAC presently do not account for the unique status of Type 1 numbers.<sup>70</sup> Third, BellSouth and Cingular have explained that the wireline and wireless industries have not established specific procedures to accommodate the unique aspects of Type 1 ports.<sup>71</sup>

The Commission can achieve resolution of these issues in a straightforward fashion. As an initial matter, it is important to recognize that these are procedural issues that could be resolved at the direction of the Commission -- they are not technical barriers to number

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<sup>68</sup> See BellSouth *ex parte*, CC Docket No. 95-116 (May 1, 2003) (“*BellSouth Type 1 Ex Parte*”); *Rate Center Petition*, BellSouth Reply Comments at 3 (filed Mar. 13, 2003).

<sup>69</sup> *BellSouth Type 1 Ex Parte* at 7.

<sup>70</sup> *BellSouth Type 1 Ex Parte* at 8.

<sup>71</sup> *BellSouth Type 1 Ex Parte* at 9; *Rate Center Petition*, Cingular Reply Comments at 3 (filed Mar. 13, 2003) (“[t]he industry has developed procedures for the migration of numbers associated with Type 1 Interconnection Arrangements. However, the industry has not yet developed an agreed-upon process for ports involving Type 1 numbers.”).

portability for consumers of Type 1 interconnecting carriers. Only the necessary resolve appears to be lacking. The Commission could supply it by granting the *Rate Center Petition* and making clear the right of all consumers to port their numbers, including those served by Type 1 interconnection. Granting the *Rate Center Petition* would oblige wireline carriers to devise a new procedure to honor port requests involving CMRS providers that does not include rate center validation. Failure to do so would amount to a violation of the Commission's order. Second, the Commission should affirm that consumers of Type 1 carriers have the right to port their numbers both intermodally and intramodally. Similarly, wireline and wireless carriers would be required to adopt procedures to accommodate such ports. The Commission itself need not establish the procedures, it need only establish the right of consumers to port numbers to and from CMRS providers irrespective of wireline rate center boundaries, including consumers served by Type 1 interconnection. Given clear guidance by the Commission, the industry consensus process, with NANC oversight, should be sufficient to establish procedures to accommodate such ports.

The availability of number portability to consumers of Type 1 interconnection was addressed in the *NANC Second Report* to the Commission in 1999. NANC reported that

[a]greement was reached on the treatment of Type 1 NPA-NXXs. Wireless carriers may request that the wireline switch is number portability capable and the NPA-NXX code is open for porting. Wireless carriers may port the assigned and reserved Type 1 numbers to their MSC. The wireless carrier then may address their old Type 1 interconnection contract with the ILEC.<sup>72</sup>

Progress on this issue has continued over the years. As BellSouth acknowledged, the LNPA Working Group issued a report which addresses Type 1 interconnection. Pursuant to the latest report, released last November, wireless and wireline carriers would negotiate amongst

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<sup>72</sup> *NANC Second Report* at 29 (§ 5.2).

themselves whether to migrate blocks of numbers from Type 1 interconnection to the more commonly utilized Type 2 interconnection, but “[i]t is not proposed to force migration of the Type 1 telephone number blocks.”<sup>73</sup> Accordingly, with final direction from the Commission, resolution of this issue is surely attainable. Until such a statement is forthcoming by the Commission, the uncertainty surrounding this issue will threaten the availability of number portability to the vast majority of consumers who purchase service from wireless carriers utilizing Type 1 interconnection.

Finally, the Commission need not accept BellSouth’s suggestion that a separate rulemaking proceeding be initiated to consider this issue along with other issues surrounding intermodal number portability.<sup>74</sup> While BellSouth is correct in identifying the unique issues concerning number portability for Type 1 interconnection, a separate rulemaking to address this issue is unnecessary -- the Commission has already determined that LECs and CMRS providers must port numbers to one another with no exception made for Type 1 carriers. A separate rulemaking proceeding would serve only to delay the availability of number portability (both intramodal and intermodal) to consumers who have no reason to know that they are served by Type 1 interconnection.

**C. The Commission Must Resolve Outstanding CMRS-Specific Issues.**

There are several CMRS-specific issues that are outstanding and need to be resolved before wireless LNP can proceed. These issues have been fully briefed and concern if, when, where, and how carriers must implement LNP. Specifically, the Commission needs to decide

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<sup>73</sup> See LNPA Working Group Report on the Migration of Numbers Associated with Type 1 Interconnection Arrangements, at 1, June 28, 2002, revised November 12, 2002 (attached to *BellSouth Type 1 Ex Parte*).

<sup>74</sup> *Rate Center Petition*, BellSouth Reply Comments at 3 (filed Mar. 13, 2003).

which markets are part of the largest 100 MSAs so that all carriers understand their porting obligations, and it needs to decide whether the bona fide request requirement will remain an element of the LNP rules so that carriers know when their porting obligations go into effect. These issues are pending as a result of the *NRO Third Order on Reconsideration* which was released in March 2002.<sup>75</sup> In the past year, these issues have been well documented and fully pled; comments, reply comments, and numerous *ex parte* filings have been submitted to the Commission in response to the *NRO Third Order on Reconsideration*. In addition, the Commission needs to clarify rural carriers' obligation to support nationwide roaming.

**1. The Commission must decide how to define the top 100 MSAs.**

The Commission needs to clarify the scope of the LNP mandate. In the *NRO Third Report and Order*, the Commission ruled that the largest 100 MSAs are those identified in the *LNP First Report and Order* as well as those areas included in any subsequent list of the largest 100 MSAs.<sup>76</sup> Having failed to seek public comment on this issue prior to releasing the *NRO Third Report and Order*, the Commission subsequently reversed this ruling. It then sought comment on whether it should require carriers in those areas that were not originally included in the largest 100 MSAs, but would be included by the definition used in the *NRO Third Report and Order*, to provide LNP and participate in thousands-block number pooling. Carriers in at least

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<sup>75</sup> See In the Matter of Numbering Resource Optimization, CC Docket Nos. 99-200 and 95-116, *Third Report and Order on Reconsideration in CC Docket 99-200, Third Further Notice of Proposed Rulemaking in CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116*, 17 FCC Rcd 4784 (2002) (“*NRO Third Order on Reconsideration*”).

<sup>76</sup> See In the Matter of Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200*, 17 FCC Rcd 252, ¶ 127. (2001) (“*NRO Third Report and Order*”).

twenty markets now find themselves in a position of not knowing whether they will have to provide LNP on November 24, 2003.<sup>77</sup>

**2. The Commission must decide if it will keep the bona fide request requirement.**

The Commission needs to decide whether the bona fide request requirement will remain an element of the LNP rules so carriers may know when their porting obligations go into effect. In the *NRO Third Order on Reconsideration*, the Commission sought comment on whether carriers should be required to deploy LNP and participate in thousands-block number pooling in the 100 largest MSAs, regardless of whether they have received a specific bona fide request to provide LNP from another carrier.<sup>78</sup> Over a year later, the Commission has not yet decided this issue.

**3. The Commission must decide when carriers are obligated to provide support for nationwide roaming.**

The Commission needs to clarify when the requirement to support nationwide roaming goes into effect for rural and small carriers. For over a year, several rural carriers have been seeking partial waivers and extensions of the deadline to provide this service.<sup>79</sup> The carriers

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<sup>77</sup> Western Wireless is an example of a carrier in this position, and it requested a waiver of the thousands-block number pooling requirement in certain MSAs. The Commission sought public comment of the Western Wireless petitions. However, it has yet to issue a ruling. See *In the Matter of Western Wireless' Limited, Conditional Petition for Waiver of Number Pooling Obligations in McAllen-Edinburg-Mission, Texas*, CC Docket Nos. 99-200 and 95-116 (filed Nov. 27, 2002); Supplement to Petition for Waiver and Petition for Clarification of Western Wireless Corporation, CC Docket Nos. 99-200, 96-98, and 95-116 (filed March 3, 2002).

<sup>78</sup> See *NRO Third Order on Reconsideration* at ¶¶ 7-8.

<sup>79</sup> See, e.g., Petition for Waiver by Pine Belt PCS, and Pine Belt Cellular, Inc., CC docket Nos. 99-200 and 95-116, WT Docket No. 01-184 (filed Nov. 22, 2002); Petition for Limited Waiver and Extension of Time by Kodiak Wireless, LLC, CC Docket No. 99-200 (filed Nov. 22, 2002); Cellular Phone of Kentucky, Inc., Petition for Limited Waiver

argue that small, rural carriers face difficulty complying with this requirement because they lack the necessary financial and administrative resources. In addition to deciding the pending requests, the Commission needs to clarify the obligation to support nationwide roaming for all rural carriers. Because there is no formal mandate implementing wireless LNP standards, it is unclear whether all rural carriers will undertake the expense of modifying their networks to support nationwide roaming.

According to Commission rules and orders, CMRS providers must support nationwide roaming for pooled numbers by November 24, 2002 and ported numbers one year later. This requirement ensures that if a customer with a ported or pooled number roams into another CMRS carriers' network, that CMRS carrier will support that customer's ability to make and receive calls.<sup>80</sup>

These waiver requests, however, pose genuine claims and raise serious implications for consumers and carriers alike. On one hand, the stability of the nationwide roaming system is at risk; on the other hand, the financial stability of rural carriers is also at issue. The importance of the availability of roaming to subscribers who have ported numbers must be balanced against the financial capacity of smaller firms. It is clear that the Commission needs to resolve this issue. Continued silence only furthers the confusion. If carriers are unclear of their obligations, they

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and Extension of Time, CC Docket No. 99-200 (filed Nov. 22, 2002); Litchfield County Cellular, Inc. Petition for Limited Waiver and Extension of Time, CC Docket No. 99-200 (filed Nov. 22, 2002).

<sup>80</sup> *Verizon Wireless LNP Forbearance Order* ¶ 31. See also Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092, ¶ 41 (1999) (stating that all wireless carriers even those outside major markets must configure their networks to support number portability).

cannot offer consumers who roam the information they require to make an informed decision about the service affecting consequences of porting their number.

**V. CONCLUSION**

For the foregoing reasons, CTIA respectfully requests that the Commission remove uncertainty and terminate controversy regarding the obligations of wireless and wireline carriers to implement LNP in a manner that achieves the Commission's stated objectives.

Respectfully submitted,

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